



**Town of Surfside  
Regular Town Commission Meeting  
AGENDA**

**Tuesday, June 14, 2022  
7:00 PM**

Commission Chambers - 9293 Harding Avenue  
Surfside, FL 33154

***Rule 7.05 Decorum. Any person making impertinent or slanderous remarks or who becomes boisterous while addressing the commission shall be barred from further appearance before the commission by the presiding officer, unless permission to continue or again address the commission is granted by the majority vote of the commission members present. No clapping, applauding, heckling or verbal outbursts in support or opposition to a speaker or his or her remarks shall be permitted. Signs or placards may be disallowed in the commission chamber by the presiding officer. Persons exiting the commission chambers shall do so quietly.***

***Rule 6.05 Agenda. The good and welfare portion of the agenda set for 8:15 p.m. shall be restricted to discussion on subjects not already specifically scheduled on the agenda for discussion and debate. In no event shall this portion of the agenda be allotted more than 45 minutes with each speaker to be given no more than three minutes, unless by vote of a majority of the members of the commission present, it is agreed to extend the time frames. Likewise, commission members shall be restricted to speaking three minutes each unless an extension is granted in the same manner as set forth in the prior sentence.***

***Any person who received compensation, remuneration or expenses for conducting lobbying activities is required to register as a lobbyist with the Town Clerk prior to engaging in lobbying activities per Town Code Sec. 2-235. "Lobbyist" specifically includes the principal, as defined in this section, as well as any agent, officer or employee of a principal, regardless of whether such lobbying activities fall within the normal scope of employment of such agent, officer or employee. The term "lobbyist" specifically excludes any person who only appears as a representative of a not-for-profit community-based organization for the purpose of requesting a grant without special compensation or reimbursement for the appearance; and any person who only appears as a representative of a neighborhood, homeowners or condominium association without compensation for the appearance, whether direct or indirect or contingent, to express support of or opposition to any item.***

***Per Miami Dade County Fire Marshal, the Commission Chambers has a maximum capacity of 99 people. Once this capacity has been reached, people will be asked to watch the meeting from the first floor.***

## 1. Opening

1A. Call to Order

1B. Roll Call of Members

1C. Pledge of Allegiance

1D. Mayor and Commission Remarks

1E. Agenda and Order of Business

1F. Presentation of Police Officers of the Year 2021. - Andrew Hyatt, Town Manager

1G. CTS Update

1H. Legislative Update by Senator Jason Pizzo - Andrew Hyatt, Town Manager

1I. Legislative Update by Town Lobbyist - Andrew Hyatt, Town Manager  
[Town of Surfside Leg Update Memo.pdf](#)

## 2. Quasi-Judicial Hearings

*Please be advised that the following items on the agenda are quasi-judicial in nature. If you wish to object or comment upon an item, please complete a Public Speaker's Card indicating the agenda item number on which you would like to comment. You must be sworn before addressing the Town Commission and you may be subject to cross-examination. If you refuse to submit to cross-examination, the Town Commission will not consider your comments in its final deliberation. Please also disclose any ex-parte communications you may have had with any members of the Town Commission. Town Commission members must also do the same.*

## 3. Consent Agenda

*All items on the consent agenda are considered routine or status reports by the Town Commission and will be approved by one motion. Any Commission member may request that an item be removed from the Consent Agenda and discussed separately. If the public wishes to speak on a matter on the consent agenda, they must inform the Town Clerk prior to the start of the meeting by completing a speaker card. They will be recognized to speak prior to the approval of the consent agenda.*

3A. Approval of Minutes - Sandra N. McCready, MMC - Town Clerk  
[2022-05-10 Town Commission Meeting Minutes.pdf](#)

3B. Committee Reports/Minutes  
[2022-04-28 Planning and Zoning Board Meeting Minutes.pdf](#)  
[2022-02-28 Parks and Recreation Committee Meeting Minutes.pdf](#)

3C. Town of Surfside Title VI Program Plan Re-adoption - Andrew Hyatt, Town Manager

**A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, APPROVING A TITLE VI PROGRAM PLAN IN ACCORDANCE WITH TITLE VI, 42 U.S.C. SECTION 2000D, CIVIL RIGHTS ACT OF 1964, AS**

**REQUIRED FOR THE TOWN TO RECEIVE FEDERAL PASS-THROUGH FUNDING FROM MIAMI-DADE COUNTY FOR THE TOWN'S TRANSIT SERVICES; PROVIDING FOR IMPLEMENTATION; AND PROVIDING FOR AN EFFECTIVE DATE.**

[Reso Adopt Title VI Plan.docx](#)  
[Title VI Program Plan.RTF](#)

- 3D. Adoption of Town of Surfside Fund Balance Policy** - Andrew Hyatt, Town Manager

**A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, APPROVING AND ADOPTING A FUND BALANCE POLICY; PROVIDING FOR AUTHORIZATION; PROVIDING FOR IMPLEMENTATION; AND PROVIDING FOR AN EFFECTIVE DATE.**

[Resolution Adopting a Fund Balance Policy.DOCX](#)  
[Fund Balance Policy - 2022.pdf](#)  
[Fund Balance Implementation FY 2022.pdf](#)

- 3E. Approval to Execute FPL Binding Estimate Agreement** - Andrew Hyatt, Town Manager

**A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, APPROVING THE BINDING COST ESTIMATE WITH FLORIDA POWER & LIGHT COMPANY (FPL) AND THE UNDERGROUND FACILITIES CONVERSION AGREEMENTS IN CONNECTION WITH THE UNDERGROUNDING ELECTRIC FACILITIES CONVERSION; AUTHORIZING THE TOWN MANAGER TO EXECUTE THE AGREEMENTS WITH FPL FOR THE PROJECT; PROVIDING FOR IMPLEMENTATION; AND PROVIDING FOR AN EFFECTIVE DATE.**

[Resolution Approving FPL Binding Estimate Agreement.DOCX](#)  
[BCE Cvr ltr Town of Surfside 9-21.pdf](#)  
[TOS - Binding Cost Estimate and GAF Phase 1.pdf](#)  
[TOS - Binding Cost Estimate and GAF Phase 2.pdf](#)  
[TOS - Binding Cost Estimate and GAF Phase 3.pdf](#)  
[FPL Undergrounding Map.pdf](#)

- 3F. Digitization and Storage of Documents: GRM Proposal and Service Agreement** - Andrew Hyatt, Town Manager

**A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, APPROVING AN AGREEMENT FOR DOCUMENT STORAGE, HANDLING, SCANNING, AND DIGITIZATION SERVICES FOR THE TOWN BUILDING DEPARTMENT WITH GRM INFORMATION MANAGEMENT SERVICES, INC.; FINDING THAT THE PURCHASE IS EXEMPT FROM COMPETITIVE BIDDING PURSUANT TO SECTION 3-13(2) OF THE TOWN CODE AS A CONTRACT FOR PROFESSIONAL SERVICES; AUTHORIZING THE TOWN MANAGER TO ENTER INTO AN AGREEMENT IN SUBSTANTIALLY THE FORM ATTACHED HERETO AS EXHIBIT "A" WITH THE CONTRACTOR; PROVIDING FOR IMPLEMENTATION; AND PROVIDING FOR AN EFFECTIVE**

**DATE.**

[Resolution Approving Agreement with GRM for Document Storage.DOCX](#)  
[GRM Agreement for Document Storage.PDF](#)

**3G. Town Hall Front Office Lobby Remodel - Andrew Hyatt, Town Manager**

**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.**

[Resolution Approving Contractor And Authorizing Expenditure of Funds for Town Hall Remodel Project.DOCX](#)

[Contract for Construction - Bldg Dept Interior Remodel V4.DOC](#)

[FINAL AMENDED FLOOR PLAN DRAFT 5.0 2-23-2022.pdf](#)

[FINAL ELECTRICAL PLAN 3.5 FOR OFFICE REMODEL 2-23-2022.pdf](#)

[REVISED PROPOSAL-RMB Contractors-Front Office Remodel - 20220511 - RMB.pdf](#)

**3H. Town of Surfside Social Media Policy - Revised - Andrew Hyatt, Town Manager**

**A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, AMENDING THE SOCIAL MEDIA POLICY FOR THE TOWN; PROVIDING FOR IMPLEMENTATION AND AUTHORIZATION; AND PROVIDING FOR AN EFFECTIVE DATE.**

[Resolution Amending Social Media Policy TA v1.DOCX](#)

[Revisions to Social Media Policy 2022-6-6.docx](#)

**3I. Authorization to Proceed with Award and Contracting for Engineering Services with Kimley-Horn and Associates, Inc. as a Result of Request for Qualifications (RFQ No. 2022-02), CDBG-MIT Town-wide Drainage Improvement and Flood Hazard Mitigation Plan - Andrew Hyatt, Town Manager**

**A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, SELECTING AND AWARDED A PROFESSIONAL SERVICES AGREEMENT TO KIMLEY-HORN AND ASSOCIATES, INC. FOR PROFESSIONAL ENGINEERING SERVICES RELATED TO THE COMMUNITY DEVELOPMENT BLOCK GRANT MITIGATION PROGRAM (CDBG-MIT) TOWNWIDE DRAINAGE IMPROVEMENT AND FLOOD HAZARD MITIGATION PLAN, AUTHORIZING THE TOWN MANAGER TO NEGOTIATE AND ENTER INTO AN AGREEMENT WITH KIMLEY-HORN AND ASSOCIATES, INC.; PROVIDING FOR IMPLEMENTATION; AND PROVIDING FOR AN EFFECTIVE DATE.**

[Resolution Approving PSA with Kimley-Horn - Drainage Improvement and Flood Hazard Mitigation Project.DOCX](#)

- 3J. **Authorization to Award Disaster Debris Monitoring Services to Whitt O'Brien's per RFP 2022-01 Disaster Debris Monitoring Evaluation Committee Recommendation - Andrew Hyatt, Town Manager**

**A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, SELECTING AND AWARDING AN AGREEMENT TO WITT O'BRIEN'S LLC FOR DISASTER DEBRIS MONITORING SERVICES PURSUANT TO RFP NO. 2022-01; PROVIDING FOR AUTHORIZATION; PROVIDING FOR IMPLEMENTATION; AND PROVIDING FOR AN EFFECTIVE DATE.**

[Resolution Selecting and Awarding Contract to Witt O'Brien's LLC for Disaster Debris Monitoring Services.DOCX](#)

[Disaster Debris Monitoring Contract - Witt O Briens.PDF](#)

- 3K. **Surfside Farmer's Market Extension - Andrew Hyatt, Town Manager**

**A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, APPROVING A SECOND AMENDMENT TO THE LIMITED REVOCABLE LICENSE AGREEMENT WITH WAVEY ACAI BOWLS, LLC FOR THE OPERATION OF THE TOWN OF SURFSIDE'S FARMERS' MARKET; PROVIDING FOR AUTHORIZATION; PROVIDING FOR IMPLEMENTATION; AND PROVIDING FOR AN EFFECTIVE DATE.**

[Resolution Approving Second Amendment to Wavey Acai Bowls LLC Agreement - Farmers Market.DOCX](#)

[Second Amendment to Wavey Acai Bowls LLC Agreement - Farmers Market.DOC](#)

- 3L. **FY 2022 Budget Amendment Resolution No. 6 - Andrew Hyatt, Town Manager**

**A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, APPROVING BUDGET AMENDMENT NO. 6 FOR THE FISCAL YEAR 2022 BUDGET; PROVIDING FOR IMPLEMENTATION; AND PROVIDING FOR AN EFFECTIVE DATE.**

[Resolution Approving Budget Amendment No 6 for FY 2022.DOCX](#)

[FY 2022 Budget Amendment No. 6.pdf](#)

#### 4. Ordinances

##### Second Reading

- 4A1. **Nonhabitable Understory - Commissioner Marianne Meisheid**

**AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA AMENDING THE TOWN OF SURFSIDE CODE OF ORDINANCES BY AMENDING SECTION 90-2. - "DEFINITIONS" TO AMEND THE DEFINITION OF "STORY" AND TO CREATE A DEFINITION OF "NONHABITABLE UNDERSTORY;" CREATING A NEW SECTION 90-49.5. - "NONHABITABLE UNDERSTORY" TO REGULATE NONHABITABLE UNDERSTORIES IN LOW-RISE RESIDENTIAL DISTRICTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR CONFLICTS;**

**AND PROVIDING FOR AN EFFECTIVE DATE.**

[EXHIBIT A.docx](#)

[Photo 8950 Irving UnderstoryFront.pdf](#)

[Photo 8950 Irving Understory Light Air.pdf](#)

[Ordinance Re Nonhabitable Understory - Second Reading with PZB - 5-26-22.pdf](#)

**First Reading**

- 4B1 First Reading: Ordinance Amending Section 54-78 of Code - Prohibited Noises**  
- Shlomo Danzinger, Mayor

**AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, AMENDING THE TOWN OF SURFSIDE CODE OF ORDINANCES BY AMENDING SECTION 54-78. - "PROHIBITED NOISES" RELATING TO PERMITTED HOURS OF OPERATION FOR PERSONAL OR RESIDENT LANDSCAPING EQUIPMENT AND OTHER NOISE-PRODUCING MECHANICAL DEVICES; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR CONFLICTS; AND PROVIDING FOR AN EFFECTIVE DATE.**

[Prohibited Noises Ordinance.docx](#)

- 4B2. Amending the Town of Surfside Code of Ordinances by Amending Section 90-57. - "Marine Structures", to Amend Regulations for Construction of Docks, Pier and Moorings on Waterfront Lots.** - Fred Landsman, Commissioner

**AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA AMENDING THE TOWN OF SURFSIDE CODE OF ORDINANCES BY AMENDING SECTION 90-57. - "MARINE STRUCTURES", TO AMEND REGULATIONS FOR CONSTRUCTION OF DOCKS, PIERS AND MOORINGS ON WATERFRONT LOTS TO MODIFY ALLOWABLE DOCK PROJECTIONS INTO WATERWAYS; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR CONFLICTS; AND PROVIDING FOR AN EFFECTIVE DATE.**

[Ordinance Amending Section 90-57 Marine Structures - 1st Reading TAv2.DOCX](#)

[Ordinance Amending Section 90-57 Marine Structures Alternate Landsman](#)

[Proposal - 1st Reading TAv2.DOCX](#)

- 4B3. 24 Inch Setback Encroachment Clarification** - Jeffrey Rose, Vice Mayor

**AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA AMENDING THE TOWN OF SURFSIDE CODE OF ORDINANCES BY AMENDING SECTION 90-47. - "YARDS, GENERALLY ALLOWABLE PROJECTIONS" TO CLARIFY ALLOWANCES FOR PROJECTIONS INTO REQUIRED SETBACKS; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR CONFLICTS; AND PROVIDING FOR AN EFFECTIVE DATE.**

[Ord Amending Section 90-47 - Yards Allowable Projections 1st Reading TAv2.DOCX](#)

**5. Resolutions and Proclamations**

*If the public wishes to speak on a matter on this section of the agenda, they must inform the Town Clerk by completing a speaker card and they will be recognized to speak.*

- 5A. Proclamation: Surfside Heroes Appreciation Month** - Shlomo Danzinger, Mayor  
[CTS Proclamation Application.pdf](#)  
[Surfside Heroes Proclamation.pdf](#)

- 5B. June 24th - Surfside Champlain Towers South Remembrance Day** - Shlomo Danzinger, Mayor

**A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, COMMEMORATING AND HONORING THE VICTIMS, FAMILY AND FRIENDS, FIRST-RESPONDERS, AND SEARCH-AND-RESCUE TEAMS TO THE CHAMPLAIN TOWERS SURFSIDE COLLAPSE; DECLARING JUNE 24, 2022, AND EACH JUNE 24 THEREAFTER, AS “SURFSIDE CHAMPLAIN TOWERS SOUTH REMEMBRANCE DAY”; PROVIDING FOR IMPLEMENTATION; AND PROVIDING FOR AN EFFECTIVE DATE.**

[Resolution Surfside Champlain Towers South Remembrance Day.docx](#)

- 5C. New High School for Surfside and Neighboring Communities** - Vice Mayor Jeff Rose

**A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, EXPRESSING SUPPORT FOR THE ESTABLISHMENT OF A NEW HIGH SCHOOL TO SERVICE SURFSIDE AND NEIGHBORING COMMUNITIES; AUTHORIZING THE TOWN MANAGER TO WORK WITH NEIGHBORING COMMUNITIES AND THE MIAMI-DADE COUNTY SCHOOL BOARD TO ESTABLISH A NEW HIGH SCHOOL FOR THE AREA; PROVIDING FOR TRANSMITTAL; AND PROVIDING FOR AN EFFECTIVE DATE.**

[Resolution Expressing Support For New High School.DOCX](#)

**6. Good and Welfare**

**7. Town Manager and Town Attorney Reports**

- 7A. Town Manager's Report** - Andrew Hyatt, Town Manager  
[Town Managers Report.pdf](#)

- 7B. Town Attorney's Report** - Lillian Arango, Town Attorney  
[Town Attorneys Report.pdf](#)

**8. Unfinished Business and New Business**

**9. Mayor, Commission and Staff Communications**

- 9A. Dogs on the Beach** - Commissioner Marianne Meisheid  
[Dog Signage A.jpg](#)  
[Dog Signage B.jpg](#)  
[Dog Signage C.jpg](#)

- 9B. Special Meetings before Regularly Scheduled Monthly Meetings** - Vice Mayor Jeff Rose
- 9C. Beach Chairs and Umbrellas at the Community Center** - Vice Mayor Jeff Rose
- 9D. New Tennis Center, Resident Gym, Rooftop Pickle Ball Court** - Vice Mayor Jeff Rose
- 9E. Tot Lot Upgrades** - Jeff Rose, Vice Mayor
- 9F. 50% Lot Coverage for 1-Story Homes** - Shlomo Danzinger, Mayor
- 9G. Residential Safety: Turtle-Friendly Lighting on the Beach** - Shlomo Danzinger, Mayor
- 9H. Planning and Zoning Board Recommendations to Town Commission; May 26, 2022 PZB Meeting.** - Fred Landsman, Commissioner
- 9I. Discussion Re Beach Furniture Ordinance** - Vice Mayor Jeff Rose
- 9J. Parking Rates in Surfside Municipal Parking Lots** - Shlomo Danzinger, Mayor
- 9K. Update on Improving Walkability and Pedestrian Safety within Residential Area** - Andrew Hyatt, Town Manager

**10. Adjournment**

Respectfully submitted,

Andrew Hayatt  
Town Manager

THIS MEETING IS OPEN TO THE PUBLIC. IN ACCORDANCE WITH THE AMERICANS WITH DISABILITIES ACT OF 1990, ALL PERSONS THAT ARE DISABLED; WHO NEED SPECIAL ACCOMMODATIONS TO PARTICIPATE IN THIS MEETING BECAUSE OF THAT DISABILITY SHOULD CONTACT THE OFFICE OF THE TOWN CLERK AT 305-861-4863 EXT. 226 NO LATER THAN FOUR DAYS PRIOR TO SUCH PROCEEDING.

IN ACCORDANCE WITH THE PROVISIONS OF SECTION 286.0105, FLORIDA STATUTES, ANYONE WISHING TO APPEAL ANY DECISION MADE BY THE TOWN OF SURFSIDE COMMISSION, WITH RESPECT TO ANY MATTER CONSIDERED AT THIS MEETING OR HEARING, WILL NEED A RECORD OF THE PROCEEDINGS AND FOR SUCH PURPOSE, MAY NEED TO ENSURE THAT A VERBATIM RECORD OF THE PROCEEDINGS IS MADE WHICH RECORD SHALL INCLUDE THE TESTIMONY AND EVIDENCE UPON WHICH THE APPEAL IS TO BE BASED.

AGENDA ITEMS MAY BE VIEWED AT THE OFFICE OF THE TOWN CLERK, TOWN OF SURFSIDE TOWN HALL, 9293 HARDING AVENUE. ANYONE WISHING TO OBTAIN A COPY OF ANY AGENDA ITEM SHOULD CONTACT THE TOWN CLERK AT 305-861-4863. A COMPLETE AGENDA PACKET IS ALSO AVAILABLE ON THE TOWN WEBSITE AT [www.townofsufsidefl.gov](http://www.townofsufsidefl.gov).



TWO OR MORE MEMBERS OF OTHER TOWN BOARDS MAY ATTEND THIS MEETING.

THESE MEETINGS MAY BE CONDUCTED BY MEANS OF OR IN CONJUNCTION WITH COMMUNICATIONS MEDIA TECHNOLOGY, SPECIFICALLY, A TELEPHONE CONFERENCE CALL. THE LOCATION 9293 HARDING AVENUE, SURFSIDE, FL 33154, WHICH IS OPEN TO THE PUBLIC, SHALL SERVE AS AN ACCESS POINT FOR SUCH COMMUNICATION.



To: Andrew Hyatt, Manager, Town of Surfside  
From: Jonathan Kilman, CEO, Converge Public Strategies  
cc: Jason Greene, Assistant Town Manager and CFO, Town of Surfside  
Date: May 31, 2022  
Re: 2022 Regular Session and 2022D Special Session Legislative Updates

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## 2022 Regular Session

The Legislature concluded the 2022 Legislative Session on Monday, March 14, completing a whirlwind 63 day session that was extended to accommodate late budget negotiations in the final full week of session. The 2022 session was dominated by themes related to Covid-19 funding, social and cultural issues, cryptocurrency, election security, rooftop solar, and state and congressional redistricting, among other issues.

Due to a recovering economy and an influx of federal Covid-19 funds, the FY 2022-2023 budget exceeded \$100 billion for only the second time in Florida's history. While a hospital rate reduction of \$189 million was dropped during the budget conference between the House and Senate, the Legislature eliminated critical care funding for Hospitals that treat the largest number of Medicaid patients. With regard to Surfside's appropriations priorities, we are pleased to report that the following projects were funded by the Legislature:

- Surfside Champlain Towers memorial (Line 3200) – \$1,000,000.
- Surfside Boulevard improvements (Line 1988A) – \$250,000.

Local government tax referenda requirements were amended by the passage of HB 777. The bill requires the referenda authorizing a number of optional local taxes to be held at a general election, including the tourist development tax and local option fuel tax.

Laws governing boating safety and the rental of vessels were revised in SB 606. The bill specifies additional boating safety issues that must be included within boating safety education courses, requires an annual permit for a livery, requires the livery to provide additional boating safety instruction before the vessel may be rented or operated, and imposes criminal penalties for violations of the requirements contained in the bill.

Social and cultural issues dominated a significant amount of floor time in the Legislature this year, including issues related to PreK-12 educational content in HB 7 as well as issues related communication between teachers and school children regarding gender and sexual orientation in HB 1557. Both bills were signed into law by the Governor in April and March of 2022, respectively. In addition, the Legislature banned abortion beyond fifteen weeks, mirroring the effort of a handful of other states over the past year, through the passage of HB 5. The bill was signed into law by the Governor on April 15, 2022.

The Legislature continued to enact policies to address future pandemics and statewide emergencies by creating the Emergency Preparedness and Response Fund, from which the Governor may expend funds to respond to an emergency situation. Senate Bill 96, which created the Fund, was signed into law by the Governor on February 17, 2022.

A recent Florida court ruling that prevented individuals who own bitcoin and other cryptocurrencies from selling them without a license prompted the passage of HB 273 to clarify that a money transmitter license is only required for a person acting as an intermediary between two parties. The bill was signed into law by the Governor on May 12, 2022.

Elections were addressed through the passage of SB 524, which created the Office of Election Crimes and Security within the Department of State to initiate independent inquiries and conduct preliminary investigations into allegations of election law violations or election irregularities. The Governor signed SB 524 into law on April 25, 2022.

Significant changes in PreK-12 policy included the replacement of PreK-12 annual standardized testing with a computer-based progress monitoring screening in English language arts and mathematics through the passage of SB 1048. The Governor signed the bill into law on March 15, 2022.

Private business will be able to claim damages from a local government if the local government enacts or amends an ordinance or a charter provision that has or will cause a reduction of at least 15 percent of the business' profit as applied on a per location basis of a business operated within the jurisdiction with the passage of SB 620. To be eligible to claim damages, the business must have been in operation for the three years preceding the enactment or amendment of the ordinance or charter. Various exceptions are provided for ordinances or charter provisions that are, for example,

required or authorized by state or federal law or promulgated under a state emergency.

The future of residential rooftop solar could have taken a dramatic turn after the enactment of legislation to phase out the alleged subsidy provided through net metering to investor owned utility customers with rooftop solar. The phase out would have occurred over a three year step down period beginning in 2024 for homeowners with new net metering agreements; customers with a net metering agreement approved before January 1, 2029 would have had 20 years to use the rate structure in the agreement. The Governor vetoed the bill, HB 741, on April 27, 2022.

Significant healthcare changes included the passage of HB 1239, which providing additional flexibility in nursing home staffing requirements by requiring each facility to determine its direct care staffing needs based on the facility assessment and the individual needs of a resident based on the resident's care plan, which must include 2 hours of daily direct care by a CNA and/or nursing assistant, among other minimum staffing standards. In addition, the statewide Medicaid managed care program underwent significant revisions through passage of SB 1950, which consolidated Medicaid managed care regions and repealed obsolete provisions in Florida law in advance of the upcoming procurement for Medicaid managed care. HB 1239 and SB 1950 were signed into law by the Governor on April 6, 2022.

### **Special Session 2022D**

The Legislature Convened a Special Session on May 23, 2022 upon the the call of Governor Ron DeSantis to address issues related to Florida's property insurance market that were not resolved during the regular Session. Two comprehensive reform bills were passed during the special session: SB 2D and SB 4D. Both bills were signed into law by the Governor on May 26, 2022.

**SB 2D** creates broad based property insurance reforms to stabilize Florida's property insurance market. The bill passed the Legislature 95-14 in the House and 30-9 in the Senate.

The property insurance reforms in the bill include:

1. Reinsurance to Assist Policyholders ("RAP") Program. The bill authorizes a \$2 billion dollar reimbursement layer of reinsurance for hurricane losses directly below the mandatory layer of the Florida Cat Fund. All eligible insurers must participate in the

program. Insurers that participate in RAP for 2022 must reduce their policyholder's rates in a rate filing by June 30, 2022, to reflect the savings from RAP.

2. My Safe Florida Home Program. The bill appropriates \$150 million to the My Safe Florida Home Program to provide hurricane mitigation inspections and matching grants for the performance of hurricane retrofitting on homestead single family homes with a value of \$500,000 or less located in the wind-borne debris region set forth in the Florida Building Code. Of the appropriated amount, \$115 million is allocated for hurricane mitigation grants to homeowners.

3. Contractor roof claim solicitations. Contractors are prohibited from making written or electronic communications that encourage or induce a consumer to contact a contractor or public adjuster for the purposes of making a property insurance claim for roof damage unless such solicitation provides a specified insurance fraud notice and a disclosure that the consumer is responsible for the payment of the deductible.

4. Separate roof deductibles. Property insurers are authorized to include in the policy a separate roof deductible of the lesser of two percent of the Coverage A limit of the policy or 50 percent of the cost to replace the roof. The policyholder must also be offered the option to decline the roof deductible by signing a form approved by OIR.

5. Insurer roof underwriting. An insurer is prohibited from refusing to issue or refusing to renew a homeowner's insurance policy insuring a residential structure with a roof that is less than 15 years old solely because of the age of the roof. If the roof is at least 15 years old, an insurer must allow a homeowner to have a roof inspection performed by an authorized inspector at the homeowner's expense before requiring the replacement of the roof as a condition of issuing or renewing a homeowner's expense before requiring the replacement.

6. Insurance claims handling. Property insurers must conduct any physical inspection of the property related to a claim within 45 days of receiving proof of loss statements.

**SB 4D** initially emerged as a proposal to allow the partial repair of a roof with more than 25% damage, rather than a full roof replacement. A late addition to the bill during the special session was the substance of HB 5D (also filed during the special session), which creates comprehensive requirements for the maintenance and inspections of condominium and cooperative buildings.

The reforms implemented by the bill include:

1. Roof repair. The bill requires the Florida Building Code to provide that when 25% or more of a roofing system or roof section is being repaired, replaced, or recovered, only the portion of the roofing system or roof section undergoing such work must be constructed in accordance with the current Florida Building Code in effect at that time, with the exception of roof systems and roof sections built, repaired, or replaced in accordance with the requirements of the 2007 Florida Building Code or later editions.

2. Statewide building milestone inspections. The bill requires that a condominium or cooperative must have a milestone inspection performed for each building that is three stories or more in height by December 31 of the year in which the building reaches 30 years of age and every 10 years thereafter. If the building is located within 3 miles of a coastline, the inspection must be performed by December 31 of the year in which the building reaches 25 years of age and every 10 years thereafter. If a building's certificate of occupancy was issued on or before July 1, 1992, the building's initial milestone inspection must be performed before December 31, 2024. The milestone inspection consists of two phases. The first phase is a visual inspection by a licensed architect or engineer; if substantial structural deterioration is identified, the second phase commences, including a full assessment of the areas of structural distress. Phase one and two reports must be submitted to the local building official of the local government which has jurisdiction.

A board of county commissioners may adopt an ordinance to require the commencement of repairs for substantial structural deterioration within a specified timeframe after the receipt of a phase two inspection report.

3. Structural integrity reserve studies. The bill requires a condominium or cooperative to have a structural integrity reserve study completed at least every 10 years. The study must include a review of the structural integrity and safety of the building related to the roof, primary structural members, floor, foundation, fire protection, plumbing, electrical, waterproofing, and windows.

4. Reserves. The bill prohibits the waiver or reduction of reserves for items that are required to be inspected in a structural integrity reserve study. In addition, reserve funds may only be used for their intended purpose.



**Town of Surfside  
Regular Town Commission Meeting  
MINUTES  
May 10, 2022  
7:00 PM**

Commission Chambers - 9293 Harding Avenue  
Surfside, FL 33154

**1. Opening**

**1A. Call to Order -**

Mayor Danzinger called the meeting to order at 7:03 p.m.

**1B. Roll Call of Members -**

Town Clerk McCready called the roll with the following members present:

Present: Mayor Shlomo Danzinger, Vice Mayor Jeff Rose, Commissioner Nelly Velasquez, Commissioner Marianne Meisheid and Commissioner Fred Landsman.

Also present were Town Manager Andrew Hyatt, Assistant Town Manager Jason Greene, Town Attorney Lillian Arango and Town Attorney Tony Recio.

**1C. Pledge of Allegiance -**

Chief Torres provided the pledge of allegiance.

**1D. Mayor and Commission Remarks -**

Mayor Danzinger congratulated Town Clerk McCreedy for receiving her Master's Degree in Public Administration. He also thanked Public Works Director Gomez for the hard work his staff has been doing on the projects that they have been working on these past few weeks.

Mayor Danzinger reminded the public that everyone comes here with an open mind, respectful and encouraged everyone to speak in a respectful manner and spoke regarding the decorum statement.

Vice Mayor Rose did not have any remarks.

Commissioner Landsman spoke regarding the events coming up in Town Hall.

Commissioner Meisheid is looking forward to a great meeting.

Commissioner Velasquez stated that she hopes to have a productive meeting and finish by 10:00 p.m.

**1E. Agenda and Order of Business Additions, deletions and linkages -**

A motion was made by Vice Mayor Rose to move item 9B (FY 2023-2027 Five-Year Financial Forecast and Proposed Fund Balance Policy) to the end of the discussion items after item 9F (Revision to Code Section 90-57 - "Marine Structures"), seconded by Commissioner Meisheid. The motion carried with a 5-0.

**1F. National Public Safety Telecommunicator Week 04/11/22 – 04/17/22 - Mayor Shlomo Danzinger**

The Police Department is requesting the Town Commission approve a proclamation declaring 04/11/2022 to 04/17/2022 National Public Safety Telecommunicator Week.

Mayor Danzinger read the proclamation into the record and presented it to the Town of Surfside Police Department Dispatchers.

A motion was made by Commissioner Velasquez to approve the proclamation, seconded by Commissioner Landsman. The motion carried with a 5-0 vote.

[Proclamation Certificate Coins and Key to the Town Request Telecommunicator 2022.doc](#)

[National Public Safety Telecommunicator Proclamation.pdf](#)



## **1G. Financial Audit Presentation - Andrew Hyatt, Town Manager**

Town Manager Hyatt provided a summary of the Audit.

Brandon Lopez, Marcum LLP, external auditors presented the financial audit and went through different areas of the report.

Mayor Danzinger asked Mr. Lopez to explain the Water Management Fund and why the water bill is the way it is since residents are concerned about the high rate in their water bills.

Mr. Lopez explained the Water Management Fund and explained that at times that fund runs into a deficit and explained the assessment the Town had done.

Mayor Danzinger recapped that the Town did not increase the rate for 10 years and unfortunately the Town never met that amount and the Town had to raise it by 13%.

Mr. Lopez stated it is thinking ahead in order to avoid a huge increase.

Commissioner Landsman asked if it is their opinion that this Commission should take action to increase marginally.

Mr. Lopez spoke regarding the projections that took place five years ago but has seen an improvement and suggested to continue to monitor it, which would help the Town determine if they need to do another study.

Vice Mayor Rose asked Assistant Town Manager Greene if he has a plan for recommendation.

Assistant Town Manager Greene stated that he does have a five year plan.

Commissioner Landsman congratulated Town Manager Hyatt and Assistant Town Manager Greene for doing a great job.

## **1H. CTS Update - Andrew Hyatt, Town Manager**

Town Manager Hyatt introduced Allyn Kilsheimer who provided an update.

Mr. Kilsheimer provided an update on the Champlain Tower South testing progress. He stated things are going the way they have been and stated it is a slow process. He stated that they are helping them on how to look at the samples and spoke regarding conversations with the experts. He stated that all the physical samplings should be completed by next week. He spoke regarding conversations with NIST to have access to the warehouse. He also spoke regarding some geotechnical testing taking place next week.

Mayor Danzinger asked regarding the geotechnical testing.

Mr. Kilsheimer addressed the comments made by Mayor Danzinger and stated that

the plan is to attempt to have the bid by the end of this month.

Mayor Danzinger asked if the geotechnical study deemed that the ground was fine.

Mr. Kilsheimer explained what the geotechnical study encompasses.

Mayor Danzinger asked if there are additional outside sources to take an additional look. He asked regarding the access to the warehouse.

Mr. Kilsheimer stated that he has spoken to the receiver and they are looking at possibly working over the memorial weekend. He addressed the comment made by Mayor Danzinger as it pertains to the warehouse and they are meeting to provide an agreed upon protocol but does not know how NIST will react.

Commissioner Velasquez asked if he feels they are getting closer to finding out the cause of the collapse.

Mr. Kilsheimer stated no because there is no way of evaluating the construction because the most important pieces NIST has possession of those. He spoke regarding needing the strength and consistencies of the materials and they are waiting to get that. He stated that the key is being able to evaluate what NIST has.

Commissioner Velasquez asked if it is safe to say that the ground was not the cause of the collapse.

Mr. Kilsheimer stated that from their geotechnical studies it shows that the ground was not the cause of the collapse.

Commissioner Velasquez asked if there was no sink hole at the site.

Mr. Kilsheimer stated that there was no sink hole.

Town Manager Hyatt gave a summary of the CTS anniversary event upcoming with some details of the event and what they are working towards. He stated that on May 13th at 10:00 a.m. there will be a press conference at the Tennis Center regarding the banner at the site.

Mayor Danzinger stated that the banner will be going up on Thursday and invited the Commission to attend.

Commissioner Velasquez asked regarding the dates of the anniversary event and after that they will come up with the memorial committee and if the event will be held on 88th Street.

Town Manager Hyatt stated that yes they are working on the location but 88th Street is the focus. He stated that the receiver will be working with the new buyer to see what can and cannot be done on the site and they are continuing the dialogue with them.

Commissioner Velasquez asked if that piece of land belongs to the Town and they

are not allowed to tell them what to do with the property.

Town Manager Hyatt stated yes and spoke regarding the egress and ingress area.

Mayor Danzinger spoke regarding allowing the family to make the decision of where the event should take place.

## 2. Quasi-Judicial Hearings

### 3. Consent Agenda

A motion was made by Commissioner Meischeid to approve the consent agenda, seconded by Vice Mayor Rose. The motion carried with a 5-0 vote.

#### 3A. Approval of Minutes - Town Clerk Sandra N. McCreedy, MPA, MMC

Approved on consent.

[2022-04-12 Budget Workshop Town Commission Meeting Minutes.pdf](#)

[2022-04-12 Special Town Commission Meeting - Quasi Judicial Minutes.pdf](#)

[2022-04-12 Regular Town Commission Meeting Minutes.pdf](#)

[2022-04-27 Special Town Commission Meeting Minutes.pdf](#)

#### 3B. Committee Reports -

Approved on consent.

[2022-03-07 Tourist Board Meeting Minutes.pdf](#)

[2022-03-31 Planning and Zoning Board Meeting Minutes.pdf](#)

#### 3C. Miami Dade County and Town of Surfside Interlocal Agreement for National Pollutant Discharge Elimination System Permit No. FLS000003 for period of October 1, 2022 to September 30, 2027 - Andrew Hyatt, Town Manager

Staff recommendation is to enter into the Interlocal Agreement as a co-permittee with Miami-Dade County in order to allow for continued support with NPDES and MS4 requirements and to be in compliance with State Regulations.

Approved on consent.

[Resolution NPDES.docx](#)

[Interlocal Agreement](#)

[Interlocal Agreement Signature Sheet](#)

#### 3D. Independent External Audit Reengagement - Andrew Hyatt, Town Manager

The Administration recommends approval of the resolution that would reengage the Town's current external auditors.

Approved on consent.

[Reso Approving Engagement of Marcum Auditors 2022.DOCX](#)

[Surfside 2022 Eng Ltr.pdf](#)

**3E. Abolishing Town of Surfside Budget Advisory Committee** - Andrew Hyatt, Town Manager

Town Administration recommends approval of the resolution.

Approved on consent.

[Reso Abolishing Budget Advisory Committee TA v2.DOCX](#)

**3F. Amending the Downtown Vision Advisory Committee (DVAC) Charter** - Andrew Hyatt, Town Manager

Town Administration recommends approval of the resolution.

Approved on consent.

[Resolution DVAC.docx](#)

[Downtown Visioning Taskforce \(May 2022\).pdf](#)

**3G. Nurse Enhancement Initiative for School Year 2022/2023** - Andrew Hyatt, Town Manager

Town Administration recommends approval of the resolution which authorizes the execution of the Memorandum of Understanding, with an Amendment 5, for the continuation of expanded participation in the Nurse Enhancement Initiative for school year 2022/2023 in the amount of \$8,112 in October 2022.

Approved on consent.

[Resolution Approving MOU - Amend. No. 5 to MOU School Nurse Initiative 22 23.DOCX](#)

[Nurse Amendment #5 Municipalities School Year 22-23.pdf](#)

## **4. Ordinances**

### **Second Reading**

### **First Reading**

**4B1. Nonhabitable Understory** - Commissioner Marianne Meischheid

Consider and adopt an ordinance at first reading to amend the zoning code to allow a nonhabitable understory in low-rise residential areas.

Town Clerk McCready read the title of the ordinance into the record.

Mayor Danzinger opened the floor to public comments.

The following individuals from the public spoke:

Jeffrey Platt asked if they are trying to change the words and is against this item.

George Kousoulas explained what the item entails and what this ordinance is trying to accomplish as it pertains to the code.

Eli Ginsburg stated that for the record he is not a developer or contractor and the only interest is to have his children live and play in Surfside. He spoke in support of the item.

Phyllis Shamis spoke against the item and does not want it to block her sun and her garden.

Mayor Danzinger closed the floor to public comments.

Commissioner Meischeid introduced the item and spoke regarding the Town Code and Florida Building Code and amendment to the Code to allow these features that bring a lot of benefits. She spoke regarding the key points.

Mayor Danzinger asked Town Attorney Recio to provide the definition of story.

Town Attorney Recio provided the definition of a story and how it pertains to Chapter 90 and Chapter 42. He spoke regarding the modification and clarification.

Commissioner Velasquez asked Town Attorney Recio that the current definition of story is a concrete floor and ceiling. She stated that the change is to have it called a uninhabitable open space. She spoke regarding uninhabitability. She asked if she can express her thoughts and ideas and add them to the ordinance.

Town Attorney Recio stated that it can never be habitable space and it can still be considered a story. He stated that the uninhabitability cannot be usable interior house space and this can be clarified.

Vice Mayor Rose asked Town Attorney Recio what the current height for single family homes and under this potential change what would the height be and can the commission change this and how the height could be changed.

Town Attorney Recio stated that single family homes and under this potential change the height for both would be 30 feet and any change has to go to the voters.

Vice Mayor Rose stated that he is supportive as it is written and stated it opens up open air and permeability. He spoke regarding these homes being built on piles and these homes will also be built on piles.

Building Official McGuinness stated that the information being spread is incorrect and the homes as well as pools are built on piles and they will require a geotechnical study and how they will be built. He stated that this takes place with all homes being built.

Commissioner Velasquez asked how they would change the number of stories would it require a commission vote.

Town Attorney Recio stated it would require a vote from the residents.

Mayor Danzinger stated what they are trying to do is define what is a story and explained what benefits this would bring. He stated that there are concerns from the residents and the commission.

Commissioner Velasquez stated that by changing the wording you can change what the charter protects and she is having a hard time understanding it. She also wants explanation as to what is being added to the understory. She would like the pool to stay at ground level, the understory smaller than the size of a bedroom, an office or storefront, no bathroom, no fencing and will they be allowing brick walls in addition to the raising of the house. She would like the fencing to be a lattice fencing in order to not block the residents on both sides. She suggested a greater setback on both sides and garage doors should not be allowed. She stated that they should not have front fencing or hedges in the front because it cuts light from going through. She wants to make sure that the ordinance states that the house could not go higher than 30 feet maximum. She would like these suggestions added to the language of the ordinance.

Further discussion took place among the Commission as to what the definition of an understory would be and if it is still considered a story and having this go as a referendum to the residents.

Commissioner Landsman stated that he is in favor of giving the residents options and it does give builders options and it does not mean that everyone will be building these types of homes. It gives options of something open and airy. He stated that when he served on the Planning and Zoning Board this was discussed and agreed upon by the Board for this new definition and this current Planning and Zoning Board does as well.

Mayor Danzinger asked if the motion maker would like to add some of the language regarding the hedges.

Vice Mayor Rose stated he would be amicable to some of the language at the second reading.

A motion was made by Commissioner Meisheid to approve the ordinance on first reading as written, seconded by Vice Mayor Rose. The motion carried with a 4-1 vote with Commissioner Velasquez voting in opposition.

[Photo 8950 Irving UnderstoryFront.pdf](#)

[Photo 8950 Irving Understory Light Air.pdf](#)

[Ordinance Re Nonhabitable Understory - First Reading - 5-4-22.pdf](#)

## 5. Resolutions and Proclamations

Town Manager Hyatt stated that Item 5A (Reimbursement and Intent to Issue Bond Resolution), Item 5B (Authorization to Execute Project Agreement with KCI Technologies, Inc. and Expend Funds for Undergrounding of Utilities Services (Phase II)-Completion of Bid Documents (100% Plans and Technical Specifications), Item 5C (Authorization to Expend Funds and Amend Agreement with HPF Associates, Inc. for Continued Project Administration of Phase II of Town Utilities Undergrounding Project) and Item 5D (FY 2022 Budget Amendment Resolution No. 5) should be linked.

A motion was made by Vice Mayor Rose to link Item 5A (Reimbursement and Intent to Issue Bond Resolution), Item 5B (Authorization to Execute Project Agreement with KCI Technologies, Inc. and Expend Funds for Undergrounding of Utilities Services (Phase II)-Completion of Bid Documents (100% Plans and Technical Specifications), Item 5C (Authorization to Expend Funds and Amend Agreement with HPF Associates, Inc. for Continued Project Administration of Phase II of Town Utilities Undergrounding Project) and Item 5D (FY 2022 Budget Amendment Resolution No. 5), seconded by Commissioner Meischeid. The motion carried with a 5-0 vote.

### 5A. Reimbursement and Intent to Issue Bond Resolution - Andrew Hyatt, Town Manager

Town Administration recommends approval of the resolution.

Town Clerk McCready read the title of the resolution into the record.

Mayor Danzinger opened the floor to public comments.

The following individuals from the public spoke:

Jeffrey Platt stated that the undergrounding project is going to be paid for by the condominiums and is against the project. He asked how much the undergrounding is going to cost and nobody has come to the Commission or residents with an actual price.

Eliana Salzhauer stated she is not in agreement with the cost and it would put the Town in a hole.

George Kousoulas spoke regarding the cost of the project.

Mayor Danzinger closed the floor to public comments.

Commissioner Velasquez requested time to respond to the comments made by the public.

Mayor Danzinger stated that public comment was closed, therefore Commissioner Velasquez could not respond.

A motion was made by Vice Mayor Rose to take a 5 minute recess, seconded by Commissioner Meischeid. The motion carried with a 5-0 vote.

The meeting recessed at 9:05 p.m.

The meeting reconvened at 9:27 p.m.

Mayor Danzinger called the meeting back to order at 9:27 p.m. He thanked Commissioner Velasquez for bringing up that the Commission does have 3 minutes to respond to residents comments. He stated since public comments is already closed, he will not reopen public comment but will have the Commission respond to public comments moving forward in future meetings.

Commissioner Velasquez asked if she could make her statement now.

Mayor Danzinger stated that public comments portion is closed and she can make her statements at a future meeting.

Commissioner Velasquez stated that she will then make her statements in a future meeting for the record.

Assistant Town Manager Greene provided an overview and summary of the item.

Paul Abbott, Project Manager introduced himself.

Mayor Danzinger asked on Page 2, paragraph 2 regarding the location of the equipment and asked for him to address that paragraph.

Mr. Abbott stated that the initial stage of the project is done by the contractor and then afterwards FPL comes in and explained what FPL will do. He spoke regarding a similar lighting program in a near by community.

Commissioner Velasquez left the dais at 9:35 p.m.

Mayor Danzinger asked regarding Page 3 under scope or services and read the section. He asked if you cannot find information on the Town site GIS are there contingencies in place for surveys.

Mr. Abbott addressed the comments made by Mayor Danzinger and spoke regarding spot checks.

Commissioner Velasquez came back to the dais at 9:38 p.m.

Mayor Danzinger asked regarding the cost to replace the driveways and landscaping and that is a large portion of the bill and where the conduits will be placed.

Mr. Abbott addressed the comments made by Mayor Danzinger.

Mayor Danzinger asked regarding the easements and read that section.

Mr. Abbott addressed the comments made regarding the conduits and if that equipment needs to be elevated it is an easy process.

Mayor Danzinger asked how raising the roads would affect the conduits.



Mr. Abbott addressed the comments made by Mayor Danzinger and stated that the conduits can function in water and it is easily elevated.

Mayor Danzinger asked regarding the bid documents and that the project is not susceptible to pressure.

Mr. Abbott commented on the bid document and dates and the binding process.

Commissioner Meischeid asked regarding the portion of the project by the Shul and the cost.

Mr. Abbott addressed the comments made by Commissioner Meischeid.

A motion was made by Commissioner Velasquez to approve the resolution, seconded by Commissioner Landsman. The motion carried with a 5-0 vote.

[Reimbursement Resolution of Intent GO Bonds \(5-2022\).DOCX](#)

**5B. Authorization to Execute Project Agreement with KCI Technologies, Inc. and Expend Funds for Undergrounding of Utilities Services (Phase II) - Completion of Bid Documents (100% Plans and Technical Specifications) - Andrew Hyatt, Town Manager**

Town Administration recommends that the Town Commission authorize the Town Manager to execute a Project Agreement with KCI Technologies, Inc. for Phase II scope of work as outlined in KCI Technologies, Inc. proposal dated April 28 2022 and expend up to \$1,471,855 for scope of work outlined.

Town Clerk McCready read the title of the resolution into the record.

A motion was made by Vice Mayor Rose to approve the resolution, seconded by Commissioner Velasquez. The motion carried with a 5-0 vote.

[Reso Approving KCI PSA For Phase II.DOCX](#)

[Project Agreement - KCI Tech - Undergrounding of Utilities Phase 2-FY22.pdf](#)

**5C. Authorization to Expend Funds and Amend Agreement with HPF Associates, Inc. for Continued Project Administration of Phase II of Town Utilities Undergrounding Project - Andrew Hyatt, Town Manager**

Town Administration recommends that the Commission authorize the Town Manager to execute an amended contract agreement and to expend up to \$184,626 for the purpose of engaging with HPF Associates, Inc. as project manager for Phase II of the undergrounding of the Town's utilities.

Town Clerk McCready read the title of the resolution into the record.

A motion was made by Commissioner Velasquez to approve the resolution, seconded by Commissioner Landsman. The motion carried with a 5-0 vote.

[Reso Approving First\\_Amendment to PSA with HPF - Phase II Services \(1\).docx](#)  
[First Amendment to HPF PSA for Phase II Utilities Underground Project.DOC](#)  
[HPF Associates, Inc. Proposal](#)

**5D. FY 2022 Budget Amendment Resolution No. 5** - Andrew Hyatt, Town Manager

Town Administration recommends approval of the budget amendment.

Town Clerk McCready read the title of the resolution into the record.

A motion was made by Commissioner Velasquez to approve the resolution, seconded by Commissioner Landsman. The motion carried with a 5-0 vote.

[Reso Approving Budget Amendment No. 5.docx](#)

[FY2022\\_Budget\\_Amendment\\_No.\\_5.pdf](#)

## 6. Good and Welfare

The following individuals from the public spoke:

Jeffrey Platt spoke regarding decorum and the actions of Mayor Danzinger and Vice Mayor Rose when it pertained to the increase of the Town Manager's contract. He spoke regarding the beach ordinance and the Town Manager is ignoring it and complained about the Marriott Hotel.

Gerardo Vildostegui spoke regarding walkability in the Town and spoke regarding a pilot project the City of Miami Beach currently has and the issues they are facing which are similar to Surfside. He spoke regarding traffic calming devices.

Phyllis Shamis spoke regarding the union negotiations and she sat with them and is happy that the employees will have a better salary and spoke regarding working out of classification salary pay. She would like that clause to be readdressed and added. She is concerned with trash on the streets and unsecured construction sites.

Eliana Salzhauer stated that she is heartbroken to see what is going on.

Joshua Epstein stated that Surfside is changing and spoke regarding taking away people's rights while expanding someone else's rights.

George Kousoulas spoke regarding the Town Planning position as a junior position to help the Town Planner and would like to state that the Town Planner they have is very knowledgeable and what they need to look for is someone to help him.

Eli Ginsburg spoke regarding talks that took place during the campaign and one of the items that were voted on was to regulate hedges and the permitting process is slow.

Michael Dranoff stated he is sad to see incredible conflict of interest going on as it pertains to construction.

Barry Cohen welcomed the Commission and he hopes they are successful and peaceful. He stated that when he served on the Commission they were all civil with each other.

Bob Fisher spoke regarding 600 92nd Street, he spoke regarding the pile of trash and they are blocking the gutter.

A motion was made by Commissioner Velasquez to extend Mr. Fisher's time by 30 seconds, seconded by Commissioner Landsman. The motion carried with a 5-0 vote.

Mayor Danzinger closed public comments.

Commissioner Velasquez stated that she was not allowed to speak and finish her statement. She stated that there have been major conflict of interests going on today in the meeting.

Mayor Danzinger stated that she is not being fare to the other Commissioners and the public.

## 7. Town Manager and Town Attorney Reports

### 7A. Town Manager's Report - Andrew, Hyatt, Town Manager

Town Manager Hyatt provided an overview of the Town Manager's Report and spoke regarding online permitting and they are having training for staff in the next two weeks to go online in June. He spoke regarding having over \$416 million dollars of commercial projects. He continued to provide a summary of his report.

Public Works Director Gomez spoke regarding the pedestrian safety and traffic calming devices and other projects. He suggested having a new traffic study.

Discussion took place among the Commission and Public Works Director Gomez regarding the different projects and the traffic issues and the connection of 95th and 94th Street.

Commissioner Velasquez asked regarding closing Byron Avenue and Bay Drive and the previous commission had requested that and they did ask for a traffic study. She asked if the previous Commission approval is sufficient.

Public Works Director Gomez stated that they will come back requesting a new study.

Town Manager Hyatt stated that Bay Drive will be temporarily closed during the time the work is being performed.

Commissioner Meisheid asked if he was aware of a walkability study that includes downtown and would he coordinate the results with the Town Planner.

Mayor Danzinger asked if walkability in Town will be addressed.

Public Works Director Gomez stated that some of these projects will be included in the traffic study and spoke regarding the inclusion for the walkability.

Town Manager Hyatt stated that they are working on different projects.

Town Planner Keller spoke regarding the downtown walkability and feasibility study.

Vice Mayor Rose spoke regarding having one meeting with everyone involved and then at the next commission meeting vote for the item regarding the study.

Town Planner Keller stated that the goal was to meet with the Downtown Vision Advisory Committee and they had issues obtaining quorum and does believe they can drop off those meetings.

Vice Mayor Rose stated that he was trying to combine them and having less meetings in order to have this done.

Town Manager Hyatt stated that you can have a workshop prior to the commission meeting in order to expedite it.

Mayor Danzinger asked what the difference would be between the workshop and the special meeting.

Town Manager Hyatt answered Mayor Danzinger's question.

Commissioner Velasquez asked if this means eliminating the parking and asked regarding the palm trees.

Town Planner Keller stated that not all of the parking would be eliminated and addressed the comments regarding the palm trees.

Consensus was reached among the Commission to change the process of the walkability study and design study.

Town Manager Hyatt continued the summary of his report.

Commissioner Velasquez asked regarding an update on the Abbott Avenue Drainage.

Town Manager Hyatt stated that the project is moving forward and the construction documents are in and spoke regarding the grant they received.

A motion was made by Vice Mayor Rose to approve the Town Attorney's Report, seconded by Commissioner Landsman. The motion carried with a 5-0 vote.

[2022-05 May Town Manager's Report.pdf](#)

#### **7B. Town Attorney's Report -**

Town Attorney Arango provided an overview of the Town Attorney's Report. She explained the way her report is set up.

Town Attorney Arango advised the Commission that she would like to request an attorney/client executive session regarding Beach House Hotel, LLC v. Town of Surfside, Case No. 2020-025405 CA 06 and asked the Town Clerk to coordinate a time and date for that executive session.

Town Attorney Arango continued with a summary of the pending litigation cases and upcoming matters. She also discussed that the Charter Review deadline is coming up now December 2022 and she will be working on bringing a committee together for the Charter Review.

A motion was made by Vice Mayor Rose to approve the Town Attorney's Report, seconded by Commissioner Landsman. The motion carried with a 5-0 vote.

[Town Attorneys Report.DOCX](#)

#### **8. Unfinished Business and New Business**

**9. Mayor, Commission and Staff Communications**

Mayor Danzinger opened public comments.

The following individuals from the public spoke on all discussion items (Items 9A through 9F):

Eliana Salzhauer

Joshua Epstein

Walter Norkin

Gerardo Vildostegui

George Kousoulas

Mayor Danzinger closed public comments.

**9A. Amendment to Section 54-78 - Prohibited Noises - Mayor Shlomo Danzinger**

To amend Town Code Section 54-78 - Prohibited Noises - to specifically allow for residents to utilize devices such as lawn mowers, hedge clippers, and other mechanical devices for personal lawncare on Sundays and Saturdays, between the hours of 10 AM - 6 PM. Commercial contractors, such as landscapers, will be prohibited from utilizing these devices on Saturday and Sunday.

A motion was made by Commissioner Velasquez for discussion purposes with the amendment for Saturday and Sunday from 10:00 a.m. to 12:00 p.m., seconded by Commissioner Landsman.

Mayor Danzinger introduced the item and spoke regarding the reason for bringing this item and the current law prohibits a religious Jewish community who cannot do work on Saturday. He stated that he is proposing to start Saturday at 10:00 am and allow homeowners to do their lawns on the weekends including Sunday. He also included holidays for homeowners not for commercial. He stated he will agree to move it to 11:00 a.m. because 12:00 p.m. is during the hottest time of the day.

Commissioner Velasquez agrees and stated that she would prefer to move it to 11:00 a.m.

A motion was made at 10:57 p.m. by Vice Mayor Rose to extend the meeting one hour (until midnight), seconded by Mayor Danzinger. The motion carried with a 4-1 vote with Commissioner Velasquez voting in opposition.

Commissioner Meischeid agrees with the dates and time.

Commissioner Landsman agrees with the dates and the time to start at 10:00 a.m. to 6:00 p.m.

Vice Mayor Rose agrees with the dates and time to start at 10:00 a.m. for homeowners.

A motion was made by Commissioner Velasquez to have homeowners allowed to do landscaping Saturdays and Sundays from 10:00 a.m. to 6:00 p.m., seconded by Commissioner Landsman. The motion carried with a 5-0 vote.

**9B. FY 2023- 2027 Five-Year Financial Forecast and Proposed Fund Balance Policy - Andrew Hyatt, Town Manager**

Provide direction to Town Administration on proposed Fund Balance Policy.

Assistant Town Manager Greene provided the FY 2023-2027 Five-Year Financial Forecast and Proposed Fund Balance Policy.

Commissioner Velasquez asked if the Town Balance Fund is healthy as it pertains to

the garbage fees and asked if the garbage fees will be reduced.

Assistant Town Manager Greene stated that it is up to the Commission to lower the garbage fees.

Mayor Danzinger asked regarding the assumption per square foot and it being a conservative assumption.

Assistant Town Manager Greene stated that they will end up at a higher level.

Commissioner Velasquez asked if they can make those changes.

Assistant Town Manager Greene stated that he would suggest to work with the Town Attorney and come back with a discussion item.

Town Attorney Arango explained the legislature which restricts the Tourism dollars and they need to look at what the restrictions would be.

A motion was made by Commissioner Velasquez to have the Town Attorney look at moving the funds. The motion died for a lack of a second.

Mayor Danzinger stated that he would like to speak to the Tourist Board to see what programs they have in mind to make sure they have the funding.

Mayor Danzinger asked regarding the money of the water fund and could it be moved.

Assistant Town Manager Greene stated that those funds are restricted.

Commissioner Velasquez asked if they could give a rebate.

Assistant Town Manager Greene stated that the water and sewer fund is also restricted.

A motion was made by Vice Mayor Rose at 12:29 a.m. to extend the meeting for 5 minutes, seconded by Commissioner Landsman. The motion carried with a 5-0 vote.

Assistant Town Manager Greene explained the debt and the Town being in default which caused them to have to increase the rates. He provided the recommendation that will be provided to them in July.

Mayor Danzinger thanked Assistant Town Manager Greene for his hard work.

[Fund Balance Policy - 2022.pdf](#)



**9C. New High School at Haulover Park - Vice Mayor Jeffrey Rose**

I would like to request for the Town Commission to work in coordination with neighboring municipalities to bring a resolution before the Miami Dade County Board of Commissioners requesting a new high school.

A motion was made by Commissioner Velasquez for discussion purposes, seconded by Commissioner Landsman. The motion carried with a 5-0 vote.

Vice Mayor Rose introduced the item and spoke regarding working together with other neighboring municipalities in moving this forward.

Commissioner Meischeid asked regarding the park and asked for clarification.

Mayor Danzinger explained the process of working with the municipalities.

Commissioner Velasquez suggested trying to identify other sites that would work for a school.

Mayor Danzinger stated that its the title for the project but to actually have these partners to find a location.

Town Attorney Arango asked if this includes traditional high schools and charter high schools.

A motion was made by Commissioner Velasquez to approve as is, add additional locations and either traditional or charter schools and move forward with a resolution, seconded by Commissioner Landsman. The motion carried with a 5-0 vote.

**9D. 24-inch Projections of Sills, Cornices, and Ornamental Features** - Vice Mayor Jeffrey Rose

To move this item forward as a first reading ordinance to clean up the ambiguous language in the zoning code.

Vice Mayor Rose introduced the item and stated this item came about because of the Hillcrest project.

Commissioner Velasquez asked if this is for the H120 district only.

Vice Mayor Rose asked Town Attorney Recio what it applies to.

Town Attorney Recio stated it applies to all districts but each one has different restrictions.

Commissioner Velasquez asked if this is in the code already.

Town Attorney Recio clarified what the code states and this will clarify the code.

Commissioner Velasquez stated that this is something that has been discussed for a while and it is putting it into an ordinance.

Town Attorney Recio addressed the comments made by Commissioner Velasquez.

Town Attorney Arango asked Town Planner Keller if he has sufficient information to draft the ordinance.

Town Planner Keller stated that he will work with Town Attorney Recio.

Commissioner Velasquez would like for every Commissioner to have an input in order to understand instead of one person taking the lead.

A motion was made by Commissioner Meisheid to move forward with an ordinance on first reading, seconded by Vice Mayor Rose. The motion carried with a 4-1 vote with Commissioner Velasquez voting in opposition.

**9E. Zoning Code Ambiguities and Inconsistencies - Vice Mayor Jeff Rose**

To have the town manager have the town attorney and town planner look at the zoning code and bring back to the commission language in our current zoning code on Municode that has ambiguities, inconsistencies, and clean up the language that needs fixing.

A motion was made by Vice Mayor Rose to have the Town Manager, Town Attorney and Town Planner to point out some of the zoning code ambiguities and inconsistencies to bring back to the Commission, seconded by Commissioner Landsman. The motion carried with a 4-1 vote with Commissioner Velasquez voting in opposition.

Commissioner Velasquez asked how this will come back next month. She stated that they would come back to the Commission once they have completed it.

Mayor Danzinger stated that this is instructing the Town Planner and Town Attorney to go through the code and find the inconsistencies.

Commissioner Landsman stated that the prior Commission had many meetings to try and change the code and it was never done. He explained what this Commission is trying to do in order to be able to update the code and codify it.

Vice Mayor Rose stated it is what is in MuniCode and spoke regarding the several meetings that took place and stated if they see things in the current code that are inconsistent or a gray area, bring them to the Commission's attention.

Commissioner Velasquez stated that this should be a Town staff looking at this not Mr. Kousoulas.

**9F. Revision to Code Section 90-57 - "Marine Structures" - Commissioner Fred Landsman**

Revise existing ordinance to amend Code Section 90-57.

A motion was made by Commissioner Landsman for purposes of discussion, seconded by Commissioner Meisheid.

Commissioner Landsman introduced the item and stated that this is not an effort to privatize the waterway and all members of the community have access to the water. He stated the different waterways and spoke regarding those waterways. He provided his suggestions and revisions to the code.

Commissioner Velasquez stated that originally they should have left those waterways the way they were. She stated that this was to be only for Pointe Lake and stated what is the public good for this. She stated that Vice Mayor Rose should recuse himself.

Mayor Danzinger stated that Commissioner Velasquez must stop making accusations.

Commissioner Velasquez asked Town Attorney Recio regarding why the other waterways were being addressed.

Town Attorney Recio stated it is due to the waterways that are adjacent are in the code and there are inconsistencies and read those areas of the code.

Commissioner Velasquez asked if the 10% is the leading item and it fixed the code.

Town Attorney Recio reiterated the section of the code and explained what that portion states.

Further discussion took place among Commissioner Velasquez, Town Attorney Recio and Town Planner Keller.

Town Planner Keller explained the section of the code and stated there is an inconsistency.

Vice Mayor Rose stated that for the record he is not a marine contractor and has never built docks and is not licensed to build docks. He gave a history of this item from the previous Commission and stated this is why they have brought this up to make it consistent. He provided his suggestions of leaving it at 10% and stated that DERM has to approve it.

Commissioner Meisheid stated that they need to keep all the paragraphs a-i but correcting d.

Mayor Danzinger provided his suggestions and spoke regarding why they need to wait 15 days for a permit. He addressed comments that came up as it pertains to private property access to waterways. He spoke regarding the dock size and people have the right to launch their boats. He spoke regarding public space. He also stated that the 10% works for the most part but there needs to be an average and there should be a cap. He spoke regarding Biscayne Bay and they have to protect the sea grass. He suggested adding Biscayne Bay to 600 feet.

Vice Mayor Rose stated that the 10% is regulated and explained how that would work and what DERM will require due to their regulations.

Commissioner Velasquez asked why the finger pier has to be so wide.

Mayor Danzinger stated it is allowing the residents to build. He also stated to Commissioner Velasquez that those individuals that live in that area also are residents.

Mayor Danzinger commented on the limitation of the finger dock. He would be in favor of not limiting the design.

Vice Mayor Rose explained the limits that are put in place.

Commissioner Velasquez asked regarding the finger dock and the large docks at the end and asked for clarification.

Commissioner Landsman provided clarification for Commissioner Velasquez.

Commissioner Meisheid stated that this is getting complicated and agrees with Mayor Danzinger.

Mayor Danzinger provided a summary of the what took place and stated that they are leaving Point Lake as the previous Commission stated. He is proposing the change at 88th Street and Bay. He stated allowing them because they have an issue with sea grass.

A motion was made by Vice Mayor Rose to extend the meeting by 30 minutes (at 11:58 p.m.), seconded by Commissioner Landsman. The motion carried with a 5-0 vote.

A motion was made by Commissioner Landsman to request for the ordinance to be written and to include the following: Point Lake stays as is, Bay Lake for a maximum of 600 feet, dockage at a maximum of 15 foot dock for new construction, if there is an existing dock they will not be required to demolish, additional extension a maximum of 10% of the waterway, with an up to 8 foot wide finger dock into the water, seconded by Commissioner Meisheid. The motion carried with a 4-1 vote with Commissioner Velasquez voting in opposition.

[Ordinance No. 2022-1718-Ordinance-Marine Structures-Construction of Docks.pdf](#)

## **10. Adjournment**

A motion was made by Commissioner Velasquez to adjourn the meeting at 12:34 a.m., seconded by Commissioner Meisheid. The motion carried with a 5-0 vote.



**Town of Surfside**  
**Planning and Zoning Board Meeting**  
**MINUTES**  
**April 28, 2022**  
**6:00 PM**  
Town Commission Chambers

**1. Call to Order/Roll Call**

Board member Judith Frankel called the meeting to order at 6:00 p.m.

Present: Board Member Judith Frankel, Board Member Ruben Bravo, Board Member Carolyn Baumel, Board Member Jonathan Edderai, Board Member David Forbes, and Alternate Board Member Michael Szafranski.

Absent: Alternate Board Member Grace Rais.

Also, Present: Commission Liaison Commissioner Fred Landsman, Town Manager Andrew Hyatt, Town Planner Walter Keller, Town Attorney Tony Recio, and Building Official Jim McGuiness.

**2. Town Commission Liaison Report**

Commissioner Landsman introduced himself and welcomed the newly appointed Board Members. He stated that he has asked for funding to review the design guidelines and to help bring a new document to light. He provided an overview of the responsibilities of the Board.

**3. Appointment of a Chair**

A motion was made by Board Member Baumel to appoint Board Member Frankel as Chair of the Planning and Zoning Board, seconded by Board Member Bravo. The motion carried with a 5-0 vote.

**4. Appointment of a Vice Chair**

A motion was made by Board Member Bravo to appoint Board Member Baumel as Vice Chair of the Planning and Zoning Board, seconded by Board Member Forbes. The motion carried with a 5-0 vote.

**5. Orientation - Tony Recio, Town Attorney**

Town Attorney Recio provided an orientation to the newly appointed board members as it pertains to quasi-judicial hearings as well as the roles of the Board members. He also went over the design review guidelines and criteria.

Chair Frankel asked for the members of the Board to introduce themselves. The newly appointed Board members introduced themselves.

## 6. Approval of Minutes

### 6A. March 31, 2022 Planning and Zoning Board Meeting Minutes - Evelyn Herbello Approval of meeting minutes.

A motion was made by Vice Chair Baumel to approve the March 31, 2022 Planning and Zoning Board Meeting Minutes, seconded by Board Member Bravo. The motion carried with a 5-0 vote.

[03-31-2022 Planning and Zoning Meeting Minutes.pdf](#)

## 7. Applications

Town Attorney Recio read the quasi-judicial statement into the record. Town Attorney Recio polled the Board members.

No Board Member had any communication with any of the applicants.

Town Attorney Recio asked Deputy Town Clerk Herbello to confirm notice requirements.

Deputy Town Clerk Herbello stated that two of the four applications did not meet notice requirement. The ones that did not meet notice requirements and will have to be deferred to the May 26, 2022 Planning and Zoning Board Meeting are 8826 Froude Avenue and 9348 Byron Avenue.

Deputy Town Clerk Herbello swore in the applicants and anyone that would be speaking tonight.

### 7A. 8826 Froude Avenue - New Two-Story Single-Family Residence - Walter Keller, PE, AICP, Town Consultant Planner

Staff Recommendation: It is recommended the Application be approved subject to the following comments:

- The site plan and drawing package refer to a garage and garage slab elevation however, the floor plans and front elevation do not show a garage door or garage space. Revise the drawings accordingly.
- Clarify the elevation of the roof relative to a maximum height limit of 30 feet and provide detail on the parapet wall height.
- Provide additional information to support the proposed existing floor area coverage is 2,247 SF.
- The deck and stairs in the north side yard are in the side yard setback area and need to be removed per the Zoning in Progress.

- Provide additional information to support the proposed existing floor area coverage is 2,247 SF.
- Pool equipment should be located at least 15 feet from the adjacent residence.
- Per the Zoning in Progress, 50% of front yard must be landscaped/pervious material; all landscaped/pervious area with 40% of Florida-Friendly materials. Provide calculations to show this requirement is met.
- Per the Zoning in Progress, all landscaped areas must include 40% of Florida-Friendly materials. Provide calculations to show this requirement is met.
- Street trees are required along the public street frontage of the property, see 90-89. Street trees shall be required at one shade tree per 20 linear feet of street frontage thereof along all public or private street rights-of-way in all zoning districts. It is suggested the trees be planted along the property lines. Palm trees count as 3:1; therefore, three palm trees equals one tree.
- A tree removal permit is required prior to the removal or relocation of existing site trees, per 90-97.

Town Attorney Recio stated that this application did not meet notice requirement and therefore cannot be heard today. This application will be deferred to the May 26, 2022 Planning and Zoning Board Meeting and they will have to meet the notice requirements and do proper notice.

A motion was made by Board Member Bravo to defer the item to the May 26, 2022 Planning and Zoning Board Meeting, seconded by Board Member Forbes. The motion carried with a 5-0 vote.

[8826 Froude Avenue Agenda Packet.pdf](#)

**7B. 9264 Dickens Avenue - New Two-Story Single-Family Residence - Walter Keller, PE, AICP, Town Consultant Planner**

**Staff Recommendation:** It is recommending the application be approved subject to the following comments:

Provide additional information to support the proposed existing floor area coverage is 2,247 SF.

Provide additional detail on the retaining wall.

The stairs in the side yards are in the side yard setback area and need to be removed or modified to comply with Zoning in Progress.

The Pool equipment and mechanical equipment should be located at least 15 feet from the adjacent residence. The pool equipment and the mechanical equipment will also be required to meet Flood elevation requirements.

The Strangler Fig is unsuited for use on this parcel and should be replaced with the one of the other proposed Florida Friendly trees.



The 3 trees located in the public right of way should be relocated to the property line.

Twenty-five (25) shrubs should be added to the site plan.

A tree removal permit is required prior to the removal or relocation of existing site trees, per **Sec. 90-97**.

Town Planner Keller provided a summary of the application and project as well as his recommendations as stated in his staff report. He spoke regarding the landscape requirements.

Building Official McGuinness provided his recommendations.

Boutros Bounahra, architect for the applicant addressed the recommendations and comments discussed by the Building Official and Town Planner.

Chair Frankel opened the floor to public comment.

Chair Frankel closed the floor to public comment.

Board Member Bravo asked if it is NAVD.

Town Attorney Recio stated it is NAVD.

Board Member Bravo asked Mr. Bounahra regarding the pool and retaining wall. He asked if they can raise the retaining wall and how it would affect the lots next door.

Town Planner Keller stated that the retaining wall is shown as 6 feet and there will be a wall that will show up at the adjacent neighbor and the wall will not be higher than 6 feet. He addressed the comments made by Board Member Bravo.

Board Member Bravo asked regarding the elevation of the equipment as well as the mechanicals and trash.

Chair Frankel asked regarding the mechanical and as it is shown on the plans it cannot go there.

Town Planner Keller addressed the comments made by Chair Frankel and provided a suggestion as to the location of the equipment.

Board Member Bravo asked how it pertains to the noise ordinance and the noise of the equipment.

Town Attorney Recio read the section of the ordinance as it pertains to noise.

Board Member Bravo asked regarding the colors and materials of the roof. He asked if the comments were addressed before.

Board Member Forbes stated that the biggest issue will be the location of the equipment and not having enough space.

Town Planner Keller addressed the comments made regarding the location of the equipment.

Vice Chair Baumel stated it will depend where the house sits on the area. She spoke regarding the equipment being hidden. She asked regarding the material of the roof tile and likes the details. She spoke regarding the retaining walls.

Board Member Szafranski stated that the house is nice and they did a great job. He asked regarding independent verification of measurements and is this standard.

Town Planner Keller stated that they need to verify the information in the drawings and in this case, he needs more information, which is a minor issue.

Chair Frankel explained to the Board the process of how they can approve an application based on the conditions stated. She stated this is a beautifully designed home. She discussed the zoning in progress and the landscape requirements. She stated that her concern is with the air-conditioning unit and it needs to go somewhere else in order to meet the 15-foot requirement and that can be a condition of approval.

Vice Chair Baumel asked if this Board can request the Commission to revisit that section of the code as it pertains to the air conditioning units and the SEER level of the air conditioners which will allow them to have a more quiet system.

Town Attorney Recio reiterated that as per code the retaining wall can only be 6 feet and on the property.

Board Member Bravo asked if the moving of the mechanical equipment changes the design and they need the space for something else, does it have to come back to the Board.

Town Planner Keller stated that it would not have to come back to them if the square footage does not change.

A motion was made by Vice Chair Baumel to approve the application with staff recommendations and conditions, seconded by Board Member Forbes. The motion carried with a 5-0 vote.

[9264 Dickens Avenue Agenda Packet.pdf](#)

**7C. 9348 Byron Avenue - New Two-Story Single-Family Residence** - Walter Keller, PE, AICP, Town Consultant Planner

**Staff Recommendation:** It is recommended the Application be approved subject to the following comments:

Plat Waiver approval by the Town Commission and Miami Dade County.

Information provided on Sheet A.100 is not relevant to this site. Information should be added considering the Plat Waiver Survey to clearly describe the site plan area.

Provide additional information to support the proposed floor area coverage.

Roof overhang is limited to a maximum of 24 inches.

Air conditioners, pool equipment and or mechanical equipment are not included on the drawings. This equipment should be located at least 15 feet from the adjacent residence. The pool equipment and the mechanical equipment will also be required to meet Flood elevation requirements.

Many of the proposed trees are not Florida Friendly species. Zoning in Progress requires 40% of the landscape material to be Florida Friendly.

A tree removal permit is required prior to the removal or relocation of existing site trees, per **Sec. 90-97**.

Town Attorney Recio stated that this application did not meet notice requirement and therefore cannot be heard today. This application will be deferred to the May 26, 2022 Planning and Zoning Board Meeting and they will have to meet the notice requirements and do proper notice.

A motion was made by Board Member Bravo to defer the item to the May 26, 2022 Planning and Zoning Board Meeting, seconded by Board Member Forbes. The motion carried with a 5-0 vote.

[9348 Byron Avenue Agenda Packet.pdf](#)

**7D. 9525 Carlyle Avenue - Two-Story Single -Family Additions and Renovations** - Walter Keller, PE, AICP, Town Consultant Planner

**Staff Recommendation:** It is recommended the Application be approved subject to addressing the following comments:

The Applicant's plan was preliminarily reviewed and was advised in email comments to submit a clean survey. A survey was not submitted in the Applicant's package.

The submitted drawings are missing important information which would be detailed in the survey.

Front yard setback is 20 feet. New 1 foot 9-inch terrace overhang and 2-foot entry foyer are not allowed by Zoning in Progress.

Clarify the elevation of the roof relative to a maximum height limit of 30 feet and provide detail on the parapet wall height. Maximum roof height is 30 feet above the crown of the road with a parapet limited to 3 feet. Elevation drawings need to be revised on the height information.

Provide additional information to support the existing floor area coverage is 1,444 SF.

Provide additional information and calculations to verify the proposed first floor SF area, the existing and proposed second floor SF area.

Existing pool equipment needs to be relocated outside of the side yard setback and should be located at least 15 feet from the adjacent residence.

Mechanical equipment mounted on the roof should comply with the requirements of Zoning in Progress.

Per the Zoning in Progress, 35% of the total lot needs to be in landscape/pervious material, 50% of front yard must be landscaped/pervious material and 40% of the rear yard must be in landscape/pervious material.

All landscaped/pervious areas are required to be 40% of Florida-Friendly materials.

Provide information and calculations to show the landscape/pervious area requirement are met.

Street trees are required along the public street frontage of the property, see **Sec. 90-89**. Street trees shall be required at one shade tree per 20 linear feet of street frontage thereof along all public or private street rights-of-way in all zoning districts. It is suggested the trees be planted along the property lines. Palm trees count as 3:1; therefore, three palm trees equals one tree.

Town Planner Keller provided a summary of the application and project as well as his recommendations as stated in his staff report.

Several members of the Board stated that the information they have in the staff report is different from what Town Planner Keller just stated.

Town Planner Keller stated that he revised his staff report. He also stated that the applicant needs an updated survey.

Building Official McGuinness gave his recommendations.

Rafael Hernandez, project manager for the applicant provided his comments as it pertains to the recommendations provided by the Town Planner and Building Official.

Chair Frankel asked regarding the encroachment of the front façade.

Mr. Hernandez showed the Board where the encroachment would take place.

Further discussion took place regarding the encroachment and air conditioning units on the roof.

Chair Frankel opened the floor to public comments.

Chair Frankel closed the floor to public comments.

Board Member Forbes spoke regarding the many concerns brought up by Town Planner Keller.

Mr. Hernandez addressed the comment made by Board Member Forbes.

Board Member Forbes asked if he will be addressing the comments and recommendations made by Town Planner Keller.

Town Planner Keller addressed the concerns from the Board and the applicant as it pertains to his questions.

Board Member Forbes suggested for the applicant to address the concerns and come back.

Chair Frankel stated that she cannot approve it with all those conditions.

Town Planner Keller addressed the concerns and he stated to the applicant that he has a hard time with the fact that the applicant wants to go into the setbacks. He stated if the Board is supportive, he can go for a variance.

Vice Chair Baumel stated to the applicant that they have two choices and that is taking down the house and starting from scratch. She stated that the second choice to sit down with someone that can review and tell them what he can and cannot do and then bring it back.

Chair Frankel stated that the best thing to do is to defer the item depending on the amount of work that needs to be done.

Board Member Bravo agrees with the Board and he stated that it is a beautiful design and they cannot approve it. He asked why they have gotten to the point that they have to reject instead of it being addressed before getting to the Board.

Town Attorney Recio advised the Board that if they defer the item, to defer to a date certain. If they defer to a date certain then they will not have to notice and he suggested deferring the item 60 days.

A motion was made by Board Member Bravo to defer the item to June 30, 2022 Planning and Zoning Board Meeting, seconded by Board Member Forbes. The motion carried with a 5-0 vote.

[9525 Carlyle Avenue Agenda Packet.pdf](#)

## 8. Discussion Items

### 8A Amending Scope of 24 Inch Setback Encroachment - Tony Recio, Town Attorney

The Town Commission has requested for the Planning and Zoning Board to review the language of this ordinance and provide suggested language.

Town Attorney Recio provided an update and overview of the item and discussed the Hillcrest application which came before the Board and the Town Commission. He explained how this item came about. He spoke how those encroachments pertain to with the zoning code.

Chair Frankel opened up the floor to public comments.

The following individual from the public spoke:

George Kousoulas

Chair Frankel closed the floor to public comments.

Chair Frankel spoke regarding the zoning code, roof eaves and the language. She stated that they will stay with the 24-inch projection and she is happy that they are staying with that.

Vice Chair Baumel thanked Mr. Kousoulas for his work and agrees with the Chair and believes in architectural relevance and integrity.

Board Member Bravo spoke regarding it being a great feature and sustainable design as well as it being consistent. He stated that he did like the Hillcrest and it made a sense.

Board Member Szafranski stated that it makes a lot of sense and you want development and not make it difficult for architects to build. He believes the Hillcrest is beautiful and supports this 100%.

Board Member Forbes stated it is a very good cleanup of the language.

Chair Frankel asked if they can move this forward.

Commission Liaison Commissioner Landsman asked if this verbiage clears up the inconsistency and Town Attorney Recio will correct the language in the ordinance.

Town Attorney Recio explained the process.

Chair Frankel stated that the applicants need to be aware that it is in the purview of the design review guidelines.

Town Planner Keller addressed the comments made.

[Second Reading Ordinance - 24 inch.docx](#)  
[Mr. Kousoulas Proposal.pdf](#)

**8B. Understories** - Tony Recio, Town Attorney

Please see Commissioner Meischeid's memorandum attached.

Town Attorney Recio provided an overview of the item.

Chair Frankel asked regarding the language.

Town Planner Keller spoke regarding a project that currently does not meet code because it would be a three-story home.

Chair Frankel explained to the Board how this pertains to projects and homes.

The following individual from the public spoke:

George Kousoulas

Chair Frankel stated that it would be more resilient and help with flood problems. She stated that another benefit is being able to walk to their pool deck.

Vice Chair Baumel spoke regarding this item and it would be great for the neighborhood.

Commission Liaison Commissioner Landsman commented on coming up with another name for it the code and there has been misunderstanding of what understory really means.

Board Member Bravo stated that it is important to educate everyone.

Chair Frankel asked if there is a name for what exists.

Board Member Szafranski asked what the concern is.

Town Attorney Recio stated that the concern the community has is that they would consider it a third story.

Vice Chair Baumel asked if they can be called piled dwellings.

Chair Frankel explained that it would still not be a larger home.

Board Member Forbes stated that he is fine with the way it is written and it is a great idea and it should be left to the Board.

Commission Liaison Commissioner Landsman will take the Board's recommendations to the Commission as a point of reference.  
[Understories.pdf](#)

**8C. Lot Coverage for Single-Story Homes - Tony Recio, Town Attorney**  
For discussion purposes.

Chair Frankel explained to the Board that this item has to do with the retention of single- story homes and it was to encourage people to keep the older homes. She stated that she is not sure what priorities they want to set now since this was the desire of the last commission.

The following individual from the public spoke:  
George Kousoulas

Board Member Forbes asked if they go from 40% to 50% if they have to raise the house 10 feet.

Mr. Kousoulas stated no and explained what they would have to do.

Town Planner Keller explained the percentage.

Chair Frankel spoke regarding the owner building the home and then 10 years later they want to build something different.

Town Planner Keller addressed the comments made by Chair Frankel.

Discussion took place regarding the item, variances and difficulty variances as it pertains to this item and there is no need to change this at this time.

Chair Frankel spoke about education being important and that needs to happen.

Vice Chair Baumel stated that is why it has to be written in layman's term.

Board Member Szafranski spoke regarding the lot coverage and bogging down the Commission with applications to get to the 50% is not a good idea. He suggested



changing the code to allow to build up to the 50% which will make the Commission and this Board more efficient.

Chair Frankel stated that they have to see what is the direction they want to give the Commission.

Further discussion took place among the Board regarding this item and suggested changes and ideas.

Chair Frankel stated she does not see a need for the 50% and does not see an urgency. She stated that she would like to table the item.

Board Member Bravo is torn and does not want to change the character but one must understand what the residents want. He agrees to table this item and evaluate what they want to do and promote.

Board Member Edderai spoke regarding the square footage structure of the home and does not see a problem with it the way it is written.

Chair Frankel stated that she does not believe they are ready to give direction to the Commission.

Vice Chair Baumel stated that their number one complaint is that they cannot have the square footage they are looking for and agrees to give them the 50%.

Chair Frankel stated she does not have a problem with the 50%, she just does not know if they are ready to provide direction.

**8D. Walkability - Tony Recio, Town Attorney**

Please see Mayor Danzinger's memorandum attached.

Chair Frankel introduced the item and was happy to hear that Mayor Danzinger brought this up. She asked Town Manager Hyatt if there is a walkability report and if they could look at it. She agrees with improving walkability. She would like the Planning and Zoning Board to be involved in this initiative.

Commission Liaison Commissioner Landsman spoke regarding the item and initiative and Mayor Danzinger is interested in bringing this back. His only concern is undergrounding which may be years away from breaking ground. He suggested having ideas that can be implemented short term.

Chair Frankel would like to add this to their discussion items in the future again.

[Improving Walkability and Pedestrian Safety within Residential Area.pdf](#)

**8E. Future Agenda Items -**

Chair Frankel would like to add walkability to the June 30, 2022 meeting. She would like to add to the agenda the zoning in progress. If the zoning in progress dies then they do not have to address it. Florida friendly landscape to keep it at 40% and it is very easy to accomplish and helps the homeowners to easily maintain them. She suggested having a list for the homeowners to choose from. She spoke to add air conditioners to a future discussion item and see if there are some that have a lower noise level.

Board Member Bravo would like to add to the landscaping, what benefits they would have, for example irrigation and what can be promoted.

Chair Frankel stated to also add solar panels and what benefits would they have.

**9. Next Meeting Date**

Deputy Town Clerk Herbello advised the Board Members of their next meeting of May 26, 2022 and consensus was reached.

Chair Frankel advised the Board that they usually combine the July meeting with August and the November meeting in December before the holidays.

Chair Frankel advised the Board that she will not be available in July.

Board Member Forbes advised that he will not be available in July either.

Deputy Town Clerk Herbello advised the Board that she will place on the June agenda an item to combine the July and August meeting to be held on August 25, 2022.

**10. Adjournment**

A motion was made by Board Member Bravo to adjourn the meeting without objection at 9:09 p.m. The motion received a second from Vice Chair Baumel. The motion carried with a 5-0 vote.

Respectfully submitted,

Accepted this 26 day of May, 2022.

  
Judith Frankel, Chair

Attest:

  
Sandra McCready, MMC  
Town Clerk



**Town of Surfside**

**PARKS & RECREATION COMMITTEE  
MEETING**

**MINUTES**

**February 28, 2022 at 7:00 p.m.**  
Surfside Community Center  
9301 Collins Avenue, Surfside, FL 33154

**1. Call to Order/Roll Call**

The meeting was called to order by Chair Logan at 7:00 p.m.

The following were present: Chair Retta Logan  
Vice Chair Frank MacBride, Jr.  
Committee Member Marta Olchyk  
Committee Member Lara Frank

Absent: Committee Member Janice Tatum  
Commissioner Nelly Velasquez, Commission Liaison

Also, present: Town Manager Andrew Hyatt  
Tim Milian, Parks and Recreation Director  
Evelyn Herbelo, Deputy Town Clerk

**2. Agenda and Order of Business**

**3. Committee Member Recognition 2020-2022**

Town Manager Hyatt thanked the Committee Members for their work on the Committee and presented them with a certificate of appreciation.

Parks and Recreation Director Milian thanked the Committee Members for their hard work and time they dedicated to this Committee.

**4. Approval of Minutes:**

- January 24, 2022 Parks and Recreation Committee Meeting

A motion was made by Vice Chair MacBride to approve the January 24, 2022 Parks and Recreation Committee Meeting Minutes, seconded by Committee Member Olchyk. The motion carried with a 4-0 vote with Committee Member Tatum absent.

## **5. 96<sup>th</sup> Street Park Update**

Parks and Recreation Director Milian provided an update on the project. He stated that he sent out an email with an update but they are moving right along and advised them there is a link with updates on the Town's website. He stated that the next update will probably be in April.

Vice Chair MacBride stated that he spoke to several people in Publix that are against the new two-story building at the park. He stated that he advised them the need for this new building and explained it to them.

Parks and Recreation Director Milian stated that going two-stories is the best way to proceed with the project and stated it will be a state-of-the-art project.

## **6. Summer Camp 2022**

Parks and Recreation Director Milian gave an update of the upcoming Summer Camp 2022. He spoke regarding if they ran their summer camp the way they ran it, it would not have been successful due to the collapse. He discussed using PEAR to help them with the different camps and he is meeting with them for the Summer Camp. He explained how it would work with PEAR.

Chair Logan asked if they will be bringing back the Teen Camp.

Parks and Recreation Director Milian stated that he is looking into it but it also depends on staffing. He explained that by having PEAR assist, they have a pool of staff that can assist them.

Vice Chair MacBride asked how staffing is with lifeguards as well.

Parks and Recreation Director Milian stated that they have a problem keeping lifeguards due to the competition. He explained there is a difference from a pool lifeguard and a beach lifeguard and explained the difference between them.

Vice Chair MacBride asked if he knows the estimate of staffing for the new playground.

Parks and Recreation Director Milian stated that most likely 3 but he needs to look at exactly what the needs will be.

Chair Logan stated that adding the kayak launch will require the need to add more staff.

Vice Chair MacBride spoke regarding Bal Harbour's project.

Parks and Recreation Director Milian spoke regarding Bal Harbour's project. He spoke regarding the different programs that will be offered.

Parks and Recreation Director Milian stated that they will be having Family Fun Day on March 13 and gave an update on the event.

Committee Member Frank stated that it would be the last event at that facility.

Parks and Recreation Director Milian stated there are a few more events that will take place there before the project starts.

Committee Member Olchyk spoke regarding the different field trips and events for the seniors.

Parks and Recreation Director Milian addressed the comment made by Committee Member Olchyk. He also spoke regarding an upcoming survey regarding the senior events and trips.

Parks and Recreation Director Milian stated that they had a good turn out at the 5K run.

**7. Public Comments - (2-minute time limit per speaker)**

There were no public speakers.

**8. Next Meeting: March 21, 2022**

Deputy Town Clerk Herbello advised the Committee members that their last meeting is this one, February 28, 2022. She advised them that once new members are appointed to this Committee, hopefully at the April 12, 2022 Commission Meeting, then she will send out the invitation for their next meeting.

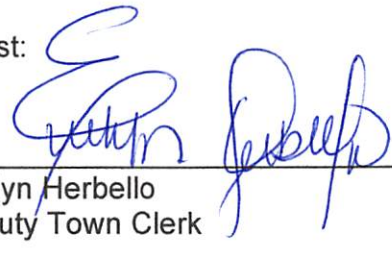
**9. Adjournment**

A motion was made by Vice Chair MacBride to adjourn the meeting without objection at 7:30 p.m. The motion received a second from Committee Member Olchyk. The motion carried with a 4-0 vote with Committee Member Tatum absent.

Respectfully submitted:

Accepted this 16 day of May, 2022.

  
Chair  
Reha Logan

Attest:   
Evelyn Herbello  
Deputy Town Clerk



## MEMORANDUM

ITEM NO. 3C.

**To:** Honorable Mayor, Vice-Mayor and Members of the Town Commission

**From:** Andrew Hyatt, Town Manager

**Date:** June 14, 2022

**Subject:** **Town of Surfside Title VI Program Plan Re-adoption**

---

Town Administration recommends the Town Commission to approve the re-adoption of the Title VI Program Plan resolution in order to be compliant with federal requirements.

The Town of Surfside, through Miami-Dade Transit, was a sub-recipient of the American Recovery and Reinvestment Plan ("ARRA") Economic Stimulus Grant funding from the Federal Transit Administration ("FTA").

The FTA requires that sub-recipients have a "Program Plan" to comply with the regulation implementing Title VI of the Civil Rights Act of 1964 ("Title VI"). Specifically, the Title VI provides that "no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance" (42 U.S.C Section 2000d).

In 2019, The Town re-adopted the "Title VI Program Plan for the Town of Surfside" (Title VI Plan) to comply with these federal requirements. (See Attachment A to the Resolution). The Federal Transit Administration requires Title VI plans to be updated and approved by the governing body every three (3) years.

Adopting the Title VI Program Plan will provide education to both the community and the staff and discourage discrimination on the basis of race, color, or national origin. The Plan serves to ensure that users of the Transit Service are able to make anti-discrimination complaints and to have procedures in place for investigating, tracking, and providing an administrative remedy to these types of complaints.

There is no cost associated with approving this item.

[Reso Adopt Title VI Plan.docx](#)

[Title VI Program Plan.RTF](#)



**RESOLUTION NO. 2022- \_\_\_\_\_**

**A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, APPROVING A TITLE VI PROGRAM PLAN IN ACCORDANCE WITH TITLE VI, 42 U.S.C. SECTION 2000D, CIVIL RIGHTS ACT OF 1964, AS REQUIRED FOR THE TOWN TO RECEIVE FEDERAL PASS-THROUGH FUNDING FROM MIAMI-DADE COUNTY FOR THE TOWN'S TRANSIT SERVICES; PROVIDING FOR IMPLEMENTATION; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the Town of Surfside ("Town"), through Miami-Dade County, was a sub-recipient of the American Recovery and Reinvestment Act ("ARRA") Economic Stimulus Grant funding from the Federal Transit Administration ("FTA"); and

**WHEREAS**, the FTA requires that sub-recipients have a "Program Plan" to comply with the regulation implementing Title VI of the Civil Rights Act of 1964 ("Title VI"), which provides that "no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance" (42 U.S.C Section 2000d); and

**WHEREAS**, on November 12, 2019, the Town Commission adopted Resolution No. 2019-2644, approving a Title VI Program Plan to comply with federal requirements; and

**WHEREAS**, the FTA requires Title VI plans to be updated and approved by the governing body every three years; and

**WHEREAS**, the Town Commission wishes to readopt the updated Title VI Program Plan, in substantially the form attached hereto as Exhibit "A" (the "Title VI Program Plan"); and

**WHEREAS**, the Title VI Program Plan serves to ensure that users of the Town's transit services are able to make anti-discrimination complaints and to have procedures in place for investigating, tracking, and providing an administrative remedy to these types of complaints; and

WHEREAS, the Town Commissions finds that readopting the Title VI Program Plan is in the best interest and welfare of the Town.

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

**Section 1.**     **Recitals.** That the above and foregoing recitals are true and correct and are hereby incorporated by reference.

**Section 1.**     **Approval of Title VI Program Plan** The Town Commission approves the Title VI Program Plan, in substantially the form attached hereto as Exhibit “A,” subject to final approval as to form and legal sufficiency by the Town Manager and Town Attorney.

**Section 2.**     **Implementation.** The Town Manager and/or Town Officials are authorized to take all action reasonably necessary to implement the purposes of this Resolution and the Title VI Program Plan.

**Section 3.**     **Effective Date.** This Resolution shall become effective immediately upon adoption.

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

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

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

**FINAL VOTE ON ADOPTION:**

Commissioner Fred Landsman \_\_\_\_\_

Commissioner Marianne Meischeid \_\_\_\_\_

Commissioner Nelly Velasquez \_\_\_\_\_

Vice Mayor Jeffrey Rose \_\_\_\_\_

Mayor Shlomo Danzinger \_\_\_\_\_

\_\_\_\_\_

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



**TITLE VI PROGRAM PLAN**

**TOWN OF SURFSIDE**

**9293 Harding Avenue**

**Surfside, FL 33154**

**Tel: 305-861-4863**

**Fax: 305-861-1302**

**Website: [www.townofsurfsidefl.gov](http://www.townofsurfsidefl.gov)**

## Town of Surfside Title VI Program Plan

### Introduction

Title VI of the Civil Rights Act of 1964 prohibits discrimination on the basis of race, color, or national origin in programs and activities receiving Federal financial assistance. Specifically, Title VI provides that “no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance” (42 U.S.C. Section 2000d).

The Town of Surfside is committed to ensuring that no person is excluded from participation in, denied the benefits of, or subjected to discrimination in Miami-Dade County transit services on the basis of race, color, national origin, or disability as protected by Title VI of the Civil Rights Act of 1964 and other federal and state authorities.

### Information Notices

Title VI information notices are prominently and publicly displayed in the Town Hall lobby and the Community Center.

The name and contact information of the Title VI coordinator is available on the Town’s website, at [www.townofsurfsidefl.gov](http://www.townofsurfsidefl.gov). Additional information relating to the Town’s nondiscrimination obligation is provided in this document.

Further information can be obtained directly from the Town’s Title VI Coordinator:

**Name:** James McGuinness, Title VI Coordinator  
**Address:** Town of Surfside  
9293 Harding Avenue  
Surfside, FL 33154  
**Phone:** (305) 861-4863 Ext. 231  
**Email:** [jmcguinness@townofsurfsidefl.gov](mailto:jmcguinness@townofsurfsidefl.gov)

### Record Keeping

The Title VI Coordinator will maintain permanent records, which include, but are not limited to copies of Title VI complaints or lawsuits and related documentation, and records of correspondence to and from complainants, and Title VI investigations.

### Complaints

The complainant may file a signed, written complaint no later than 180 days after the date of the alleged discrimination. The complaint procedures are described in detail herein (see Appendix A). Each complaint should include the following information:

- Full name
- Mailing address
- Contact Information (i.e., telephone number, email address, etc.)
- How, when, where and why you believe you were discriminated against, including location, names and contact information of any witnesses
- Other information that you consider significant

The Title VI Complaint Form, (see Appendix B), may be used to submit the complaint information. The complaint may be filed in writing to the Town at the following address:

**Name:** James McGuinness, Title VI Coordinator

**Address:** Town of Surfside  
9293 Harding Avenue  
Surfside, FL 33154

**Phone:** (305) 861-4863 Ext. 231

**Email:** [jmcguinness@townofsurfsidefl.gov](mailto:jmcguinness@townofsurfsidefl.gov)

The Town encourages all complainants to certify all mail that is sent through the U.S. Postal Service and/or ensure that all written correspondence can be tracked easily. Complaints must be mailed to the Title VI Coordinator no later than 180 days after the date of the alleged discrimination.

All complaints alleging discrimination based on race, color or national origin in a service or benefit provided by the Town will be directly addressed by the Title VI Coordinator who shall also provide appropriate assistance to complainants, including those persons with disabilities, or who are limited in their ability to communicate in English.

Additionally, the Town shall make every effort to address all complaints in an expeditious and thorough manner. A letter acknowledging receipt of complaint will be mailed within seven days (see Appendix C). Please note that in responding to any requests for additional information, a complainant's failure to provide the requested information may result in the administrative closure of the complaint.

The Town of Surfside will send a final written response letter (see Appendix D) to the complainant. If the complaint is found to be not substantiated (see Appendix E), the complainant is also advised of his or her right to:

- 1) Appeal within seven calendar days of receipt of the final written decision from the Town, and/or
- 2) File a complaint externally with the U.S. Department of Transportation and/or the FTA.

Every effort will be made to respond to Title VI complaints within 60 working days of receipt of such complaints, if not sooner.

Once sufficient information for investigating the complaint is received by the Town, a written response will be drafted subject to review by the Town Attorney. If appropriate, the Town Attorney may administratively close the complaint. In this case, the Town will notify the

complainant of the action as soon as possible.

In addition to the complaint process described above, a complainant may file a Title VI complaint with the following offices:

Federal Transit Administration Office of Civil Rights  
Attention: Title VI Program Coordinator  
East Building, 5th Floor — TCR  
1200 New Jersey Ave., SE  
Washington, DC 20590

### Limited English Proficiency (LEP)

The Town of Surfside has a land area of 1.0 Square Miles. According to the 2020 Census, the Town has an approximate total population of 5,689 people, composed of 86.4% White or Caucasian, 44.9 % Hispanic or Latino, Non-Hispanic White 53.6%, and 5.0% other races.

The Town provides information in English. Residents can request translations of documents that are in English. Most departments have at least one or more employees that are bilingual and Spanish speakers are accommodated with a translator when requested.

The Town's Title VI Policy and Complaint Procedures is hosted on the Town's web page in English and made available in other languages as requested.

The Town educates our staff and contractors on the following procedure (see Appendix F):

- a. Understanding the Title VI Policy and LEP responsibilities
- b. How to access Title VI Policy and Procedures via the Town's website.
- c. Document and resolve any language assistance deficiencies
- d. The procedure if a Title VI and/or LEP complaint is filed.

The Town will review LEP procedures annually to determine if modifications are needed to meet language assistance deficiencies.

### ADA/504 Statement

Section 504 of the Rehabilitation Act of 1973 (Section 504), the Americans with Disabilities Act of 1990 (ADA) and related federal and state laws and regulations forbid discrimination against those who have disabilities. Furthermore, these laws require federal aid recipients and other government entities to take affirmative steps to reasonably accommodate the disabled and ensure that their needs are equitably represented in transportation programs, services and activities.

The Town will make every effort to ensure that its facilities, programs, services, and activities are accessible to those with disabilities. The Town will make every effort to ensure that its advisory committees, public involvement activities and all other programs, services and activities include representation by the disabled community and disability service groups.

The Town encourages the public to report any facility, program, service or activity that appears inaccessible to those who are disabled. Furthermore, the Town will provide reasonable accommodation to disabled individuals who wish to participate in public involvement events or who require special assistance to access facilities, programs, services or activities. Because providing reasonable accommodation may require outside assistance, organization or resources, the Town asks that requests be made at least fourteen (14) calendar days prior to the need for accommodation.

Questions, concerns, comments or requests for accommodation should be made to the Town's ADA Coordinator:

**Name:** James McGuinness, Title VI Coordinator  
**Address:** Town of Surfside  
9293 Harding Avenue  
Surfside, FL 33154  
**Phone:** (305) 861-4863 Ext. 231  
**Email:** [jmcguinness@townofsurfsidefl.gov](mailto:jmcguinness@townofsurfsidefl.gov)

#### Public Participation Plan

The Town of Surfside seeks to engage the public in its planning and decision-making processes. Members of the public may make statements at Commission meetings, which occur on the second Tuesday of every month. Town Commission agendas are available for review by the public late in the afternoon on the Wednesday prior to Commission meetings via the Town's website. Consideration of Town Ordinances is published in the Daily Business Review.

The Town and its records are available to the public. The Town's Title VI Complaint Procedure is available to the public via the Town's website [www.townofsurfsidefl.gov](http://www.townofsurfsidefl.gov).

#### Decision Making Bodies

The Town of Surfside does not have any transit related non-elected planning boards or advisory councils or planning boards or committees. If any such committees are established in the future, this plan will be amended to depict minority representation on such committees and to describe the efforts made to encourage participation of minorities on such committees.

#### Transit Programs/Service Standards

Town of Surfside operates a circulator bus within the Town of Surfside in compliance with an interlocal agreement with Miami-Dade County Transit. All other transit services are provided and operated by Miami-Dade County Transit.



## Transit Facilities

The Town has a lease agreement for the circulator bus service and does not have any storage, maintenance facilities, or operation centers.

Town of Surfside Title VI Program Plan

Appendices

Appendix A	Complaint Procedures
Appendix B	Complaint Form
Appendix C	Letter Acknowledging Receipt of Complaint
Appendix D	Letter Notifying Complainant That the Complaint is Substantiated
Appendix E	Letter Notifying Complainant that the Complaint is not Substantiated
Appendix F	Employee Annual Education Form
Appendix G	Record of Investigations, Complaints, and/or Lawsuits

## Town of Surfside Title VI Program Plan

### Appendix A

#### Complaint Procedures

Title VI of the 1964 Civil Rights Act requires that “No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.”

Any person who believes he or she has been discriminated against on the basis of race, color, or national origin by the Town of Surfside may file a Title VI complaint by completing and submitting the agency’s Title VI Complaint Form. A complaint may be filed no later than 180 days after the date of the alleged discrimination. The Town or its designated Title VI Coordinator will process complaints that are complete.

Once the complaint is received, the Title VI Coordinator will review it to determine if our office has jurisdiction. The complainant will receive an acknowledgement letter informing him/her whether the complaint will be investigated by our office.

The Town has 60 days to investigate the complaint. If more information is needed to resolve the case, the Town’s Title VI Coordinator may contact the complainant. The complainant will have 10 business days from the date of the letter to send the requested information to the investigator assigned to the case. If the investigator is not contacted by the complainant or does not receive the additional information within 10 business days, the Title VI Coordinator can administratively close the case. A case can also be administratively closed if the complainant no longer wishes to pursue their case.

After the case is investigated, he/she will issue one of two letters to the complainant: a closure letter or a letter of finding (LOF). A closure letter summarizes the allegations and states that there was not a Title VI violation and that the case will be closed. An LOF summarizes the allegations and the interviews regarding the alleged incident, and explains whether any disciplinary action, additional training of the staff member or other action will occur.

If the complainant wishes to appeal the decision, he/she has 10 business days after the date of the LOF to do so.

A person may also file a complaint directly with:

Federal Transit Administration  
FTA Office of Civil Rights  
1200 New Jersey Avenue SE  
Washington, DC 20590.

Town of Surfside Title VI Program Plan

Appendix B

Complaint Form

If you feel you have been discriminated against, please provide the following information in order to assist us in processing your complaint and send it to:

**Name:** James McGuinness, Title VI Coordinator

**Address:** Town of Surfside  
9293 Harding Avenue  
Surfside, FL 33154

**Phone:** (305) 861-4863 Ext. 231

**Email:** jmcguinness@townofsurfsidefl.gov

Please print clearly:

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

Address: \_\_\_\_\_

City, State, Zip Code: \_\_\_\_\_

Telephone Number: (cell) \_\_\_\_\_ (home) \_\_\_\_\_

Person discriminated against: \_\_\_\_\_

Address of person discriminated against: \_\_\_\_\_

City, State, Zip Code: \_\_\_\_\_

Please indicate why you believe the discrimination occurred:

- \_\_\_\_\_ Race or color
- \_\_\_\_\_ National origin
- \_\_\_\_\_ Income
- \_\_\_\_\_ Other

What was the date of the alleged discrimination? \_\_\_\_\_

Where did the alleged discrimination take place? \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Please describe the circumstances as you saw it:

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Please list any and all witnesses' names and phone numbers:

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Please attach any documents which support the allegation.

Date and sign this form and send to the Title VI Coordinator.

\_\_\_\_\_  
Your signature

\_\_\_\_\_  
Print your name

\_\_\_\_\_  
Date

Appendix C

Letter Acknowledging Receipt of Complaint

Date

Complainant's Name

Complainant's Address

Dear (Mr/Ms):

This letter is to acknowledge receipt of your complaint against the Town of Surfside alleging:

---

An investigation will begin shortly. If you have additional information you wish to convey or questions concerning this matter, please feel free to contact this office by telephoning 305-861-4863, or write to me at this address.

Sincerely,

Town of Surfside  
Attention: James McGuinness, Title VI Coordinator  
9293 Harding Avenue  
Surfside, FL 33154

Appendix D

Letter Notifying Complainant that the Complaint is Substantiated

Date

Complainant's Name

Complainant's Address

Dear (Mr/Ms):

The matter referenced in your letter of \_\_\_\_\_(date) against the Town of Surfside alleging Title VI violation has been investigated.

The violation of the Title VI of the Civil Rights Act of 1964 mentioned in your letter was identified. Corrective action of this deficiency(s) is being implemented to ensure that this issue does not arise again

Thank you for bringing this important matter to our attention.

Sincerely,

Town of Surfside  
Attention: James McGuiness, Title VI Coordinator  
9293 Harding Avenue  
Surfside, FL 33154

Town of Surfside Title VI Program Plan

Appendix E

Letter Notifying Complainant that the Complaint is not Substantiated

Date

Complainant's Name

Complainant's Address

Dear (Mr/Ms)

The matter referenced in your complaint of \_\_\_\_\_(date) against the Town of Surfside alleging a Title VI violation has been investigated.

The results of the investigation did not indicate that the provisions of Title VI of the Civil Rights Act of 1964 had in fact been violated. As you know, Title VI prohibits discrimination based on race, color, or national origin in any program receiving federal financial assistance.

The Town Attorney has analyzed the materials and facts pertaining to your case for evidence of the Town's failure to comply with any of the civil rights laws. There was no evidence found that any of these laws have been violated.

I therefore advise you that your complaint has not been substantiated, and that the Town is closing this matter in our files as of \_\_\_\_\_. (date) You have the right to:

- 1) Appeal within seven calendar days of receipt of this final written decision from the Town, and/or
- 2) File a complaint externally with the U.S. Department of Transportation and/or the Federal Transit Administration at:

Federal Transit Administration Office of Civil Rights  
Attention: Title VI Program Coordinator  
East Building, 5th Floor  
TCR 1200 New Jersey Ave., SE  
Washington, DC 20590

Thank you for taking the time to contact us. If I can be of assistance to you in the future, do not hesitate to call me.

Sincerely,

James McGuiness, Title VI Coordinator



Town of Surfside Title VI Program Plan

Appendix F

Employee Annual Education Form

To all employees of the Town of Surfside:

No person shall, on the grounds of race, color or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

All employees of the Town of Surfside and its contractors are expected to consider, respect, and observe this policy in their daily work and duties.

If a citizen approaches you with a question or complaint, direct him or her to contact:

**Name:** James McGuinness, Title VI Coordinator

**Address:** Town of Surfside  
9293 Harding Avenue  
Surfside, FL 33154

**Phone:** (305) 861-4863 Ext. 231

**Email:** [jmcguinness@townofsurfsidefl.gov](mailto:jmcguinness@townofsurfsidefl.gov)

In all dealings with citizens, use courtesy titles (i.e., Mr., Ms., etc.) to respectfully address the citizens without regard to race, color or national origin.

Town of Surfside Title VI Program Plan

Appendix G

Record of Investigations, Complaints, and/or Lawsuits

<u>Type of Complaint</u> <small>(Investigation, Compliant, Lawsuit)</small>	<u>Date of Complaint</u> <small>(Month/Day/Year)</small>	<u>Basis of Complaint</u> <small>(Race, Color, National Origin)</small>	<u>Status of Complaint</u>	<u>Action(s) Taken</u>



## MEMORANDUM

ITEM NO. 3D.

**To:** Honorable Mayor, Vice-Mayor and Members of the Town Commission

**From:** Andrew Hyatt, Town Manager

**Date:** June 14, 2022

**Subject:** **Adoption of Town of Surfside Fund Balance Policy**

---

Town Administration recommends approval of the Fund Balance Policy.

In February of 2011, the Town of Surfside, Florida conducted its first Five Year Financial Forecast for Fiscal Years 2012 through 2016. It projected that without the benefits associated with quality, balanced infill developments the Town's tax base would remain static. The Town presented updated forecasts in September 2013 for Fiscal Years 2014 through 2018, and in October 2017 for Fiscal Years 2018 through 2022. The advance warning of potential undesirable outcomes from those reports helped direct Town Commission policy decisions which diversified the tax base and dramatically improved the financial position of the Town. Aiding in these long-term strategic decisions is one of the fundamental advantages brought by this type of analysis.

The Town of Surfside Fiscal Year 2023-2027 Five Year Financial Forecast is a long-range fiscal planning guide that serves as an integral part of planning the Town's future financial strategy and is a key tool in ensuring long-term fiscal sustainability. A Five-Year Financial Forecast allows the Town to look into the future to navigate our financial challenges by developing long-term solutions rather than short-term fixes. It provides an outlook of Surfside's financial future over the next five-year period, October 1, 2022 through September 30, 2027, as forecasted.

The Government Finance Officers Association (GFOA) recommends that governments establish a formal policy on the level of unrestricted fund balance that should be maintained in the general fund. Such a guideline should be set by the appropriate policy body and articulate a framework and process for how the government would increase or decrease the level of unrestricted fund balance over a specific time period. In particular, governments should provide broad guidance in the policy for how resources will be directed to replenish fund balance should the balance fall below the level prescribed. It is essential that governments maintain adequate levels of fund balance to mitigate current and future risks (e.g., revenue shortfalls and unanticipated expenditures) and to ensure stable tax rates. In most cases, discussions of fund balance will properly focus on a government's general fund. Nonetheless,

financial resources available in other funds should also be considered in assessing the adequacy of unrestricted fund balance in the general fund.

Also the Recommended Practice 4.1 of the National Advisory Council on State and Local Budgeting governments on the need to "maintain a prudent level of financial resources to protect against reducing service levels or raising taxes and fees because of temporary revenue shortfalls or unpredicted one-time expenditures".

[Resolution Adopting a Fund Balance Policy.DOCX](#)

[Fund Balance Policy - 2022.pdf](#)

[Fund Balance Implementation FY 2022.pdf](#)

**RESOLUTION NO. 2022- \_\_\_\_\_**

**A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, APPROVING AND ADOPTING A FUND BALANCE POLICY; PROVIDING FOR AUTHORIZATION; PROVIDING FOR IMPLEMENTATION; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the Town of Surfside (“Town”) desires to adopt a formal policy governing the level of unrestricted fund balances that are maintained in the Town’s General Fund (the “Fund Balance Policy”) in accordance with the best practices recommendation of the Government Finance Officers Association (GFOA); and

**WHEREAS**, the Fund Balance Policy provides broad guidance on how resources will be directed to replenish fund balance should the balances fall below the level prescribed in order to mitigate current and future risks and to ensure stable tax rates; and

**WHEREAS**, the Town of Surfside desires to adopt the Fund Balance Policy, substantially in the form attached hereto as Exhibit “A,” providing guidelines and framework as to how resources will be directed when fund balances fall below prescribed levels.

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

**Section 1. Recitals.** That the above and foregoing recitals are true and correct and are hereby incorporated by reference.

**Section 2. Fund Balance Policy Approved and Adopted.** The Fund Balance Policy, in substantially the form attached hereto as Exhibit “A,” is hereby approved, subject to final approval by the Town Manager and Town Attorney as to form, content, and legal sufficiency.

**Section 3. Implementation.** The Town Manager and Town Officials are authorized to take all action necessary to implement the Fund Balance Policy and the purposes of this Resolution.

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

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

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

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

**FINAL VOTE ON ADOPTION:**

Commissioner Fred Landsman \_\_\_\_\_

Commissioner Marianne Meisheid \_\_\_\_\_

Commissioner Nelly Velasquez \_\_\_\_\_

Vice Mayor Jeff Rose \_\_\_\_\_

Mayor Shlomo Danzinger \_\_\_\_\_

\_\_\_\_\_  
Shlomo Danzinger, Mayor

Attest:

\_\_\_\_\_  
Sandra McCready, MMC  
Town Clerk

Approved as to Form and Legal Sufficiency:

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



## FUND BALANCE POLICY

### A. OBJECTIVE

To help ensure that the Town of Surfside maintains a positive and healthy fund balance and to establish a fund balance policy to insure against unanticipated events that would adversely affect the financial condition of the Town and jeopardize the continuation of necessary public services.

### B. SCOPE

This policy shall serve as guidance on the Town of Surfside's Fund Balance/Reserves. The Fund Balance policy establishes an appropriate level of reserves for the Town to target and maintain in the funds primarily the General Fund. The Town's Fund Balance policy looks beyond annual revenues and expenditures to policies promoting the sustainability of Town services and rate structure, property values and capital needs, with a focus on current policies being financially sustainable over the next five years and beyond.

### C. POLICY

#### **Committed Fund Balance**

This policy will create a Committed Fund Balance with uses as listed below for the General Fund and non-Tourist Board Tourist Resort Fund.

Definition:

Committed Fund Balance - The portion of fund balance that can be used only for the specific purposes determined by a formal action (resolution) of the Town Commission, the Town's highest decision-making authority. Commitments may be changed or lifted only by the Town Commission taking the same formal action (resolution) that imposed the original constraint.

#### **Annual Review and Determination**

Compliance with the provisions of this policy shall be reviewed as part of the annual budget adoption process and revisions to the levels of fund balance will be determined during this process.

## **General Fund**

The Town will strive to budget and fund the target amounts listed below in the General Fund as a percentage of the Town's annual operating expenditures of the General Fund.

- 25% Operations & Maintenance (O&M) Reserve
- 20% Hurricane/Natural Disaster Reserve
- 10% Budget Stabilization Reserve
- 5% Capital Projects Reserve

Annual operating expenditures are defined as total budgeted personnel services plus operating expenses.

Working Capital or Operations & Maintenance (O&M) Reserve is for general use to maintain essential services during periods of intense capital and budgetary needs.

The Hurricane/Natural Disaster Reserve should be used for related unbudgeted expenses that are expected to be submitted for reimbursement by the Federal Emergency Management Agency (FEMA).

The Budget Stabilization Reserve should be used during periods of assumed temporary decreases to the property values/ad valorem taxes typical during recessions. This would allow for a budget in which taxes would not need to be increased to cover the current level of service.

The Capital Reserve should be used for needed capital expenditures in a fiscal year in which current net revenues are insufficient to cover project costs. Such a reserve helps to split the costs of infrastructure projects between current and future residents by reducing the amount of future borrowing for major projects.

## **Tourist Resort Fund**

The Town accounts for 100% of total projected revenues in the Tourist Resort Fund. Thirty-four percent (34%) of total revenues are allocated directly for tourism related activities. The expenditure of these funds is governed by the Tourist Bureau Board of the Town of Surfside. The remaining sixty-six percent (66%) of total revenues are allocated for the cost of operating the Community Center and Tennis Center operations, and other resort tax eligible activities.

The Town will strive to budget and fund the target amounts listed below in the Tourist Resort Fund as a percentage of the Town's non-Tourist Board annual operating expenditures of the Tourist Resort Fund.

- 10% Unrestricted Fund Balance
- 10% Hurricane/Natural Disaster Reserve
- 10% Budget Stabilization Reserve
- 10% Capital Reserve



Annual operating expenditures are defined as total budgeted personnel services plus operating expenses.

Working Capital or Operations & Maintenance (O&M) Reserve is for general use to maintain essential services during periods of intense capital and budgetary needs.

The Hurricane/Natural Disaster Reserve should be used for related unbudgeted expenses that may not be reimbursable by the Federal Emergency Management Agency (FEMA).

The Budget Stabilization Reserve should be used during periods of assumed temporary decreases to the tourist resort taxes typical during recessions.

The Capital Reserve should be used for needed capital expenditures in a fiscal year in which current net revenues are insufficient to cover the project's costs.

### **Building Fund**

The Building Fund is a special revenue fund to account for the building department activities within the Town. Revenues sources are generated from fees for the issuance of building permits and inspections related to construction, building, renovation, alteration, repair or other activity requiring a permit by the Code of Ordinances or the Florida Building Code. The fees fund building department operations.

Per Section 553.80(7)(a), F.S., a local government may not carry forward an amount exceeding the average of its operating budget for enforcing the Florida Building Code for the previous 4 fiscal years.

### **Enterprise Funds**

Fees charged to customers will cover operating expenses, debt service and required reserves to meet debt service requirements and a reserve for renewal and replacement of capital assets and infrastructure.

The Town should have an appropriate unrestricted fund balance to be used for cash flow purposes for unanticipated expenses or a non-recurring nature or to meet unexpected increases in service delivery costs.

# Fund Balance Policy Implementation

## General Fund

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FY 22 Personnel Services	\$	8,577,040
FY 22 Operating Expenses	\$	<u>4,338,773</u>
FY 22 Total Operating Expenditures	\$	12,915,813

FY 21 Unrestricted Fund Balance \$ 18,929,974

### Recommended Policy

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25% Unrestricted Fund Balance	\$	3,228,953
20% Hurricane/Natural Disaster Reserve*	\$	2,583,163
10% Budget Stabilization Reserve	\$	1,291,581
5% Capital Reserve	\$	<u>645,791</u>
	\$	7,749,488

\*Current balance is \$2.0M. Only \$583,162.60 additional needed.

Additional Unrestricted Fund Balance \$ 13,180,486

## Tourist Resort Fund

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FY 22 Personnel Services	\$	1,605,547
FY 22 Operating Expenses	\$	<u>795,406</u>
FY 22 Total Operating Expenditures	\$	2,400,953

FY 21 Unrestricted Fund Balance \$ 2,008,400

### Recommended Policy

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10% Unrestricted Fund Balance	\$	240,095
10% Hurricane/Natural Disaster Reserve	\$	240,095
10% Budget Stabilization Reserve	\$	240,095
10% Capital Reserve	\$	<u>240,095</u>
	\$	960,381

Additional Unrestricted Fund Balance \$ 1,048,019



## MEMORANDUM

ITEM NO. 3E.

**To:** Honorable Mayor, Vice-Mayor and Members of the Town Commission  
**From:** Andrew Hyatt, Town Manager  
**Date:** June 14, 2022  
**Subject:** **Approval to Execute FPL Binding Estimate Agreement**

---

Town Administration recommends approval of the resolution to approve execution of the agreement with FPL Binding Cost Estimate in the amount of \$4,874,370.

At the December 2, 2020 Commission meeting, Town Administration was authorized to engage and expend funds towards the Florida Power & Light (FPL) binding cost estimate. Also included in the resolution was direction to engage with an undergrounding project management consultant (HPF Associates, Inc.) to assist with project management services and to prepare the non-FPL portion of the cost estimate. During the March 2022 Town General Elections, the residents of the Town voted in majority favor to approve a bond referendum to underground utilities.

At the May 20, 2022 Commission meeting, Town Administration was authorized to proceed with the utilities underground project and to coordinate the various action items required. These action in May 2022 included approval of a resolution stating an intent to issue bonds to cover the cost of the project, engaging with KCI Technology to complete the design, and continuing to retain HPF Associates for project management services.

As discussed at the May Commission meeting, the Town is seeking approval to execute the agreement with FPL to proceed with the next phase of the undergrounding of utilities project. The cost of the Binding Cost Estimate from FPL is in the amount of \$4,874,370. This amount is part of the \$37.1M total project cost estimate.

[Resolution Approving FPL Binding Estimate Agreement.DOCX](#)

[BCE Cvr ltr Town of Surfside 9-21.pdf](#)

[TOS - Binding Cost Estimate and GAF Phase 1.pdf](#)

[TOS - Binding Cost Estimate and GAF Phase 2.pdf](#)

[TOS - Binding Cost Estimate and GAF Phase 3.pdf](#)

[FPL Undergrounding Map.pdf](#)

**RESOLUTION NO. 2022-\_\_\_\_\_**

**A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, APPROVING THE BINDING COST ESTIMATE WITH FLORIDA POWER & LIGHT COMPANY (FPL) AND THE UNDERGROUND FACILITIES CONVERSION AGREEMENTS IN CONNECTION WITH THE UNDERGROUNDING ELECTRIC FACILITIES CONVERSION; AUTHORIZING THE TOWN MANAGER TO EXECUTE THE AGREEMENTS WITH FPL FOR THE PROJECT; PROVIDING FOR IMPLEMENTATION; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, on November 3, 2020, the Town of Surfside (“Town”) electorate approved a non-binding ballot/referendum question concerning the undergrounding of overhead utilities for electric and communication services for the Surfside Conversion Project (the “Project”) in the Town; and

**WHEREAS**, on December 8, 2020, the Town Commission adopted Resolution No. 2022-2743, authorizing the Town Manager to make a non-refundable engineering deposit in the amount of \$62,432.00 to Florida Power & Light Company (“FPL”) for a binding cost estimate in connection with the electrical facilities conversion for the Project; and

**WHEREAS**, on September 21, 2021, FPL provided the Town with an Electric Facilities Conversion Binding Cost Estimate Letter, together with Overhead to Underground Conversion Customer Cost Sheets and Underground Facilities Conversion Agreements, for the three phases of the electrical facilities conversion, which documents are attached hereto as composite Exhibit “A” (the “FPL Agreements”); and

**WHEREAS**, on March 15, 2022, the Town electorate approved a ballot/referendum question for the issuance of general obligation bonds in an amount not to exceed Forty Million (\$40,000,000) Dollars (the “Bonds”) for the purpose of financing the costs of the Project; and

**WHEREAS**, on May 10, 2022, the Town Commission adopted Resolution No. 2022-2877, confirming the Town’s intent to issue tax-exempt Bonds in the amount necessary to finance the costs of the Project; and

**WHEREAS**, in accordance with the FPL Agreements, attached hereto as composite Exhibit “A,” FPL will provide the electrical facilities conversion for the Project in an amount not to exceed \$4,874,370 for the remaining balance of the binding cost estimate, which shall be implemented in three phases: (1) Phase 1 with a total cost of \$1,960,764, (2) Phase 2 with a total cost of \$1,676,096, and (3) Phase 3 with a total cost of \$1,237,510; and

**WHEREAS**, the Town Commission desires to authorize the Town Manager to enter into the FPL Agreements in substantially the form attached hereto as composite Exhibit “A,” and authorize the expenditure of budgeted funds in an amount not to exceed \$4,874,370 for the electrical facilities conversion work; 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.** Each of the above-stated recitals are hereby adopted, confirmed, and incorporated herein.

**Section 2. Approval of the Binding Cost Estimate and the FPL Agreements.** The Town Commission hereby approves the FPL Binding Cost Estimate for the Project and the FPL Agreements, in substantially the form attached hereto as composite Exhibit “A.”

**Section 3. Authorization to Execute FPL Agreements; Authorization to Expend**

**Funds.** The Town Commission hereby authorizes the Town Manager to execute the FPL Agreements, in substantially the forms attached hereto as composite Exhibit “A,” subject to the approval of the Town Attorney as to form, content, and legal sufficiency. The Town Manager is further authorized to expend budgeted funds for the electrical facilities conversion work for the Project in an amount not to exceed \$4,874,370.

**Section 4. Implementation.** The Town Manager and Town Officials are authorized to take any and all necessary action to implement the Binding Cost Estimate and FPL Agreements 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: \_\_\_\_\_

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

**FINAL VOTE ON ADOPTION:**

Commissioner Fred Landsman \_\_\_\_\_

Commissioner Marianne Meisheid \_\_\_\_\_

Commissioner Nelly Velasquez \_\_\_\_\_

Vice Mayor Jeffrey Rose \_\_\_\_\_

Mayor Shlomo Danzinger \_\_\_\_\_

\_\_\_\_\_  
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



**COMPOSITE EXHIBIT "A"**

**BINDING COST ESTIMATE AND OVERHEAD TO UNDERGROUND CONVERSION --**

**CUSTOMIZED COST SHEETS CONVERSION AGREEMENTS**



September 21, 2021

Mr. Paul Abbott  
9293 Harding Avenue  
Surfside, FL 33154

**Re: Town of Surfside  
Electric Facilities Conversion – Binding Cost Estimate  
Entire Town Limits  
WR # 4269737, 4269749, 4269755**

Dear Mr. Abbott:

FPL welcomes the opportunity to assist you in determining if underground service is right for your area. As per your request, FPL has completed a binding cost estimate for the project designated as the Surfside Conversion Project. The binding cost estimate amount, known as the Contribution In Aid of Construction (C.I.A.C.), required for converting the area to underground is \$7,273,037. This estimate is based on the underground design inclusive of the Vista switch technologies as requested by the Town. In addition, the cost estimate includes a more than \$5,795,551 adjustment credit for both FPL's Government Adjustment Factor (G.A.F.) Waiver and as required in the C.I.A.C. formula, tariff Section 12.1, credit for an equivalent overhead system designed at the current hardened (i.e. extreme wind) standard. Further the cost assumes the following:

- Customer performs some of the underground work.
- All work will be performed during the daylight hours, Monday through Friday, 8 A.M. to 5 P.M.. Any after hours work, e.g. disconnect/reconnect service appointments or requiring construction at night, would be an additional expense for the Town.

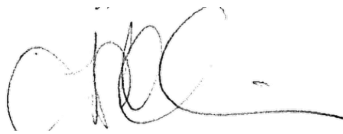
This binding cost estimate is valid for 180 days and a response must be received within that timeframe. Should you agree to move forward with the project, please sign and return the enclosed documents. Once we receive the acceptance package (e.g. partially executed documents and C.I.A.C. payment), we will commence the construction process (i.e. initiate bid requests and material purchasing). Any deposits that you have already paid will be applied towards the C.I.A.C. and you must pay the remaining difference of \$4,874,370 before we begin construction. Failure to execute the applicable Agreement and pay the C.I.A.C. specified in the Agreement within the 180-day time limit, or termination of the Agreement, shall result in the expiration of the binding cost estimate. However, if you choose to cancel your request or not respond in time, your engineering deposit will not be returned and the estimate will be withdrawn.

This estimate only includes the charges to be paid to FPL. There are additional costs which are the customer's responsibility and should also be considered. These potential costs include:

- Site restoration (sod, landscaping, pavement, sidewalks, etc).
- Rearrangement of customer electric service entrances (requires electrician) from overhead to underground. Also, additional customer expense if local inspecting authorities require customer wiring to be brought up to current codes.
- Removal and burial of other utilities (e.g. telecom, CATV, etc.).
- Any project scope changes that modify the enclosed drawings.
- Acquiring, describing, securing and recording of easements for underground facilities.

We look forward to working with you and your staff as this project progresses. If you have any questions, please contact me at 954-327-3124.

Sincerely,

A handwritten signature in black ink, appearing to read 'Terry Miller', with a long horizontal flourish extending to the right.

Terry Miller  
Project Manager  
CMC – Feeder Undergrounding Group  
Area Office Broward  
FPL

cc: Hau Tran, Program Manager  
Armando Fernandez, External Affairs Manager  
Jose Triana, Customer Advisor

## Overhead to Underground Conversion - Customer Cost Sheet

Project: Town of Surfside Phase 1

Date Estimate Provided to Customer: 9/20/2021

Customer Performs SOME UG Work - Conduit and Concrete Installation

### Underground Cost

New UG Installation (+)	\$3,926,284	Cost for FPL to install new underground facilities
Equivalent OH Installation (-)	(\$1,204,008)	Cost to install an overhead system at current hardening standards

### Existing Overhead Cost

OH Removal Cost & Make ready (+)	\$735,276	Cost for FPL to remove existing overhead facilities
Existing OH Value (+)	\$57,617	Net Book Value of existing OH facilities to be removed
Operational Costs Differential (+)	(\$584,453)	30-year Net present value of the est. operational OH / UG Diff. cost
Salvage Value (-)	(\$33,600)	Credit for re-usable items
<b>Subtotal*</b>	<b>\$2,897,116</b>	Total customer contribution as specified in Tariff 12.2.3
	<b>(\$915,920)</b>	ASRC - Tier 1 - 25%
<b>CIAC</b>	<b>\$1,981,196</b>	
Engineering Deposit (-)	(\$20,432)	Engineering deposit previously collected
<b>Subtotal*</b>	<b>\$1,960,764</b>	
<b>Net Due FPL</b>	<b>\$1,960,764</b>	Total customer contribution owed

### Cost Breakdowns for Customer Contributions

	Total	Labor/Vehicle	Material	Direct Engineering, Supervision, and Support
New UG Facilities (+)	\$3,926,284	\$1,174,958	\$2,099,840	\$651,486
Credit for equivalent OH (-)	(\$1,204,008)	(\$449,638)	(\$575,482)	(\$178,888)
OH Removal Cost & Make ready (+)	\$735,276	\$626,391	\$21,126	\$87,759
<b>Total</b>	<b>\$3,457,552</b>	<b>\$1,351,711</b>	<b>\$1,545,484</b>	<b>\$560,357</b>
Net Book Value (+)	\$57,617			
Operational Costs Differential (+)	(\$584,453)		3.2 miles	
Salvage Value (-)	(\$33,600)			
<b>Subtotal*</b>	<b>\$2,897,116</b>			
<b>GAF</b>	<b>(\$915,920)</b>			
<b>CIAC</b>	<b>\$1,981,196</b>			
Engineering Deposit (-)	(\$20,432)			Engineering deposit previously collected
<b>Subtotal*</b>	<b>\$1,960,764</b>			
<b>Net Due FPL</b>	<b>\$1,960,764</b>			

### Major Material Breakdown

	Quantity	Item
<b>Install</b>	231,086	Primary UG Cable (feet)
	10	UG Switch Cabinet (0 Vista Sw's)
	97	UG Transformer (each)
	12	Splice box for UG feeder (each)
<b>Remove</b>	37,986	OH Primary Conductor (feet)
	131	Poles (each)
	86	OH Transformer (each)
	0	Primary UG Cable (feet)

**UNDERGROUND FACILITIES CONVERSION AGREEMENT –  
GOVERNMENTAL ADJUSTMENT FACTOR WAIVER**

This Agreement is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the City of Surfside (“Local Government Applicant”), a Florida municipal corporation or county with an address of 9293 Harding Ave, Surfside FL 33154 and FLORIDA POWER & LIGHT COMPANY (“FPL”), a Florida corporation with an address of P.O. Box 14000, 700 Universe Boulevard, Juno Beach, FL 33408-0429.

WHEREAS, the Local Government Applicant has requested that FPL convert certain overhead electric distribution facilities located within the following boundaries (the “Conversion”):

Entire Town Limits – Phase I

(collectively, the “Existing Overhead Facilities”) to underground facilities, including transformers, switch cabinets and other appurtenant facilities installed above ground as set forth in Attachment A hereof (collectively, the “Underground Facilities”, WR # 4269737).

NOW THEREFORE, in consideration of the foregoing premises and the covenants and agreements set forth herein, and other consideration the sufficiency of which is hereby acknowledged, the parties intending to be legally bound, hereby covenant and agree as follows:

1. **Governmental Adjustment Factor Waiver (“GAF Waiver”) Eligibility Criteria.** The Local Government Applicant represents and warrants that it meets the following eligibility criteria for the Conversion:
  - a. In order for the Conversion to incorporate a sufficient amount of overhead facilities to provide electrical continuity, the Conversion must include a minimum of approximately 3 pole line miles or approximately 200 detached dwelling units within contiguous or closely proximate geographic areas (the “Conversion Area”). The Conversion may be completed in mutually agreed upon phases, with the project size minimums applying to the aggregate project – provided that any necessary subsequent phase begins within a 1 year period from completion of the prior phase and the minimums are met within, at most, 3 phases; and
  - b. The Local Government Applicant must require all customers within the Conversion Area who currently have overhead service directly from the Existing Overhead Facilities to convert their service entrances to underground within 6 months of completion of the Underground Facilities installation or each phase thereof; and
  - c. The Local Government Applicant must be willing and able to execute a right of way (“ROW”) agreement with FPL if the Local Government Applicant requests that facilities be placed in the ROW; and
  - d. For any affected laterals, the complete lateral must be converted, including all stages of any multi-stage lateral; and
  - e. The Local Government Applicant must demonstrate to the reasonable satisfaction of FPL that the sum of the GAF Waiver credit plus any federal or state funds that the Local Government Applicant is able to use to support the Conversion does not exceed the otherwise applicable CIAC as calculated before application of the GAF Waiver.

Special Circumstances. Conversions which do not meet the project size minimums described in section 1.a are eligible for the GAF Waiver in the following special circumstances:

- i. 100% of the Existing Overhead Facilities within the Local Government Applicant’s corporate limits are to be converted, but are less than the pole line mileage or dwelling unit minimums; or
- ii. A single lateral that serves at least one Critical Infrastructure Facility as determined by the appropriate local agency with the mutual agreement of FPL; or
- iii. An island or peninsula where 100% of the Existing Overhead Facilities are to be converted; or

iv. When the aggregate size of the first 3 phases of a project would satisfy the minimum size criteria but, for mutually-agreed engineering or logistical reasons, those phases are non-contiguous; provided that (a) the next (4<sup>th</sup>) phase must be adjacent to one or more of the first 3 phases such that the combined contiguous area meets the minimum size criteria, and (b) this 4<sup>th</sup> phase begins within 1 year from completion of the 3<sup>rd</sup> phase.

2. **Contribution-in-Aid-of-Construction (CIAC).** The Local Government Applicant shall pay FPL a CIAC as required by FPL's Electric Tariff and Section 25-6.115 of the Florida Administrative Code with the Otherwise Applicable CIAC amount reduced by the GAF Waiver.

i. Otherwise Applicable CIAC	\$	2,897,116
ii. GAF Waiver	\$	<u>- 915,920</u>
iii. CIAC Due	\$	1,981,196 (Cust. performs SOME UG work)

In the event the actual cost of the Conversion exceeds the estimate, the Otherwise Applicable CIAC shall be adjusted by the lesser of (a) the difference between the actual cost of the Conversion and the estimate, or (b) 10% of the Otherwise Applicable CIAC identified above. The GAF Waiver shall also be adjusted accordingly and the Local Government Applicant shall pay FPL the resulting difference in the amount of the CIAC Due.

3. **Applicant-Installed Facilities.** The Local Government Applicant may, upon entering into an applicant-installed facilities agreement satisfactory to FPL, construct and install all or a portion of the Underground Facilities. Such work must meet FPL's construction standards and FPL will own and maintain the completed facilities. The Local Government Applicant agrees to rectify any deficiencies, found by FPL, prior to the connection of any customers to the Underground Facilities and the removal of the Existing Overhead Facilities.
4. **Compliance with Tariff.** The Local Government Applicant agrees to comply with and abide by the requirements, terms, and conditions of FPL's Electric Tariff.
5. **Timing of Conversion.** Upon compliance by the Local Government Applicant with the requirements, terms, and conditions of FPL's Electric Tariff, this Agreement and any other applicable agreements, FPL will proceed in a timely manner with the Conversion in accordance with the construction drawings and specifications set forth in Attachment A hereof.
6. **Relocation.** In the event that the Underground Facilities are part of, or are for the purposes of, relocation, then this Agreement shall be an addendum to the relocation agreement between FPL and the Local Government Applicant. In the event of any conflict between the relocation agreement and this Agreement or the Electric Tariff, this Agreement and the Electric Tariff shall control.
7. **Term.** This Agreement shall remain in effect for as long as FPL or any successor or assign owns or operates the Underground Facilities.
8. **GAF Waiver Repayment.** If the Local Government Applicant does not satisfy the relevant eligibility criteria, the Local Government Applicant shall repay the GAF Waiver within 30 days of written notice from FPL of such failure. Additionally, if at any point within 30 years of completion of the Underground Facilities installation, the Local Government Applicant elects to have electric service within the Conversion Area supplied by a provider other than FPL, the Local Government Applicant shall repay FPL a pro-rata share of the GAF Waiver. The pro-rata share (which shall reflect partial years) shall be determined as follows:

$$\text{GAF Waiver} * [(30 - \text{years since the Underground Facilities completion date}) / 30]$$

- 9. **Termination Prior to the Conversion Completion.** Failure by the Local Government Applicant to comply with any of the requirements, terms, or conditions of this Agreement or FPL's Electric Tariff shall result in termination of this Agreement. The Local Government Applicant may terminate this Agreement at any time prior to the start of the Conversion and the CIAC paid by the Local Government Applicant will be refunded to the Local Government Applicant; provided however, that the refund of the CIAC shall be offset by any costs incurred by FPL in performing under the Agreement up to the date of termination.
- 10. **Assignment.** The Local Government Applicant shall not assign this Agreement without the written consent of FPL.
- 11. **Adoption and Recording.** This Agreement shall be adopted by the Local Government Applicant and maintained in the official records of the Local Government Applicant for the duration of the term of this Agreement. This Agreement also shall be recorded in the Official Records of the County in which the Underground Facilities are located, in the place and in the manner in which deeds are typically recorded.
- 12. **Conflict between Terms of Franchise Agreement.** In the event of a conflict between the terms of this Agreement and any permit or franchise agreement entered into by Local Government Applicant and FPL, the terms of this Agreement shall control.

IN WITNESS WHEREOF, FPL and the Local Government Applicant have executed this Agreement on the date first set forth above.

**TOWN OF SURFSIDE**

**FPL**

Signed \_\_\_\_\_

Signed \_\_\_\_\_

Name \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

Title \_\_\_\_\_

Signed \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

Approved as to Terms and Conditions

Signed \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

Approved as to Form and Legal Sufficiency

Signed \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

## Overhead to Underground Conversion - Customer Cost Sheet

Project: Town of Surfside Phase 2

Date Estimate Provided to Customer: 9/20/2021

Customer Performs SOME UG Work - Conduit and Concrete Installation

### Underground Cost

New UG Installation (+)	\$3,686,720	Cost for FPL to install new underground facilities
Equivalent OH Installation (-)	(\$1,229,041)	Cost to install an overhead system at current hardening standards

### Existing Overhead Cost

OH Removal Cost & Make ready (+)	\$619,126	Cost for FPL to remove existing overhead facilities
Existing OH Value (+)	\$24,532	Net Book Value of existing OH facilities to be removed
Operational Costs Differential (+)	(\$572,096)	30-year Net present value of the est. operational OH / UG Diff. cost
Salvage Value (-)	(\$57,520)	Credit for re-usable items
<b>Subtotal*</b>	<b>\$2,471,721</b>	Total customer contribution as specified in Tariff 12.2.3
	<b>(\$775,626)</b>	ASRC - Tier 1 - 25%
<b>CIAC</b>	<b>\$1,696,096</b>	
Engineering Deposit (-)	(\$20,000)	Engineering deposit previously collected
<b>Subtotal*</b>	<b>\$1,676,096</b>	
<b>Net Due FPL</b>	<b>\$1,676,096</b>	Total customer contribution owed

### Cost Breakdowns for Customer Contributions

	Total	Labor/Vehicle	Material	Direct Engineering, Supervision, and Support
New UG Facilities (+)	\$3,686,720	\$1,100,041	\$1,984,257	\$602,422
Credit for equivalent OH (-)	(\$1,229,041)	(\$450,388)	(\$595,388)	(\$183,265)
OH Removal Cost & Make ready (+)	\$619,126	\$519,747	\$19,142	\$80,237
<b>Total</b>	<b>\$3,076,805</b>	<b>\$1,169,400</b>	<b>\$1,408,011</b>	<b>\$499,394</b>
Net Book Value (+)	\$24,532			
Operational Costs Differential (+)	(\$572,096)		3.2 miles	
Salvage Value (-)	(\$57,520)			
<b>Subtotal*</b>	<b>\$2,471,721</b>			
<b>GAF</b>	<b>(\$775,626)</b>			
<b>CIAC</b>	<b>\$1,696,096</b>			
Engineering Deposit (-)	(\$20,000)			Engineering deposit previously collected
<b>Subtotal*</b>	<b>\$1,676,096</b>			
<b>Net Due FPL</b>	<b>\$1,676,096</b>			

### Major Material Breakdown

	Quantity	Item
<b>Install</b>	174,062	Primary UG Cable (feet)
	13	UG Switch Cabinet (0 Vista Sw's)
	110	UG Transformer (each)
	12	Splice box for UG feeder (each)
<b>Remove</b>	45,656	OH Primary Conductor (feet)
	208	Poles (each)
	112	OH Transformer (each)
	0	Primary UG Cable (feet)



**UNDERGROUND FACILITIES CONVERSION AGREEMENT –  
GOVERNMENTAL ADJUSTMENT FACTOR WAIVER**

This Agreement is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the **City of Surfside** (“Local Government Applicant”), a Florida municipal corporation or county with an address of 9293 Harding Ave, Surfside FL 33154 and FLORIDA POWER & LIGHT COMPANY (“FPL”), a Florida corporation with an address of P.O. Box 14000, 700 Universe Boulevard, Juno Beach, FL 33408-0429.

WHEREAS, the Local Government Applicant has requested that FPL convert certain overhead electric distribution facilities located within the following boundaries (the “Conversion”):

Entire Town Limits – Phase 2

(collectively, the “Existing Overhead Facilities”) to underground facilities, including transformers, switch cabinets and other appurtenant facilities installed above ground as set forth in Attachment A hereof (collectively, the “Underground Facilities”, WR #4269755).

NOW THEREFORE, in consideration of the foregoing premises and the covenants and agreements set forth herein, and other consideration the sufficiency of which is hereby acknowledged, the parties intending to be legally bound, hereby covenant and agree as follows:

1. **Governmental Adjustment Factor Waiver (“GAF Waiver”) Eligibility Criteria.** The Local Government Applicant represents and warrants that it meets the following eligibility criteria for the Conversion:
  - a. In order for the Conversion to incorporate a sufficient amount of overhead facilities to provide electrical continuity, the Conversion must include a minimum of approximately 3 pole line miles or approximately 200 detached dwelling units within contiguous or closely proximate geographic areas (the “Conversion Area”). The Conversion may be completed in mutually agreed upon phases, with the project size minimums applying to the aggregate project – provided that any necessary subsequent phase begins within a 1 year period from completion of the prior phase and the minimums are met within, at most, 3 phases; and
  - b. The Local Government Applicant must require all customers within the Conversion Area who currently have overhead service directly from the Existing Overhead Facilities to convert their service entrances to underground within 6 months of completion of the Underground Facilities installation or each phase thereof; and
  - c. The Local Government Applicant must be willing and able to execute a right of way (“ROW”) agreement with FPL if the Local Government Applicant requests that facilities be placed in the ROW; and
  - d. For any affected laterals, the complete lateral must be converted, including all stages of any multi-stage lateral; and
  - e. The Local Government Applicant must demonstrate to the reasonable satisfaction of FPL that the sum of the GAF Waiver credit plus any federal or state funds that the Local Government Applicant is able to use to support the Conversion does not exceed the otherwise applicable CIAC as calculated before application of the GAF Waiver.

Special Circumstances. Conversions which do not meet the project size minimums described in section 1.a are eligible for the GAF Waiver in the following special circumstances:

- i. 100% of the Existing Overhead Facilities within the Local Government Applicant’s corporate limits are to be converted, but are less than the pole line mileage or dwelling unit minimums; or
- ii. A single lateral that serves at least one Critical Infrastructure Facility as determined by the appropriate local agency with the mutual agreement of FPL; or
- iii. An island or peninsula where 100% of the Existing Overhead Facilities are to be converted; or

iv. When the aggregate size of the first 3 phases of a project would satisfy the minimum size criteria but, for mutually-agreed engineering or logistical reasons, those phases are non-contiguous; provided that (a) the next (4<sup>th</sup>) phase must be adjacent to one or more of the first 3 phases such that the combined contiguous area meets the minimum size criteria, and (b) this 4<sup>th</sup> phase begins within 1 year from completion of the 3<sup>rd</sup> phase.

2. **Contribution-in-Aid-of-Construction (CIAC).** The Local Government Applicant shall pay FPL a CIAC as required by FPL's Electric Tariff and Section 25-6.115 of the Florida Administrative Code with the Otherwise Applicable CIAC amount reduced by the GAF Waiver.

i. Otherwise Applicable CIAC	\$	2,471,721
ii. GAF Waiver	\$	<u>-775,626</u>
iii. CIAC Due	\$	1,696,096 (Cust. performs SOME UG work)

In the event the actual cost of the Conversion exceeds the estimate, the Otherwise Applicable CIAC shall be adjusted by the lesser of (a) the difference between the actual cost of the Conversion and the estimate, or (b) 10% of the Otherwise Applicable CIAC identified above. The GAF Waiver shall also be adjusted accordingly and the Local Government Applicant shall pay FPL the resulting difference in the amount of the CIAC Due.

3. **Applicant-Installed Facilities.** The Local Government Applicant may, upon entering into an applicant-installed facilities agreement satisfactory to FPL, construct and install all or a portion of the Underground Facilities. Such work must meet FPL's construction standards and FPL will own and maintain the completed facilities. The Local Government Applicant agrees to rectify any deficiencies, found by FPL, prior to the connection of any customers to the Underground Facilities and the removal of the Existing Overhead Facilities.
4. **Compliance with Tariff.** The Local Government Applicant agrees to comply with and abide by the requirements, terms, and conditions of FPL's Electric Tariff.
5. **Timing of Conversion.** Upon compliance by the Local Government Applicant with the requirements, terms, and conditions of FPL's Electric Tariff, this Agreement and any other applicable agreements, FPL will proceed in a timely manner with the Conversion in accordance with the construction drawings and specifications set forth in Attachment A hereof.
6. **Relocation.** In the event that the Underground Facilities are part of, or are for the purposes of, relocation, then this Agreement shall be an addendum to the relocation agreement between FPL and the Local Government Applicant. In the event of any conflict between the relocation agreement and this Agreement or the Electric Tariff, this Agreement and the Electric Tariff shall control.
7. **Term.** This Agreement shall remain in effect for as long as FPL or any successor or assign owns or operates the Underground Facilities.
8. **GAF Waiver Repayment.** If the Local Government Applicant does not satisfy the relevant eligibility criteria, the Local Government Applicant shall repay the GAF Waiver within 30 days of written notice from FPL of such failure. Additionally, if at any point within 30 years of completion of the Underground Facilities installation, the Local Government Applicant elects to have electric service within the Conversion Area supplied by a provider other than FPL, the Local Government Applicant shall repay FPL a pro-rata share of the GAF Waiver. The pro-rata share (which shall reflect partial years) shall be determined as follows:

$$\text{GAF Waiver} * [(30 - \text{years since the Underground Facilities completion date}) / 30]$$

- 9. **Termination Prior to the Conversion Completion.** Failure by the Local Government Applicant to comply with any of the requirements, terms, or conditions of this Agreement or FPL's Electric Tariff shall result in termination of this Agreement. The Local Government Applicant may terminate this Agreement at any time prior to the start of the Conversion and the CIAC paid by the Local Government Applicant will be refunded to the Local Government Applicant; provided however, that the refund of the CIAC shall be offset by any costs incurred by FPL in performing under the Agreement up to the date of termination.
- 10. **Assignment.** The Local Government Applicant shall not assign this Agreement without the written consent of FPL.
- 11. **Adoption and Recording.** This Agreement shall be adopted by the Local Government Applicant and maintained in the official records of the Local Government Applicant for the duration of the term of this Agreement. This Agreement also shall be recorded in the Official Records of the County in which the Underground Facilities are located, in the place and in the manner in which deeds are typically recorded.
- 12. **Conflict between Terms of Franchise Agreement.** In the event of a conflict between the terms of this Agreement and any permit or franchise agreement entered into by Local Government Applicant and FPL, the terms of this Agreement shall control.

**IN WITNESS WHEREOF,** FPL and the Local Government Applicant have executed this Agreement on the date first set forth above.

**TOWN OF SURFSIDE**

**FPL**

Signed \_\_\_\_\_

Signed \_\_\_\_\_

Name \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

Title \_\_\_\_\_

Signed \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

Approved as to Terms and Conditions

Signed \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

Approved as to Form and Legal Sufficiency

Signed \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

## Overhead to Underground Conversion - Customer Cost Sheet

Project: Town of Surfside Phase 3

Date Estimate Provided to Customer: 9/20/2021

### Customer Performs SOME UG Work - Conduit and Concrete Installation

#### Underground Cost

New UG Installation (+)	\$3,133,141	Cost for FPL to install new underground facilities
Equivalent OH Installation (-)	(\$1,024,226)	Cost to install an overhead system at current hardening standards

#### Existing Overhead Cost

OH Removal Cost & Make ready (+)	\$353,947	Cost for FPL to remove existing overhead facilities
Existing OH Value (+)	\$47,309	Net Book Value of existing OH facilities to be removed
Operational Costs Differential (+)	(\$572,096)	30-year Net present value of the est. operational OH / UG Diff. cost
Salvage Value (-)	(\$33,875)	Credit for re-usable items
<b>Subtotal*</b>	<b>\$1,904,200</b>	Total customer contribution as specified in Tariff 12.2.3
	<b>(\$646,690)</b>	ASRC - Tier 1 - 25%
<b>CIAC</b>	<b>\$1,257,510</b>	
Engineering Deposit (-)	(\$20,000)	Engineering deposit previously collected
<b>Subtotal*</b>	<b>\$1,237,510</b>	
<b>Net Due FPL</b>	<b>\$1,237,510</b>	Total customer contribution owed

### Cost Breakdowns for Customer Contributions

	Total	Labor/Vehicle	Material	Direct Engineering, Supervision, and Support
New UG Facilities (+)	\$3,133,141	\$942,118	\$1,664,331	\$526,692
Credit for equivalent OH (-)	(\$1,024,226)	(\$363,544)	(\$506,532)	(\$154,150)
OH Removal Cost & Make ready (+)	\$353,947	\$311,624	\$0	\$42,323
<b>Total</b>	<b>\$2,462,862</b>	<b>\$890,198</b>	<b>\$1,157,799</b>	<b>\$414,865</b>
Net Book Value (+)	\$47,309			
Operational Costs Differential (+)	(\$572,096)		3.2 miles	
Salvage Value (-)	(\$33,875)			
<b>Subtotal*</b>	<b>\$1,904,200</b>			
<b>GAF</b>	<b>(\$646,690)</b>			
<b>CIAC</b>	<b>\$1,257,510</b>			
Engineering Deposit (-)	(\$20,000)			Engineering deposit previously collected
<b>Subtotal*</b>	<b>\$1,237,510</b>			
<b>Net Due FPL</b>	<b>\$1,237,510</b>			

### Major Material Breakdown

	Quantity	Item
<b>Install</b>	165,617	Primary UG Cable (feet)
	8	UG Switch Cabinet (0 Vista Sw's)
	92	UG Transformer (each)
	8	Splice box for UG feeder (each)
<b>Remove</b>	29,641	OH Primary Conductor (feet)
	114	Poles (each)
	84	OH Transformer (each)
	0	Primary UG Cable (feet)

**UNDERGROUND FACILITIES CONVERSION AGREEMENT –  
GOVERNMENTAL ADJUSTMENT FACTOR WAIVER**

This Agreement is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the **City of Surfside** (“Local Government Applicant”), a Florida municipal corporation or county with an address of 9293 Harding Ave, Surfside FL 33154 and **FLORIDA POWER & LIGHT COMPANY (“FPL”)**, a Florida corporation with an address of P.O. Box 14000, 700 Universe Boulevard, Juno Beach, FL 33408-0429.

WHEREAS, the Local Government Applicant has requested that FPL convert certain overhead electric distribution facilities located within the following boundaries (the “Conversion”):

Entire Town Limits – Phase 3

(collectively, the “Existing Overhead Facilities”) to underground facilities, including transformers, switch cabinets and other appurtenant facilities installed above ground as set forth in Attachment A hereof (collectively, the “Underground Facilities”, WR # 4269749).

NOW THEREFORE, in consideration of the foregoing premises and the covenants and agreements set forth herein, and other consideration the sufficiency of which is hereby acknowledged, the parties intending to be legally bound, hereby covenant and agree as follows:

1. **Governmental Adjustment Factor Waiver (“GAF Waiver”) Eligibility Criteria.** The Local Government Applicant represents and warrants that it meets the following eligibility criteria for the Conversion:
  - a. In order for the Conversion to incorporate a sufficient amount of overhead facilities to provide electrical continuity, the Conversion must include a minimum of approximately 3 pole line miles or approximately 200 detached dwelling units within contiguous or closely proximate geographic areas (the “Conversion Area”). The Conversion may be completed in mutually agreed upon phases, with the project size minimums applying to the aggregate project – provided that any necessary subsequent phase begins within a 1 year period from completion of the prior phase and the minimums are met within, at most, 3 phases; and
  - b. The Local Government Applicant must require all customers within the Conversion Area who currently have overhead service directly from the Existing Overhead Facilities to convert their service entrances to underground within 6 months of completion of the Underground Facilities installation or each phase thereof; and
  - c. The Local Government Applicant must be willing and able to execute a right of way (“ROW”) agreement with FPL if the Local Government Applicant requests that facilities be placed in the ROW; and
  - d. For any affected laterals, the complete lateral must be converted, including all stages of any multi-stage lateral; and
  - e. The Local Government Applicant must demonstrate to the reasonable satisfaction of FPL that the sum of the GAF Waiver credit plus any federal or state funds that the Local Government Applicant is able to use to support the Conversion does not exceed the otherwise applicable CIAC as calculated before application of the GAF Waiver.

Special Circumstances. Conversions which do not meet the project size minimums described in section 1.a are eligible for the GAF Waiver in the following special circumstances:

- i. 100% of the Existing Overhead Facilities within the Local Government Applicant’s corporate limits are to be converted, but are less than the pole line mileage or dwelling unit minimums; or
- ii. A single lateral that serves at least one Critical Infrastructure Facility as determined by the appropriate local agency with the mutual agreement of FPL; or
- iii. An island or peninsula where 100% of the Existing Overhead Facilities are to be converted; or

iv. When the aggregate size of the first 3 phases of a project would satisfy the minimum size criteria but, for mutually-agreed engineering or logistical reasons, those phases are non-contiguous; provided that (a) the next (4<sup>th</sup>) phase must be adjacent to one or more of the first 3 phases such that the combined contiguous area meets the minimum size criteria, and (b) this 4<sup>th</sup> phase begins within 1 year from completion of the 3<sup>rd</sup> phase.

2. **Contribution-in-Aid-of-Construction (CIAC).** The Local Government Applicant shall pay FPL a CIAC as required by FPL's Electric Tariff and Section 25-6.115 of the Florida Administrative Code with the Otherwise Applicable CIAC amount reduced by the GAF Waiver.

i. Otherwise Applicable CIAC	\$	1,904,200
ii. GAF Waiver	\$	<u>-646,690</u>
iii. CIAC Due	\$	1,257,510 (Cust. performs SOME UG work)

In the event the actual cost of the Conversion exceeds the estimate, the Otherwise Applicable CIAC shall be adjusted by the lesser of (a) the difference between the actual cost of the Conversion and the estimate, or (b) 10% of the Otherwise Applicable CIAC identified above. The GAF Waiver shall also be adjusted accordingly and the Local Government Applicant shall pay FPL the resulting difference in the amount of the CIAC Due.

3. **Applicant-Installed Facilities.** The Local Government Applicant may, upon entering into an applicant-installed facilities agreement satisfactory to FPL, construct and install all or a portion of the Underground Facilities. Such work must meet FPL's construction standards and FPL will own and maintain the completed facilities. The Local Government Applicant agrees to rectify any deficiencies, found by FPL, prior to the connection of any customers to the Underground Facilities and the removal of the Existing Overhead Facilities.
4. **Compliance with Tariff.** The Local Government Applicant agrees to comply with and abide by the requirements, terms, and conditions of FPL's Electric Tariff.
5. **Timing of Conversion.** Upon compliance by the Local Government Applicant with the requirements, terms, and conditions of FPL's Electric Tariff, this Agreement and any other applicable agreements, FPL will proceed in a timely manner with the Conversion in accordance with the construction drawings and specifications set forth in Attachment A hereof.
6. **Relocation.** In the event that the Underground Facilities are part of, or are for the purposes of, relocation, then this Agreement shall be an addendum to the relocation agreement between FPL and the Local Government Applicant. In the event of any conflict between the relocation agreement and this Agreement or the Electric Tariff, this Agreement and the Electric Tariff shall control.
7. **Term.** This Agreement shall remain in effect for as long as FPL or any successor or assign owns or operates the Underground Facilities.
8. **GAF Waiver Repayment.** If the Local Government Applicant does not satisfy the relevant eligibility criteria, the Local Government Applicant shall repay the GAF Waiver within 30 days of written notice from FPL of such failure. Additionally, if at any point within 30 years of completion of the Underground Facilities installation, the Local Government Applicant elects to have electric service within the Conversion Area supplied by a provider other than FPL, the Local Government Applicant shall repay FPL a pro-rata share of the GAF Waiver. The pro-rata share (which shall reflect partial years) shall be determined as follows:

$$\text{GAF Waiver} * [(30 - \text{years since the Underground Facilities completion date}) / 30]$$

- 9. **Termination Prior to the Conversion Completion.** Failure by the Local Government Applicant to comply with any of the requirements, terms, or conditions of this Agreement or FPL's Electric Tariff shall result in termination of this Agreement. The Local Government Applicant may terminate this Agreement at any time prior to the start of the Conversion and the CIAC paid by the Local Government Applicant will be refunded to the Local Government Applicant; provided however, that the refund of the CIAC shall be offset by any costs incurred by FPL in performing under the Agreement up to the date of termination.
- 10. **Assignment.** The Local Government Applicant shall not assign this Agreement without the written consent of FPL.
- 11. **Adoption and Recording.** This Agreement shall be adopted by the Local Government Applicant and maintained in the official records of the Local Government Applicant for the duration of the term of this Agreement. This Agreement also shall be recorded in the Official Records of the County in which the Underground Facilities are located, in the place and in the manner in which deeds are typically recorded.
- 12. **Conflict between Terms of Franchise Agreement.** In the event of a conflict between the terms of this Agreement and any permit or franchise agreement entered into by Local Government Applicant and FPL, the terms of this Agreement shall control.

IN WITNESS WHEREOF, FPL and the Local Government Applicant have executed this Agreement on the date first set forth above.

**TOWN OF SURFSIDE**

**FPL**

Signed \_\_\_\_\_

Signed \_\_\_\_\_

Name \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

Title \_\_\_\_\_

Signed \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

Approved as to Terms and Conditions

Signed \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

Approved as to Form and Legal Sufficiency

Signed \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_







## MEMORANDUM

ITEM NO. 3F.

**To:** Honorable Mayor, Vice-Mayor and Members of the Town Commission

**From:** Andrew Hyatt, Town Manager

**Date:** June 14, 2022

**Subject:** **Digitization and Storage of Documents: GRM Proposal and Service Agreement**

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Town Administration recommends approval of the resolution to execute an agreement with GRM Information Management Services of Miami LLC for digitization of files in an amount up to \$250,000 and for the storage and management of physical documents in an amount up to \$15,000 per fiscal year.

The Building Department is currently preparing to undergo a complete customer service and permitting upgrade which includes demolition and remodel of the front office lobby area. In order to improve customer service, achieve this important remodel, increase permitting process efficiency and create more usable office space for our staff, it is important to significantly reduce the great volume of hard copy permit documents and plans which we handle and store every day. The Town will perform the following actions:

1. The Town's IT department is currently updating the Town software platform for the creation of an online Customer Service Portal so that the Building Department may go nearly fully digital and paperless in current permit application processing and plans review.
2. An outside document management firm is needed to handle, store and scan 87 years of historical documents currently being stored by the Town in three off-site storage units. The Town is currently spending \$25,470,00 annually for document storage storage only. This includes no scanning.
3. The Building Department intends to engage the services of GRM Document Management and Scanning Services to handle, store, scan and digitize our existing paper document records. GRM has extensive experience with many communities both local and nationwide. By outsourcing paper document handling, storage and digitizing, the Building Department will dramatically increase the efficiency of the Department. Additionally, this will allow the Town to upload the construction plans of existing single family homes, multi-family and commercial buildings online on the new Town website, providing a great service and online document resource for our entire community.

Town Administration is requesting an authorization to expend up to \$250,000 to scan and digitize existing paper document records and up to \$15,000 per fiscal year for annual storage and management costs paper hard copies. This represents a savings of \$10,470 annually over current hard copy outside storage expense. Scanning of documents and providing digital copies to the Town will be performed by GRM at the unit prices shown on the attachment. In the future, other departments may make use the scanning service based on budget availability. Any new scanning project over \$25,000 would return to the Commission for approval.

[Resolution Approving Agreement with GRM for Document Storage.DOCX](#)

[GRM Agreement for Document Storage.PDF](#)

**RESOLUTION NO. 2022-\_\_\_\_\_**

**A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, APPROVING AN AGREEMENT FOR DOCUMENT STORAGE, HANDLING, SCANNING, AND DIGITIZATION SERVICES FOR THE TOWN BUILDING DEPARTMENT WITH GRM INFORMATION MANAGEMENT SERVICES, INC.; FINDING THAT THE PURCHASE IS EXEMPT FROM COMPETITIVE BIDDING PURSUANT TO SECTION 3-13(2) OF THE TOWN CODE AS A CONTRACT FOR PROFESSIONAL SERVICES; AUTHORIZING THE TOWN MANAGER TO ENTER INTO AN AGREEMENT IN SUBSTANTIALLY THE FORM ATTACHED HERETO AS EXHIBIT “A” WITH THE CONTRACTOR; PROVIDING FOR IMPLEMENTATION; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the Town of Surfside (the “Town”) is in need of physical document storage and handling (the “Storage Services”) and scanning and digitizing (the “Scanning Services”) for the Town’s Building Department public records (collectively, the “Services”); and

**WHEREAS**, the Services will allow the Town to more efficiently and effectively retain records and respond to public records requests as are necessary for the Town Building Department’s transition to a digital and paperless permitting system; and

**WHEREAS**, GRM Information Management Services, Inc. (the “Vendor”) has proposed entering in an agreement, attached hereto as Exhibit “A,” for the Services in an amount not to exceed \$250,000 for the Scanning Services and \$15,000 per fiscal year for the Storage Services (the “Agreement”); 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**, the Town Commission wishes to authorize the Town Manager to enter into

the Agreement with the Vendor for the Services in substantially the form attached hereto as Exhibit “A” and to expend budgeted funds in an amount not to exceed \$250,000 for the Scanning Services and \$15,000 per fiscal year for the Storage Services; and

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

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

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

**Section 2. Approval of the Agreement.** That the Town Commission approves the Agreement with Vendor in substantially the form attached hereto as Exhibit “A.” The Town Commission finds that pursuant to Sections 3-13(2) of the Town’s Code, the Agreement for the Services is exempt from competitive bidding.

**Section 3. Authorization.** That the Town Manager is hereby authorized to execute the Agreement 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.

**Section 4. Implementation.** The Town Manager and/or Town officials are authorized to take any and all action necessary to implement the purposes of this Resolution and the Agreement.

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

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

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

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

**FINAL VOTE ON ADOPTION:**

Commissioner Fred Landsman \_\_\_\_\_  
Commissioner Marianne Meisheid \_\_\_\_\_  
Commissioner Nelly Velasquez \_\_\_\_\_  
Vice Mayor Jeff Rose \_\_\_\_\_  
Mayor Shlomo Danzinger \_\_\_\_\_

\_\_\_\_\_  
Shlomo Danzinger, Mayor

Attest:

\_\_\_\_\_  
Sandra McCready, MMC  
Town Clerk

Approved as to Form and Legal Sufficiency:

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



## **Master Services Agreement**

**THIS MASTER SERVICES AGREEMENT** (the "Agreement") is being entered into by and between GRM Information Management Services of Miami LLC, having its place of business at 1801 NW 1<sup>st</sup> Avenue, Miami FL 33136 ("GRM"), VisualVault, LLC ("VisualVault"), having its principal place of business at 2050 East ASU Circle, Suite 103, Tempe, AZ 85284, and TOWN OF SURFSIDE, having its place of business at 9293 HARDING AVENUE, SURFSIDE FL 33154 ("Customer") as of the Effective Date (defined below).

**WHEREAS**, GRM provides (i) document storage and retrieval warehousing services of hard copy documents (the "Document Storage Services"), (ii) imaging and conversion services designed to facilitate the conversion of paper files to electronic images (the "Imaging Services"), and (iii) on-site bins for collection of confidential wastepaper material to be shredded (the "Shredding Services");

**WHEREAS**, GRM and VisualVault (individually a "Service Provider" and collectively, the "Service Providers") are affiliated companies, operating under common ownership, that have partnered to combine (i) the best-in-class secure enterprise content management application (aptly named "VisualVault") with (ii) GRM's extensive experience in managing its customers' data and providing unparalleled customer service, in order to best serve their customers' needs;

**WHEREAS**, VisualVault is in the business of providing a secure, cloud-based enterprise content management software solution, known as VisualVault, which allows Customer to access and retrieve Customer's stored electronic content and data (collectively, the "Electronic Data") via the Internet. The VisualVault software and all related components, templates, features, enhancements, modifications, data, and related fields shall hereinafter collectively be referred to as the "Software". GRM is in the business of supporting the Software and assisting its customers in, among other things, capturing, transferring, and retaining customers' data; workflow creation; business process improvement; and obtaining other ancillary services in connection therewith (such services together with the Software shall hereinafter be collectively referred to as the "Hosting Services");

**WHEREAS**, All of Customer's data, whether in the form of hard copy documents (the "Documents"), , electronic data (the "Electronic Data"), and/or confidential wastepaper material (the "Confidential Waste Material") being stored or serviced hereunder, shall hereinafter be collectively referred to as the "Customer Data";

**WHEREAS**, the Document Storage Services, the Imaging Services, the Shredding Services and the Hosting Services shall hereinafter be collectively referred to as the "Services"; and,

**WHEREAS**, Customer has a need for such Services.

**NOW, THEREFORE**, in consideration of the mutual premises and covenants hereinafter set forth, the parties agree as follows:

1. **Term of Agreement/Renewal.** The term of this Agreement shall commence on the Effective Date and shall continue for twelve (12) consecutive months thereafter (the "Initial Term"). This Agreement shall automatically renew on a month-to-month basis (each such term shall be referred to as a "Renewal Term" and together with the Initial Term, the "Term") until such time as either party terminates this Agreement, upon written notice to the other party given not less than thirty (30) days prior to the expiration of the then-current Term.
2. **Services.** GRM and/or VisualVault shall provide the Services to Customer in accordance with the terms of this Agreement and, as applicable, any Service Order (defined below) annexed hereto as Exhibit A and made a part hereof upon execution by all parties. "Service Order" shall mean an addendum to this Agreement that defines a particular Imaging Services or Hosting Services project to be undertaken by GRM and/or VisualVault at the request of Customer. Each Service Order shall include: (i) a description of the Services to be provided; (ii) the schedule on which such Services are to be performed; and, (iii) the fees for the Services. To the extent that any provision contained in the Service Order is inconsistent with a provision set forth in this Agreement, the provisions of this Agreement shall control unless expressly stated otherwise in the Service Order.
3. **Fees; Payment for Services.**
  - a. Customer will pay GRM and/or VisualVault the then-applicable Service fees and charges described in the Service Order and/or the Schedule of Charges (hereinafter defined) in accordance with the terms contained therein and those contained in this Agreement. With respect to the Hosting Services, Customer shall be invoiced separately, with one invoice issued by GRM and another invoice issued by VisualVault. Customer will pay VisualVault and GRM, each separately and in accordance with the instructions set forth on each of their invoices. The Service Providers shall issue

invoices on a monthly basis and payment shall be due in accordance with the Florida Prompt Payment Act. Rates are subject to change on an annual basis upon thirty (30) days' written notice to Customer. Unless Customer provides GRM with a certificate showing its tax exempt status, Customer shall pay all sales taxes which may be levied or assessed in connection with the provision of Services. Customer shall be liable for all reasonable expenses incurred (including, without limitation, attorneys' and collections agency fees) in collecting charges which are in arrears. Failure of Customer to dispute any invoice within one hundred eighty (180) days of receipt thereof shall be deemed to be an admission of the correctness of the invoice.

- b. GRM and/or VisualVault may give Customer at least sixty (60) days prior written notice of Customer's breach of its payment obligations hereunder; and if Customer has not paid such amount within such sixty (60) day period, GRM and/or VisualVault may, as applicable, (i) suspend the provision of some or all of the Services to Customer until payment is received, (ii) deny Customer access to Customer's Data; and/or (iii) terminate this Agreement and return all Documents to Customer, at Customer's sole cost and expense; Customer shall remain liable to GRM and/or VisualVault for all fees and charges incurred up to and including the date of such return.
- c. With regard to Document Storage Services only, (i) charges shall be at the rates shown on GRM's schedule of charges annexed hereto as Exhibit B and made a part hereof (the "Schedule of Charges"); (ii) invoices may include various surcharges implemented by GRM, at GRM's sole but reasonable discretion, on an as-needed basis; such surcharges include, but shall not be limited to, higher than usual fuel costs, re-boxing records arriving in damaged boxes upon their arrival to GRM's facilities, and transportation of records to a remote location; (iii) a full month's storage shall be charged for all Documents remaining in storage for a fraction of a month; in no event shall Customer be entitled to a pro-rated charge; (iv) Customer's request for the removal of boxes shall not reduce the current monthly storage charge then in effect, unless such request is in writing and calls for the permanent removal thereof, in which event a permanent removal charge shall apply in addition to all access/reference charges; and (v) GRM shall destroy Documents only upon Customer's written directive and in accordance with commercially acceptable methods of destruction, in which event Customer shall pay a destruction charge in addition to all access/reference charges, and Customer hereby releases GRM from all liability resulting from destruction pursuant to such directive.
- d. With regard to Imaging Services and Hosting Services only, charges shall be in accordance with the rates set forth in the Service Order. Customer acknowledges that the Hosting Services are subject to certain usage capacities specified in the Service Order. If Customer's use of the Software exceeds the usage capacity set forth on the applicable Service Order, Customer will be notified of such excess usage and will be invoiced by VisualVault therefor. The Service Providers reserve the right to change fees or applicable charges in accordance with this Agreement, and Customer's continued use of the Hosting Services shall be deemed an acceptance of such changes to the fees or applicable charges.
- e. With regard to Shredding Services only, charges shall be at the rates shown on the Service Proposal for Certified Shredding Services (or similar document). Customer shall be charged for a Confidential Waste Material pick-up a minimum of once (1x) every month.

#### **4. Special Terms Relating to Document Storage Services.**

- a. Minimum Monthly Storage Charge: There shall be a minimum monthly storage charge assessed by GRM (the "Minimum Monthly Storage Charge") for each month throughout the Term (hereinafter defined). During the Initial Term and unless otherwise noted on the Schedule of Charges, the Minimum Monthly Storage Charge shall equal an amount representing seventy five percent (75%) of the monthly storage charges payable by the Customer for the Document Storage Services. Notwithstanding anything contained in this Agreement to the contrary, should Customer's actual monthly storage charges fall below the Minimum Monthly Storage Charge in any given month, Customer shall nevertheless be required to pay an amount equal to the Minimum Monthly Storage Charge for each such month.
- b. Moving Documents by GRM. GRM reserves the right to move, at GRM's expense, any Documents from the storage facility in which they may be stored to (i) any other LOCAL storage facility owned and/or operated by GRM, and/or (ii) any other location within the storage facility in which they are stored.
- c. Examination and Refusal for Reasonable Cause: GRM has *not* examined the Documents to be stored hereunder and expressly makes no representation as to their type or content. GRM may refuse to accept Customer's Documents for any commercially reasonable cause.
- d. Authorization: Customer shall furnish, in writing, the names of those agent(s) Customer authorizes (the "Authorized Agent(s)") to (i) have access to the Documents, (ii) remove or add Documents, and (iii) order services for Customer's account. Customer will promptly notify GRM in writing of the revocation of any such Authorized Agent's authority; no revocation shall be binding until received by GRM.

#### **5. Special Terms Relating to Imaging Services and Hosting Services.**

- a. **Inspection Period.** With regard to the Imaging Services only, unless otherwise agreed to by the parties, GRM shall upload the scanned images onto the Software so that Customer may view the scanned deliverables. Customer shall have sixty (60) days from the date that such scanned deliverables are made available to Customer to inspect such deliverables. Failure to make any objection within such sixty (60) day period shall be conclusive evidence of Customer's full satisfaction with the Imaging Services provided and any deliverables made in connection therewith, and any right to thereafter object shall be forever waived.
- b. **Access to Customer Data.** The Service Providers shall use commercially reasonable efforts to make the Software available for use twenty-four (24) hours a day, seven (7) days per week. The foregoing times of Software availability may be modified to provide for (i) regularly scheduled maintenance, (ii) maintenance required as a result of matters beyond the Service Providers' reasonable control, or (iii) events beyond either Service Provider's reasonable control. VisualVault or GRM shall endeavor to give Customer at least twenty-four (24) hours' notice of scheduled maintenance by email to Customer's designated point of contact.
- c. **Authorized Users.** When a user previously authorized by Customer is no longer authorized to access the Software, Customer shall (i) promptly notify GRM of the revocation of such user's authority, and (ii) ensure that each such user ceases accessing the Software.
- d. **Use Policy, Restrictions and Responsibilities.**

(i) All uses of the Software and the Hosting Services must comply with all applicable laws and regulations, and with the acceptable use policy (hereinafter referred to as the "Use Policy") attached hereto as Exhibit C and made a part hereof, which Use Policy may be amended from time-to-time. VisualVault or GRM shall endeavor to give Customer notice of any such changes to the Use Policy. Although neither Service Provider has an obligation to monitor Customer's use of the Services, each of them reserves the right to do so, and Customer hereby authorizes same. Notwithstanding anything contained herein to the contrary, the Service Providers reserve the right to suspend the Services or terminate this Agreement effective immediately, with notice to Customer, in the event of Customer's violation of the Use Policy.

(ii) Customer (including Customer's authorized users) shall not engage in or permit any unacceptable use of the Services. "Unacceptable use" of the Services shall include, but shall not be limited to, (1) dissemination or transmission (or establishment of links with the Software therefor) of material that, to a reasonable person, may be abusive, obscene, pornographic, defamatory, harassing, grossly offensive, vulgar, threatening or malicious; (2) dissemination or transmission of files, graphics, software or other material that actually or potentially infringes upon the copyright, trademark, patent, trade secret, or other intellectual property right of any person; (3) interference with, disruption of, or attempt to gain unauthorized access to other accounts of either VisualVault or GRM or any other third party computer network; (4) dissemination or transmission of viruses, Trojan horses or any other malicious codes or programs; or (5) engaging in any other activity reasonably considered by either Service Provider to conflict with the spirit and intent of this Agreement and/or the Services being rendered.

(iii) Customer will not make any Services available to, or use any Services for the benefit of, anyone other than Customer, unless otherwise expressly stated in a Service Order(s). Customer will not sell, resell, license, distribute, make available, rent or lease any Service, or use any Service for timesharing or service bureau purposes or otherwise for the benefit of a third party.

(iv) Customer will not directly or indirectly reverse engineer, decompile, disassemble or otherwise attempt to discover the source code, object code or underlying structure, ideas, know-how or algorithms relevant to the Services, the Software, or any Materials (hereinafter defined); modify, translate, or create derivative works based on the Services or any Software; remove any proprietary notices or labels; access or use any of the Service Providers' intellectual property except as expressly permitted under this Agreement; or frame or mirror any part of the Services, other than framing on Customer's own intranets or otherwise for its own internal business purposes.

(v) Customer shall be responsible for obtaining and maintaining any equipment and ancillary services needed to connect to, access or otherwise utilize the Services, including, without limitation, computer hardware, web browsers, and internet utility services.

(vi) Customer (1) owns and accepts all responsibility for the Customer Data; (2) agrees to separately back up all Customer Data; and (3) shall at all times retain ownership of Customer Data. Customer shall provide notices to, and obtain any consents from, third parties as may be required by applicable law, rule, or regulation in connection with the Service Providers' processing of the Customer Data via the Services.

## **6. Special Terms Relating to Shredding Services.**

- a. GRM shall furnish bins to Customer for the exclusive purpose of depositing into such bins Confidential Waste Material, which Customer desires to have shredded and recycled. GRM's bins shall not be used by Customer for the disposal of materials other than Confidential Waste Material, unless approved in writing by GRM in advance of Customer's disposal in the provided bins. In no event shall GRM's bins be used by Customer for the disposal of any hazardous or toxic materials, or metals (except staples), solids or other materials that could damage or contaminate GRM's bins or shredding equipment.



- b. GRM agrees, throughout the term of this Agreement, to collect from Customer's locations such Confidential Waste Material or other materials approved by GRM, and cause same to be destroyed by shredding or repulping equipment so as to render the contents unreadable and indecipherable. GRM shall collect such Confidential Waste Material from its bins in accordance with a collection schedule for each location. Such Confidential Waste Material shall be collected by GRM and transported to GRM's facility for destruction or by emptying the bins into a sealed collection truck using certified, bonded personnel. Upon collection of Confidential Waste Material from the bins, GRM shall issue to Customer a receipt showing the date and time of collection. GRM shall provide a certificate of destruction to the Customer.
- c. Customer shall maintain GRM's bins in a secure location and exercise reasonable care to avoid theft, vandalism or other damage or loss to the bins. Customer shall pay to GRM the cost (i) to repair any of GRM's bins that are damaged, and/or (ii) to replace any of GRM's bins that are lost or stolen or damaged beyond repair, while in Customer's custody and care. Customer shall provide areas at Customer's location for placement of GRM's bins that are readily accessible to GRM's personnel and equipment.
- d. GRM shall, at all times, retain title to and all rights of possession of the bins. GRM may remove the bins, along with any Confidential Waste Material contained therein, upon the expiration or sooner termination of this Agreement. GRM shall assume title to and all right of possession to the Confidential Waste Material following its destruction.
- e. All Confidential Waste Material shall be shredded within forty-eight (48) hours of pick up by GRM. Any Confidential Waste Material that cannot be shredded immediately upon delivery to the GRM destruction facility shall be stored in a secured location at such facility.
- f. Customer agrees to cancel any scheduled pick-up, if at all, at least one (1) business day before the scheduled pick-up day. In the event Customer fails to do so, Customer shall be charged a fee as if the pick-up occurred.
- g. Once the bins are delivered to Customer, Customer shall be responsible for safekeeping the keys to the bins delivered. If the keys are lost or not returned with the return of the bins, Customer shall pay to GRM a \$50.00 replacement fee for each key that is lost or not returned.

**7. Warranties; Ownership.**

- a. Customer represents and warrants that: (i) it is the owner or legal custodian of the Customer Data; (ii) it has full authority to direct the disposition of the Customer Data in accordance with this Agreement; and (iii) GRM's storage, imaging, or other processing of the Customer Data shall not violate the rights of any third party. Customer agrees to pay all costs and expenses which GRM and/or VisualVault may incur or become liable for or by judgment be compelled to pay in connection with the breach of such representation, including but not limited to, reasonable attorneys' fees.
- b. Customer acknowledges and agrees that all software, programs, tools, systems, data or other materials made available to Customer in connection with this Agreement, including, without limitation, the Software, as well as any information and materials provide to Customer relating to any of the foregoing (collectively, the "Materials") are and shall at all times remain the sole and exclusive property of GRM or VisualVault, as the case may be, and each of them retains all right, title, and interest in and to their respective Materials. Customer does not and will not be deemed to acquire any right, title, or interest therein, except as expressly granted in this Agreement.
- c. The Service Providers warrant that the Services to be provided hereunder shall be provided in a professional manner by trained personnel. EXCEPT AS EXPRESSLY SET FORTH HEREIN, NEITHER PARTY MAKES ANY EXPRESS WARRANTIES AND EXPRESSLY DISCLAIMS ANY AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

**8. No Consequential Damages. IN NO EVENT SHALL GRM, VISUALVAULT, OR THEIR SHAREHOLDERS, MEMBERS, DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, SUPPLIERS OR AFFILIATES (COLLECTIVELY, THE "AFFILIATES") BE LIABLE TO CUSTOMER (OR ANYONE CLAIMING BY, THROUGH, OR UNDER CUSTOMER) FOR ANY INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF PROFITS.**

**9. Limitations of Liability. NOTWITHSTANDING OR ANYTHING CONTAINED IN THIS AGREEMENT TO THE CONTRARY, GRM, VISUALVAULT, AND THEIR AFFILIATES SHALL ONLY BE LIABLE FOR FAILURE TO USE ORDINARY CARE, AND ANY SUCH LIABILITY IMPOSED SHALL IN NO EVENT EXCEED, IN THE AGGREGATE: (i) WITH RESPECT TO THE DOCUMENT STORAGE SERVICES, A TOTAL VALUE EQUAL TO THE MONTHLY STORAGE CHARGE PER CONTAINER FOR EACH SUCH CONTAINER DAMAGED OR LOST; (ii) WITH RESPECT TO THE DOCUMENT STORAGE SERVICES AND VAULT STORAGE SERVICES, IN THE CASE OF LIABILITY OTHER THAN LOSS OR DAMAGE, THE AMOUNTS PAID BY CUSTOMER IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO THE LIABILITY; (iii) WITH RESPECT TO THE IMAGING**

**SERVICES, THE TOTAL AMOUNT OF FEES PAID BY CUSTOMER TO GRM FOR THE IMAGING SERVICES; (iv) WITH RESPECT TO HOSTING SERVICES, THE TOTAL AMOUNT OF FEES PAID BY CUSTOMER TO GRM AND VISUALVAULT DURING THE PRIOR TWELVE (12) MONTH PERIOD FOR THE HOSTING SERVICES; AND, (v) WITH RESPECT TO THE SHREDDING SERVICES, THE AMOUNT OF FEES PAID BY CUSTOMER TO GRM FOR THE SHREDDING SERVICES.**

**Confidential Information; Exceptions; Security.**

- a. Confidential Information. Subject to Chapter 119, "Public Records," of the Florida Statutes, the parties agree as follows:
  - i. Each party shall regard any information and documents provided to it by the other parties as proprietary or confidential ("Confidential Information").
  - ii. Each party shall use reasonable efforts to maintain the other parties' Confidential Information in strict confidence, and shall not knowingly use, transfer or disclose such Confidential Information to a third party without the prior written consent of the other party(ies), unless required to do so in order to comply with an order or subpoena issued by a court or government agency or tribunal, in which event such party shall promptly notify the other party(ies) (where legally permitted to do so) so as to afford the other party(ies) a reasonable time within which to oppose such process or seek an appropriate protective order.
  - iii. Customer expressly agrees that the Software, eAccess (defined below), and any other software utilized in connection with the Services are the Confidential Information of VisualVault or GRM, as the case may be.
  - iv. Any copying, modification, distribution, translation, reverse engineering, reverse compiling, making derivative works or other dealing in the Confidential Information of a party is strictly prohibited, except to the extent deemed absolutely necessary to perform the Services hereunder or to utilize the Service provided hereunder.
  - v. Customer will not remove or destroy any proprietary markings or restrictive legends placed upon or contained within any of the software or any associated documentation.
  - vi. Customer shall not transfer, assign, distribute, re-sell, sublicense or otherwise make available the Services, the Software, and/or to GRM's remote web-based document and data inventory control service (the "eAccess") to any third party. The Services are intended for the internal use of Customer only.
- b. Exceptions. The term "Confidential Information" shall not include information that: (i) is known to the receiving party prior to receipt from the disclosing party directly or indirectly, other than from a source having an obligation of confidentiality to the disclosing party; (ii) becomes known (independently of disclosure by the disclosing party) to the receiving party directly or indirectly from a source other than one having an obligation of confidentiality to the disclosing party; (iii) becomes publicly known or otherwise publicly available, except through a breach of this Agreement by the receiving party; or (iv) is independently developed by the receiving party without access to or use of the disclosing party's information.
- c. Security Measures by Customer. Customer shall implement reasonable information technology and data security procedures relating to Customer's access to the Software and/or to eAccess. Customer shall be responsible for administering the procedures relating to the assignment and administration of all identification codes and passwords authorizing access to Software and/or to eAccess on behalf of or for the benefit of Customer, and Customer shall be responsible for taking appropriate security measures relating to protection of such identification codes and passwords. Customer shall be solely responsible for any and all acts or omissions that occur under any account or password issued to Customer (and its authorized users). To the extent not prohibited by applicable laws, Customer shall defend, indemnify, protect and hold GRM, VisualVault and their Affiliates harmless from and against any liabilities, actions, losses, costs, expenses, or claims (including reasonable attorneys' fees and court costs) incurred by any of them as a result of any misuse of the Software and/or eAccess by Customer, its agents, employees, contractors, and/or authorized users.
- d. Notwithstanding anything to the contrary, both Service Providers shall have the right to collect and analyze data and information relating to the provision, use and performance of various aspects of the Services and related systems and technologies (including, without limitation, information concerning storage usage, data transfers, login activity, API transactions, creation of unique logins, and data derived therefrom), and both Service Providers will be free (during and after the Term) to (i) use such information and data to improve and enhance the Services and for other development, diagnostic and corrective purposes in connection with the Services and their other offerings, and (ii) disclose such data solely in aggregate or other de-identified form in connection with their businesses.

## **11. Termination/Transition.**

- a. Termination for Cause. A party may terminate this Agreement (i) in the event that the other party materially breaches any term or provision of this Agreement and fails to cure such breach within thirty (30) days following the breaching party's receipt of written notice from a non-breaching party specifying the nature of such breach, or (ii) if one other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors. A termination in accordance with the foregoing shall be deemed a termination "for cause".
- b. Termination Obligations. **(A)** Upon the expiration of this Agreement or its earlier termination in accordance with Section 11(a), Customer shall be liable for: (i) all fees and any additional charges incurred up to and including (x) the date of termination for Services other than Document Storage Services, and (y) for Document Storage Services, the date on which all of Documents have been removed from GRM's facilities, and (ii) all fees incurred as a result of GRM's return of the Documents, including, as applicable, all permanent withdrawal and access fees as described in the Schedule of Charges for the permanent removal of Customer's Documents from storage. **(B)** With respect to the Hosting Services only, upon the expiration or earlier termination of this Agreement for any reason, (1) Customer shall cease accessing the Software, and (2) upon Customer's request, the Service Providers will make all Electronic Data available to Customer for electronic retrieval for a period of thirty (30) consecutive days following the expiration or termination of this Agreement, after which the Service Providers may delete or destroy all copies of Electronic Data in the Software or otherwise in their possession or control. **(C)** With respect to Document Storage Services and Vault Storage Services only. With respect to Document Storage Services only, in the event that (i) Customer shall terminate this Agreement prior to the expiration of the then-current Term other than for cause, or (ii) GRM terminates this Agreement for cause, GRM shall have, in addition to all other remedies, the option of treating all or any part of the charges payable by Customer hereunder throughout the remainder of such Term as immediately due and payable, in which event Customer shall pay to GRM the Minimum Monthly Storage Charge for each and every month remaining in the then-current Term. **(D)** With respect to the Hosting Services, (1) if Customer terminates this Agreement for cause, GRM and VisualVault will refund to Customer any prepaid fees and charges, if any, covering the remainder of the then-current Term, or portion thereof, within thirty (30) days following termination; and (2) if this Agreement is terminated by GRM and/or VisualVault for cause, Customer will pay any unpaid fees covering the remainder of the then-current Term, including, without limitation, any and all fees and charges payable to GRM and/or VisualVault for the period prior to the effective date of termination.
- c. Post-Termination Transition Period. With respect to Document Storage Services only: except as otherwise provided in this Agreement, GRM will, at Customer's sole cost and expense, reasonably cooperate with Customer in connection with the removal and transfer of Customer's Documents from GRM's facilities to Customer's and/or its agent's storage facilities (the period during which such cooperation, removal, and transfer occurs hereinafter being referred to as the "Transition Period"), and in the event that the Transition Period and GRM's storage of Customer's Documents shall extend beyond the expiration or sooner termination of this Agreement, the terms and provisions of this Agreement shall nevertheless continue to apply (and all storage and service charges shall nevertheless continue to accrue) until all of the Documents have been removed from GRM's facilities and all monies owed hereunder to GRM have been paid in full, and Customer shall pay all estimated storage and services charges that shall accrue during the Transition Period to GRM prior to GRM's removal of Customer's Documents from its facilities. Customer shall be entitled to a refund for any overpayments made in accordance with the foregoing.

- 12. Time for Filing Claims.** As a condition precedent to recovery, all claims must be in writing and filed with GRM and/or VisualVault in a timely manner (but in no event more than ninety (90) days) after the Customer's discovery of the loss of, destruction of, or damage to the Customer Data or any part thereof.

## **13. Indemnification.**

- a. Subject to the limitations of Section 768.28, Florida Statutes, in the event that Customer's personnel are on GRM's property or GRM's personnel are on Customer's property, then Customer and GRM shall each defend and indemnify the other and the other's employees, officers, directors, members, and agents against all damages for bodily injury, death, or damage to real or tangible personal property (other than the Documents being stored hereunder) to the extent proximately caused by the indemnifying party.
- b. Subject to the limitations on liability set forth in this Agreement, GRM and VisualVault shall indemnify and hold harmless the Customer, its officers, agents and employees, from and against any and all demands, claims, losses, suits, liabilities, causes of action, judgment or damages, arising from GRM and/or VisualVault's material breach of this Agreement or their negligent acts or omissions. Subject to the limitations on liability set forth in this Agreement, GRM and VisualVault shall reimburse the Customer for all its reasonable expenses (including reasonable attorneys' fees) incurred by Customer in its defense of any such claim.
- c. To the extent permitted by applicable law, with respect to Hosting Services only: **(i)** Customer hereby agrees

- to indemnify, defend, and hold harmless VisualVault, GRM and their Affiliates from and against any damages, settlements, liabilities, actions, losses, costs, expenses (including reasonable attorneys' fees and court costs) in connection with any claim or action alleging (x) the use or misuse of the Software or the Services by Customer, its agents, employees and/or authorized users, including but not limited to Customer's use of the Services in an unlawful manner or in violation of this Agreement, or (y) that any Customer Data or Customer's use of the Customer Data infringes or misappropriates a third party's intellectual property rights. (ii) Service Providers hereby agree to indemnify, defend and hold harmless Customer and its Affiliates from and against any damages, settlements, liabilities, actions, losses, costs, expenses (including reasonable attorneys' fees and court costs) in connection with any claim or action alleging that any of the Software, the Materials, or the Services infringe upon or misappropriate a third party's intellectual property rights. In the event that any of the Services, Software, or Materials become, or, in the opinion of either VisualVault or GRM, are likely to become, the subject of an infringement claim, VisualVault and/or GRM may, at their option and expense, (x) procure for Customer the right to use the Services, Software, or Materials free of any liability, or (y) modify, in whole or in part, the Services, Software or Materials to make them non-infringing, provided that the replaced or modified portion(s) is substantially equivalent in functionality and performance. This subsection 14(b) states the indemnifying party's sole liability to, and the indemnified party's exclusive remedy against, the other party for any third party claims described in this subsection.
- d. Nothing herein is intended to serve as a waiver of sovereign immunity by the Customer nor shall anything included herein be construed as consent to be sued by third parties in any matter arising out of this Agreement or any other contract. The Customer is subject to section 768.28, Florida Statutes, as may be amended from time to time.
- e. The provisions of this section shall survive termination of this Agreement.

#### 14. Miscellaneous.

- (a) Entire Agreement. This Agreement, together with the exhibits attached hereto and incorporated herein, constitutes the entire agreement of the parties with respect to the subject matter hereof, and supersedes all previous proposals, negotiations, agreements, or discussions between the parties related to this Agreement. Each party acknowledges that it has not been induced to enter into this Agreement by any representation or statements, oral or written, not expressly contained herein and in any attachments, schedules, exhibits or addenda not attached hereto.
- (b) Governing Law. This Agreement will be governed by and interpreted in accordance with the laws of the State of Florida, without regard to its conflict of laws principles. Any claims or legal actions brought by one party against the other arising out of the relationship between the parties contemplated herein shall be commenced and maintained in a court of competent jurisdiction located in Miami-Dade County, Florida, and each party hereto hereby consents and submits to the exclusive jurisdiction and venue of such court.
- (c) Notices. All notices hereunder shall be in writing and shall be delivered in person or sent by courier, express mail, or certified mail, addressed to the party for whom it is intended, at the address set forth herein.
- (d) Severability. If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, such provision shall, to such extent it shall be determined to be invalid or unenforceable, be deemed to be null and void, but the remaining terms of this Agreement shall otherwise remain in full force and effect.
- (e) Assignment. Customer may assign this Agreement as part of a corporate reorganization, consolidation, merger, or sale of substantially all of its assets upon prior written notice to both Service Providers. Any other assignment of this Agreement on the part of Customer, whether in whole or in part, shall require the prior written consent of both Service Providers. This Agreement will bind and inure to the benefit of each party's successors and permitted assigns.
- (f) Waiver and Amendment. Any waiver, supplement or modification of this Agreement will not be effective unless set forth in writing and signed by an authorized representative of all parties. The failure of either party to exercise any of its rights under this Agreement will not be deemed a waiver or forfeiture of such rights.
- (g) Counterparts. This Agreement may be executed in counterparts, which taken together, will constitute one Agreement, and any party hereto may execute this Agreement by signing such counterpart.
- (h) Surviving Provisions. The provisions of Sections 3, 5, 7 through 14 of this Agreement (and any other obligations in this Agreement that by their nature are continuing) shall survive the termination hereof. The parties agree that the limitations and exclusions of liability and disclaimers specified in this Agreement will survive breach or termination and apply even if found to have failed of their essential purpose.
- (i) Anti-Corruption. Neither party has received or been offered any illegal or improper bribe, kickback, payment, gift or thing of value from an employee or agent of the other parties in connection with this Agreement. Reasonable gifts and entertainment provided in the ordinary course of business do not violate the aforesaid restriction.
- (j) Relationship of the Parties. The parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties. Each party will be solely responsible for payment of all compensation owed to its employees, as well as all employment-related taxes.
- (k) Third Party Beneficiaries. There are no third party beneficiaries under this Agreement.
- (l) Insurance. GRM and VisualVault shall secure and maintain throughout the duration of this agreement insurance of such types and in such amounts not less than those specified below, naming the Customer 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 Customer, its officials, employees, agents, and volunteers naming the Customer as additional insured. Any insurance maintained by the Customer shall be in excess of the GRM and VisualVault's insurance and shall not contribute to the GRM and VisualVault's insurance. The Service Providers' insurance coverage shall in no way be construed as limiting or expanding its liability hereunder.

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 GRM and VisualVault. The General Aggregate Liability limit and the Products/Completed Operations Liability Aggregate limit shall be in the amount of \$2,000,000 each.
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 GRM and VisualVault shall be allowed to provide Services pursuant to this Agreement who is not covered by Worker's Compensation insurance.
3. Professional Liability Insurance in an amount of not less than One Million Dollars (\$1,000,000.00) per occurrence, single limit.
4. Cyber Liability Insurance in an amount of not less than one million dollars (\$1,000,000) for each occurrence, two million dollars (\$2,000,000) in the aggregate.

**(m) Force Majeure.** Except with respect to Customer's monetary obligations hereunder, neither party hereto will be liable for any failure or delay in the performance of its obligations hereunder by reason of any event or circumstance beyond its reasonable control ("force majeure"), including, without limitation, Acts of God, war, terrorism, fire, flood, shortage or failure of suppliers, riots or civil disorder, pandemics, interruptions of or delays in transportation or communications, or decisions or requirements of any government agency, board, official or other public body; provided, however, that for any force majeure extending for more than sixty (60) days, the party not claiming the existence of a force majeure will have the right to terminate this Agreement upon written notice to the other parties.

**(n) Notice Pursuant to Section 119.0701(2)(a), Florida Statutes.** IF GRM OR VISUALVAULT HAVE QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE GRM AND VISUALVAULT'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

**IN WITNESS WHEREOF**, the parties have caused this Master Services Agreement to be executed as of this \_\_\_\_\_ day of \_\_\_\_\_, 2022 (the "Effective Date").

**GRM Information Management Services**  
[OF MIAMI LLC]

**[TOWN OF SURFSIDE]**

\_\_\_\_\_  
Printed Name:  
Title:

\_\_\_\_\_  
Printed Name:  
Title:

**VisualVault, LLC**

\_\_\_\_\_  
Printed Name:  
Title:

**EXHIBIT A**

**Schedule of Charges (if any)**

(for Document Storage Services only)



TOWN OF SURFSIDE

<b>Account #:</b> TBD			
<b>Date:</b> 1/13/2022			
<b>Record Center Storage</b>	<b>Billable Measurement</b>	<b>Rate</b>	<b>Unit</b>
Per cubic foot rate	1.0	\$0.10	Cubic Foot
Storage Minimum		75%	per month
<i>Storage charges are based on a 30-day billing period and are adjusted to reflect the actual number of days in a month.</i>			
<b>Record Center Services</b>		<b>Rate</b>	<b>Unit</b>
Containers Added		\$3.50	Cubic Foot
Container Access		\$3.50	Cubic Foot
Container Refiled		\$3.50	Cubic Foot
Files Added (any additional files being barcoded for the first time)		\$5.00	Per Item
Access File for Delivery or Files Refiled		\$4.50	Per Item
File Search		\$65.00	per hour
Rush Reference Surcharge (plus retrieval charges)		\$10.00	Cubic Foot
Shredding - per file (plus retrieval and Handling charges)		\$5.50	Per Item
Shredding (plus retrieval and Handling charges)		\$7.95	Cubic Foot
Permanent Removal (plus retrieval charges & record changes)		\$7.50	Cubic Foot
Late Reference		\$5.00	per occurrence
<b>Pick-up/Delivery Services</b>		<b>Rate</b>	<b>Unit</b>
Next Day Regular Service (Includes First Item)-order by 4:30 p.m., Receive next business day by 5:00 p.m. Zone 2 ( Within 25 miles)		\$58.00	per trip
Each additional		\$2.50	Per cubic foot
A.M. Service-order by 4:30 p.m., Receive by 12:00 p.m. next business day		\$18.00	trip surcharge
Same Day Service-order by 12:00 p.m., Receive by 5:00 p.m. that day		\$18.00	trip surcharge
Morning Rush Service-order by 4:30 p.m., Receive next business day by 9:30 a.m.		\$65.00	trip surcharge
Emergency Service-order by 4:30 p.m., Receive within 3 hours of request		\$65.00	trip surcharge
<b>Materials - Subject to market change</b>		<b>Rate</b>	<b>Unit</b>
GRM 1-Archive Box		\$3.25	each
GRM 4-Letter Box		\$4.75	each
GRM 3-Legal Box		\$5.50	each
GRM 8-Push Down Carton Archive		\$3.75	each
Sheets of Barcode Labels		\$3.20	each
<b>Other Services</b>		<b>Rate</b>	<b>Unit</b>
Records Center Hourly Services		\$65.00	per hour
Minimum Service Order Charge		\$21.66	per order
Off-Hour opening-3 hour minimum		\$120.00	per hour
Filefolder Tracking		0.010	each
Client Access Room Charge (to be quoted upon request)		tbd	per room
Handling Charge		\$2.50	cubic foot
Record Change (any manual database change)		\$0.50	per item
Dock Access Fee for Pick Up		2.50	per cubic foot
Account Maintenance Fee - Billing under \$500.00/month		\$ 20.00	monthly
Vbiz		\$ 0.00	monthly
<b>Scan on Demand</b>		<b>scan on demand</b>	<b>Unit</b>
Scan on demand - includes the first 50 images ( next day service)		\$ 25.00	Image
		\$ 0.20	Per Image
<p>Standard GRM Hours: 8:30am to 5:00pm; Monday Through Friday excluding New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving and Christmas Day. During non-standard hours service is available Monday through Sunday, at the rate of time and a half the hourly rate. There is a 3-hour minimum charge. Any service not listed will be quoted upon request.</p>			

**Exhibit B**

**Service Order (if any)**

(for Imaging Services and Hosting Services only)



## **EXHIBIT C**

(For Hosting Services only)

### **VisualVault Acceptable Use Policy**

This Acceptable Use Policy specifies the actions prohibited by VisualVault to Customer. VisualVault reserves the right to modify the Policy at any time, effective upon posting of the modified policy to <https://www.VisualVault.com>.

#### **Illegal/Prohibited Use**

The VisualVault Software may be used only for lawful purposes. Transmission, distribution or storage of any material in violation of any applicable law or regulation is prohibited. This includes, without limitation, material protected by copyright, trademark, trade secret or other intellectual property right used without proper authorization, and material that is obscene, defamatory, constitutes an illegal threat, or violates export control laws.

#### **Unauthorized Uses**

The VisualVault Software is intended for use only as a document storage, access, and retrieval system in support of a subscriber's or end-user's need to store, access, and retrieve documents. It is not intended for use as a temporary data or document storage and transportation mechanism or system. Documents, either individually or in volume, may not be uploaded to the VisualVault Software and then retrieved by and/or transferred to any person and shortly thereafter be deleted from VisualVault Software. This type of activity within an VisualVault Software account will be considered unauthorized data or document transportation and in violation of this Acceptable Use Policy under the subscriber's agreement with VisualVault.

VisualVault Software services sold on a per-Entity basis can only be utilized by a single company, enterprise, proprietorship, government agency, or individual (Entity). If per-Entity services are required by or for more than one Entity, they must be purchased for each individual Entity. Per-Entity services are not authorized for use on a project-level basis that involves multiple Entities unless stated within the Service Order Form. Unless otherwise stated in the Service Order Form, utilizing per-Entity services at a project level for more than one Entity, whether by a subscriber, end-user, or reseller, will be considered an unauthorized use, in violation of this Acceptable Use Policy under the subscriber's agreement with VisualVault.

#### **Software Installations**

VisualVault may make available software to be installed by users. Any new installations of said software must be performed using the latest available version. Installing older versions of the software will be considered a violation of this Acceptable Use Policy.

#### **System and Network Security**

Violations of system or network security are prohibited, and may result in criminal and civil liability. VisualVault will investigate incidents involving such violations and may involve and will cooperate with law enforcement if a criminal violation is suspected. Examples of system or network security violations include, without limitation, the following:

- Unauthorized access to or use of data, systems or networks, including any attempt to probe, scan or test the vulnerability of a system or network or to breach security or authentication measures without express authorization of the owner of the system or network.
- Unauthorized monitoring of data or traffic on any network or system without express authorization of the owner of the system or network.
- Interference with service to any user, host or network including, without limitation, mailbombing, flooding, deliberate attempts to overload a system and broadcast attacks.
- Forging of any TCP-IP packet header or any part of the header information in an email or a newsgroup posting.

INDIRECT OR ATTEMPTED VIOLATIONS OF THE POLICY, AND ACTUAL OR ATTEMPTED VIOLATIONS BY A THIRD PARTY ON BEHALF OF A VISUALVAULT CUSTOMER OR A CUSTOMER'S END USER, SHALL BE CONSIDERED VIOLATIONS OF THE POLICY BY SUCH CUSTOMER OR END USER.

Complaints regarding Illegal Use or System or Network Security issues should be sent to [support-edm@grmdocument.com](mailto:support-edm@grmdocument.com).

For live incidents, please contact GRM Administration at 1-800-886-6567.



## MEMORANDUM

ITEM NO. 3G.

**To:** Honorable Mayor, Vice-Mayor and Members of the Town Commission

**From:** Andrew Hyatt, Town Manager

**Date:** June 14, 2022

**Subject:** **Town Hall Front Office Lobby Remodel**

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Town Administration recommends the approval of a contract with RMB General Contractors and the authorization to expend in the amount of \$323,471 for the remodeling of the Town Hall Front Desk area.

The first point of physical contact with our citizens and customers is the front lobby of Town Hall. The current lobby design is archaic, cold and unwelcoming. A complete upgrade of the Townhall front lobby is needed to dramatically improve our customer experience. With the assistance of the design engineer Alfredo Carbonell, P.E., the Town have completed a new floor plan design of our front office area which is warm, accommodating and customer friendly. Customer service kiosks will replace the empty floor space now between the lobby columns. The current inhospitable glass wall and counter will be replaced by open customer service kiosks attended by staff members equipped with the latest in digital building permitting and utility technology. New ceilings, LED lighting, and transparent glass partitions within the office area will create an open, modern working environment.

After careful consideration of competitive bid proposals from three capable general contracting firms, the Town has selected RMB General Contractors to perform the work. Under the leadership of Russell Miller, President, RMB General Contractors has extensive local commercial interior remodel experience with both construction management and design/build capabilities. Their latest success here in Surfside is the complete interior demo, remodel and opening of the very popular Grove Kosher Marketplace on Harding Avenue.

This construction of the project will be funded by the Building Fund.

[Resolution Approving Contractor And Authorizing Expenditure of Funds for Town Hall Remodel Project.DOCX](#)

[Contract for Construction - Bldg Dept Interior Remodel V4.DOC](#)

[FINAL AMENDED FLOOR PLAN DRAFT 5.0 2-23-2022.pdf](#)

[FINAL ELECTRICAL PLAN 3.5 FOR OFFICE REMODEL 2-23-2022.pdf](#)

[REVISED PROPOSAL-RMB Contractors-Front Office Remodel - 20220511 - RMB.pdf](#)

**RESOLUTION NO. 2022-\_\_\_\_\_**

**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: \_\_\_\_\_  
Second By: \_\_\_\_\_

**FINAL VOTE ON ADOPTION:**

Commissioner Fred Landsman    \_\_\_\_\_  
Commissioner Marianne Meisheid    \_\_\_\_\_  
Commissioner Nelly Velasquez    \_\_\_\_\_  
Vice Mayor Jeffrey Rose    \_\_\_\_\_  
Mayor Shlomo Danzinger    \_\_\_\_\_

\_\_\_\_\_  
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").

**WITNESSETH**

**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"**

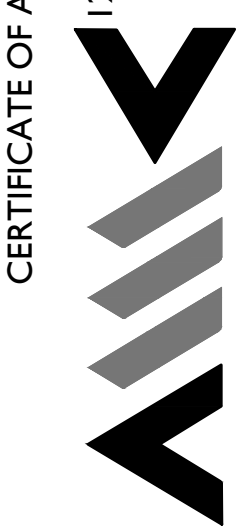
**(Attach Contractor's Proposal)**

# TOWN OF SURFSIDE

## FIRST FLOOR OFFICES REMODELING

9293 HARDING AVENUE SURFSIDE, FLORIDA 33154

CERTIFICATE OF AUTHORIZATION #: 26074  
 P.E. #: 14170  
 12355 SW 129 CT. SUITE 04  
 MIAMI, FLORIDA 33186  
 PHONE: (305) 608-8926  
 FAX: (305) 251-9177



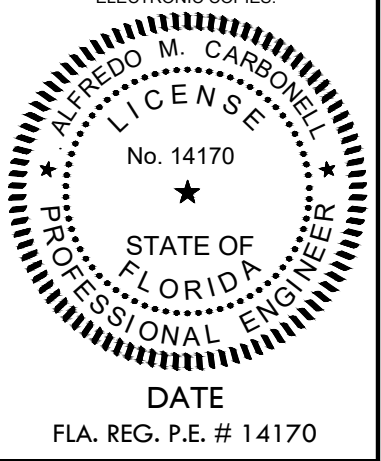
**ALFREDO M. CARBONELL, P.E. Inc.**  
**CONSULTING ENGINEERS**

Reviews:


Client: TOWN OF SURFSIDE  
 Project: FIRST FLOOR OFFICE REMODELING  
 Address: 9293 HARDING AVENUE SURFSIDE, FL. 33154

Plan Description:  
**PRESENTATION SHEET**

THIS ITEM HAS BEEN DIGITALLY SIGNED AND SEALED BY ALFREDO M. CARBONELL, P.E. ON THE DATE ADJACENT TO THE SEAL. PRINTED COPIES OF THIS DOCUMENT ARE NOT CONSIDERED SIGNED AND SEALED AND THE SIGNATURE MUST BE VERIFIED ON ANY ELECTRONIC COPIES.



Designed by: ALFREDO M. CARBONELL

Drawn by: ERICK FLORIDO

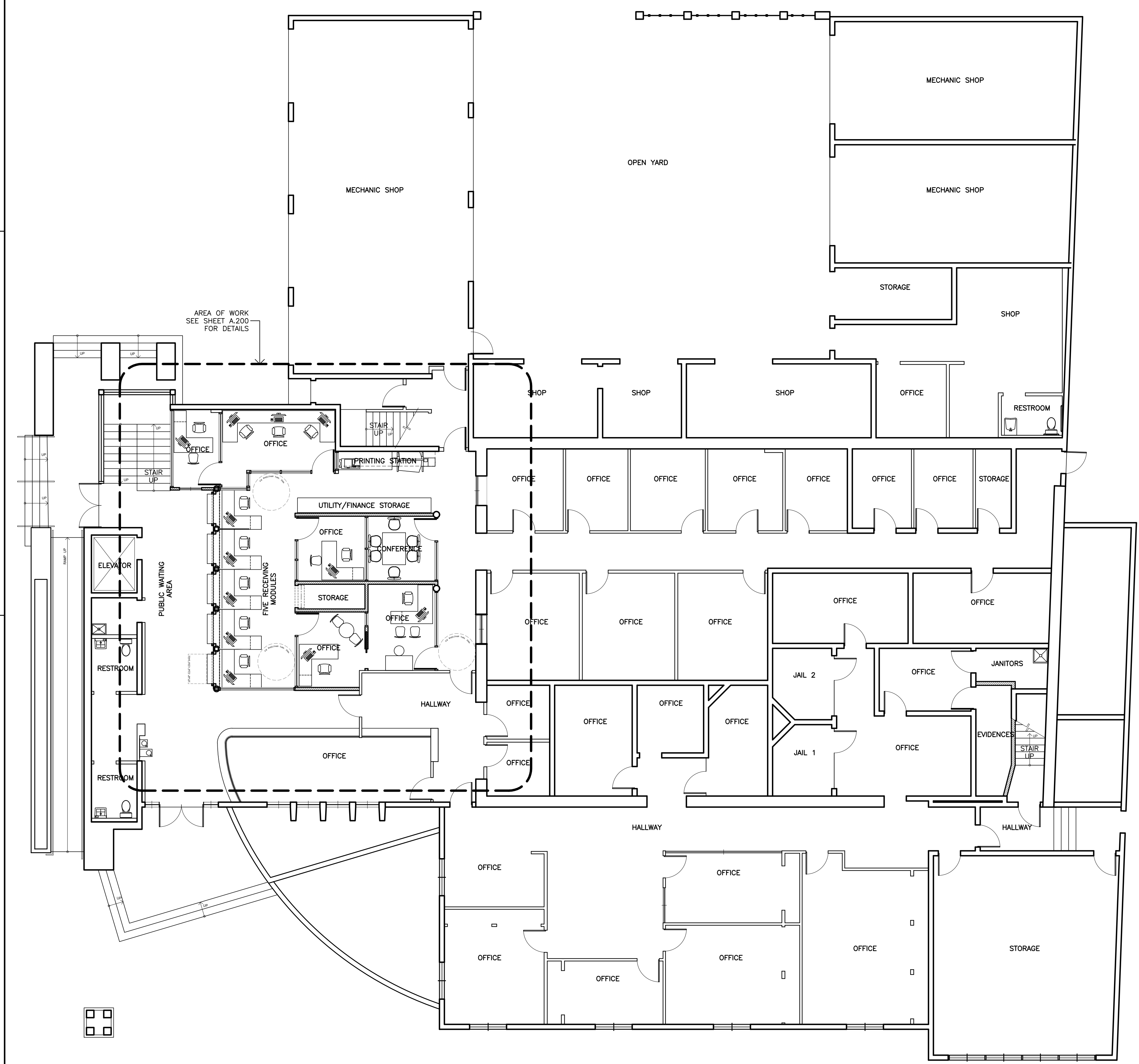
Revised & Sealed: ALFREDO M. CARBONELL

Date: -

Scale: AS SHOWN

Job #: 2021.08-17

Sheet:  
**A.000**  
 1 of 6 Sheets



- FIRST FLOOR SCOPE OF WORK**
- ALL WORK TO COMPLY WITH:  
 - 2020 FLORIDA BUILDING CODE - 7TH EDITION.  
 - 2020 FLORIDA BUILDING CODE - EXISTING - 7TH EDITION  
 - NATIONAL ELECTRICAL CODE 2017.  
 - NFPA 101, 2021 EDITION.
1. ENLARGE EXISTING FRONT OFFICE TO ACCOMMODATE TWO (2) NEW OFFICE SPACES.
  2. NEW FIVE (5) CUBICLES AT FRONT DESK FOR PLAN RECEIVING, PLAN RECEIVING, ETC.
  3. NEW FOUR (4) OFFICE SPACES AT FRONT AS SHOWN.
  4. NEW ROLL-UP DOORS AT EACH CUBICLE OPENING.
  5. NEW PORCELAIN TILE THROUGHOUT REMODELED AREA.
  6. NEW LIGHTING FIXTURES THROUGHOUT REMODELED AREA. SEE ELECTRICAL PLANS.

**PROPOSED FIRST FLOOR PLAN**  
 SCALE: 1/8" = 1'-0".

CERTIFICATE OF AUTHORIZATION # 26074  
 P.E. # 14170  
 12355 SW 129 CT. SUITE 04  
 MIAMI, FLORIDA 33186  
 PHONE: (305) 608-8976  
 FAX: (305) 251-9177

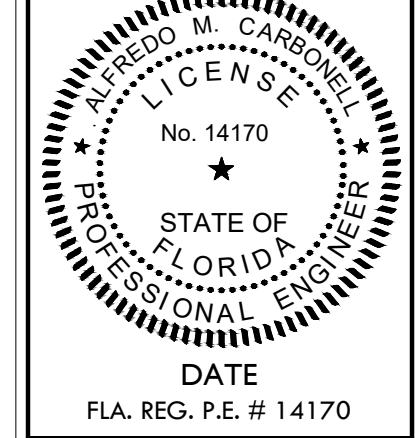
**ALFREDO M. CARBONELL, P.E. Inc.**  
 CONSULTING ENGINEERS

Reviews:


Client: **TOWN OF SURFSIDE**  
 Project: **FIRST FLOOR OFFICE REMODELING**  
 Address: **9293 HARDING AVENUE SURFSIDE, FL 33154**

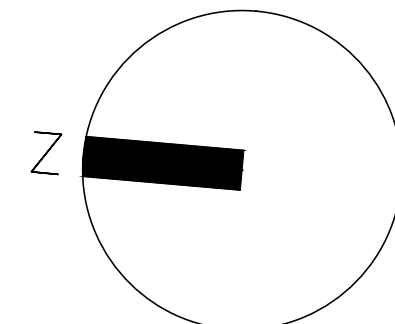
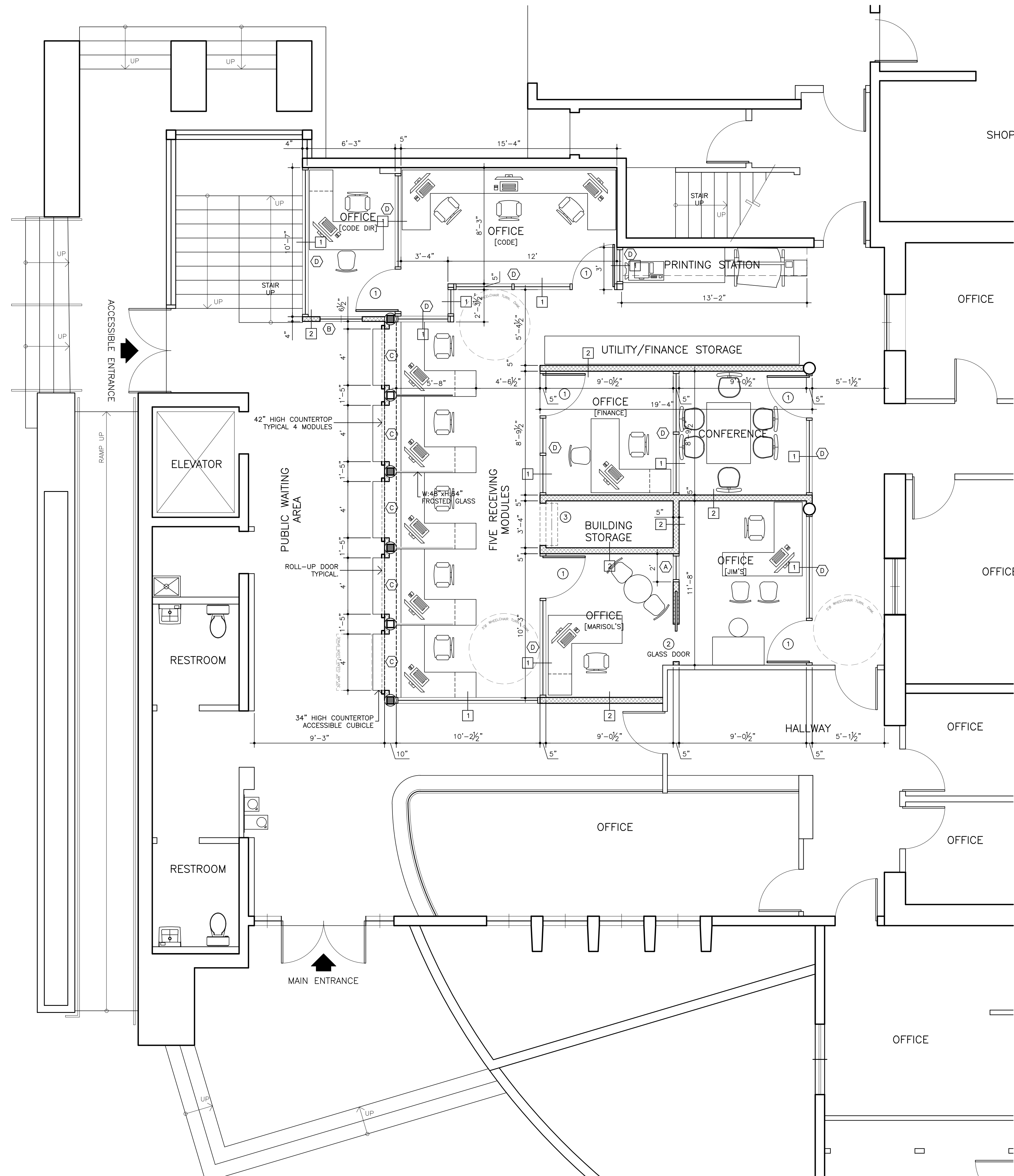
Plan Description:  
**PROPOSED FIRST FLOOR PLAN**

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Designed by: **ALFREDO M. CARBONELL**  
 Drawn by: **ERICK FLORIDO**  
 Revised & Sealed: **ALFREDO M. CARBONELL**  
 Date: **-**  
 Scale: **AS SHOWN**  
 Job #: **2021.08-17**

Sheet:  
**A.100**  
 2 of 6 Sheets



**ENLARGED FIRST FLOOR PLAN**  
 SDALE: 1/4" = 1'-0"

CERTIFICATE OF AUTHORIZATION #: 26074  
 P.E. #: 14170  
 12355 SW 129 CT. SUITE 04  
 MIAMI, FLORIDA 33186  
 PHONE: (305) 608-8976  
 FAX: (305) 251-9177

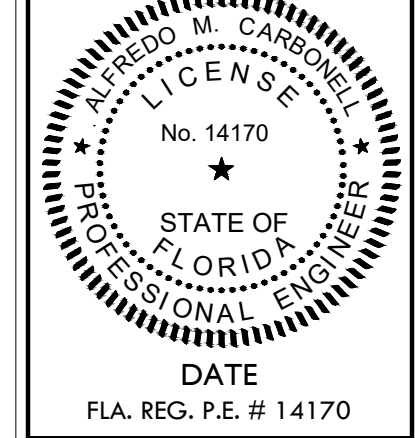
**ALFREDO M. CARBONELL, P.E. Inc.**  
 CONSULTING ENGINEERS

Reviews:


Client: **TOWN OF SURFSIDE**  
 Project: **FIRST FLOOR OFFICE REMODELING**  
 Address: **9293 HARDING AVENUE SURFSIDE, FL 33154**

Plan Description:  
**ENLARGED FIRST FLOOR PLAN**

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Designed by: **ALFREDO M. CARBONELL**  
 Drawn by: **ERICK FLORIDO**  
 Revised & Sealed: **ALFREDO M. CARBONELL**  
 Date: **-**  
 Scale: **AS SHOWN**  
 Job #: **2021.08-17**

Sheet:  
**A.200**  
 3 of 6 Sheets



- LIGHTING OUTLETS
- 2'x2' FLUORESCENT FIXTURE, SLASH INDICATES FIXTURE ON EMERGENCY SERVICE
- MECHANICAL LEGEND
- SIZE CD CFM SUPPLY OUTLET; CEILING DIFFUSER
  - SIZE RAG RETURN AIR GRILLE
- PANELS & MISCELLANEOUS
- EXHAUST FAN OUTLET OR MOTOR DEVICE
- SIGNALING SYSTEM OUTLETS
- SMOKE DETECTOR DEVICE
  - STROBE LIGHT
- CH: 'X'-'X' CEILING HEIGHT MARK
- E DENOTES EXISTING OUTLET AND/OR FIXTURE
  - N DENOTES NEW OUTLET AND/OR FIXTURE
  - R DENOTES RELOCATED OUTLET AND/OR FIXTURE
  - WP WEATHER PROOF FIXTURE.

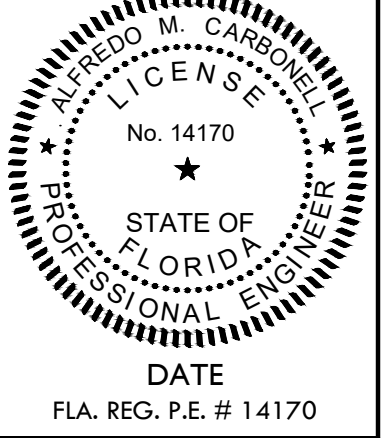
CERTIFICATE OF AUTHORIZATION #: 26074  
 P.E. #: 14170  
 12355 SW 129 CT. SUITE 04  
 MIAMI, FLORIDA 33186  
 PHONE: (305) 608-8976  
 FAX: (305) 251-9177

Reviews:


Client: TOWN OF SURFSIDE  
 Project: FIRST FLOOR OFFICE REMODELING  
 Address: 9293 HARDING AVENUE SURFSIDE FL 33154

Plan Description:  
**REFLECTED CEILING PLAN**

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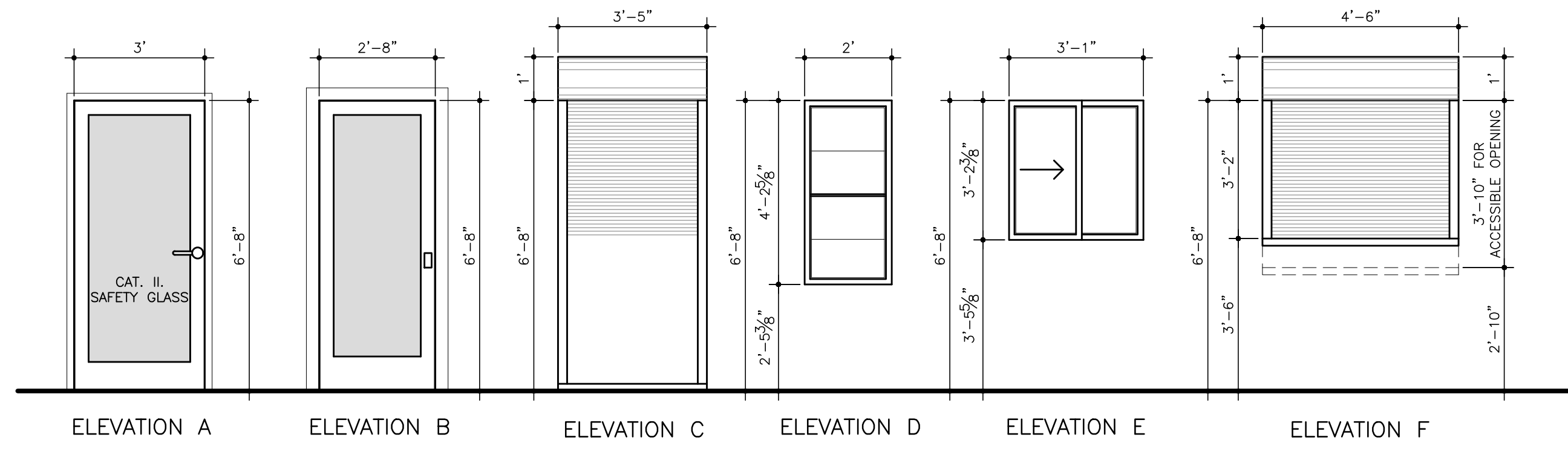


Designed by: ALFREDO M. CARBONELL  
 Drawn by: ERICK FLORIDO  
 Revised & Sealed: ALFREDO M. CARBONELL  
 Date:                    -  
 Scale: AS SHOWN  
 Job #: 2021.08-17

Sheet: **A.201**  
 4 of 6 Sheets

REFLECTED CEILING PLAN  
 SCALE: 1/4" = 1'-0"





DOOR SCHEDULE																
MARK	SIZE			PAIR	MATERIAL	LABEL	TYPE	FRAME	ELEV.	TRESHOLD		NET GLASS	TINTED	QTY	REMARKS	
	WIDTH	HEIGHT	THICK							TYPE	MAT.					FINISH
(1)	3'-0"	6'-8"	1-3/8"	1/2	ALUM. HC	-	FULL VIEW	ALUM	A	-	-	ENAMEL	-	4	2	SEE NOTE 1 BELOW
(2)	2'-8"	6'-8"	1-3/8"	1/2	WD, SC	-	POCKET-GLASS	WD	B	-	-	PAINTED	-	1	-	OBSURE FULL GLASS DOOR
(3)	3'-0"	6'-8"	-	1/2	MTL, ROLL-UP	-	ROLL UP	MTL	C	-	-	-	-	1	-	-

NOTES:

- ALL GLASS TO BE CATEGORY II, SAFETY GLASS. ALL GLASS TO BE CLEAR. LEVER HANDLE FOR ALL DOORS.

WINDOW SCHEDULE											
MARK	SIZE			PAIR	MATERIAL	LABEL	TYPE	FRAME	ELEV.	GLAZING	REMARKS
	WIDTH	HEIGHT	THICK								
(A)	24"	50 3/4"	1/2	-	ALUMINUM	-	SINGLE HUNG	ALUM	D	TEMPERED	-
(B)	36"	38 3/4"	1/2	-	ALUMINUM	-	ROLLING	ALUM	E	TEMPERED	-
(C)	54"	38" & 46"	1/2	-	STEEL	-	ROLLUP	ALUM	F	TEMPERED	-

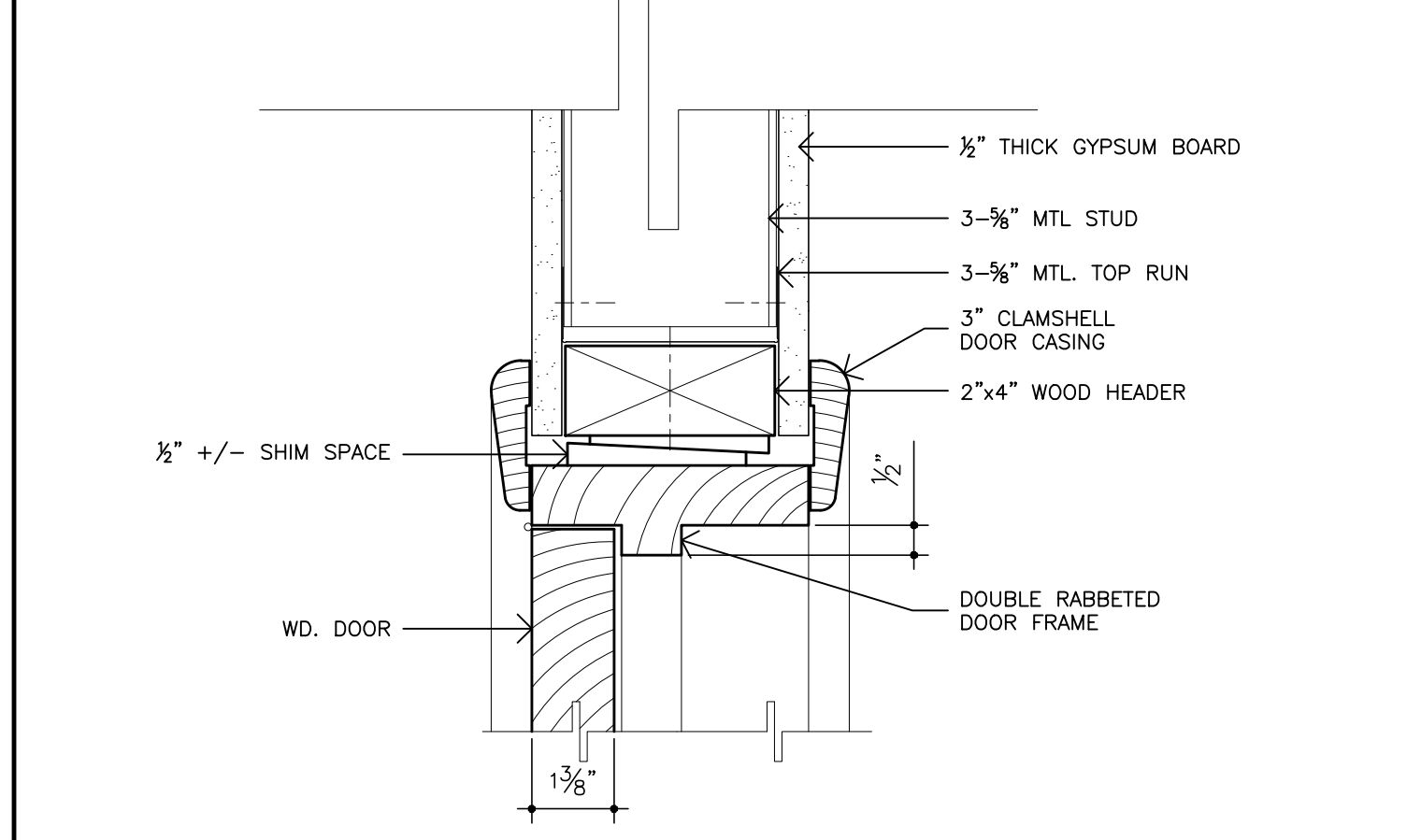
80" HIGH FIX CATEGORY II, SAFETY GLASS PANELS. OBSURE/FROSTED UP TO 48" A.F.F. TYP. CONTRACTOR TO TAKE EXACT DIMENSIONS IN SITE, ONCE PARTITIONS ARE INSTALLED.

NOTE:

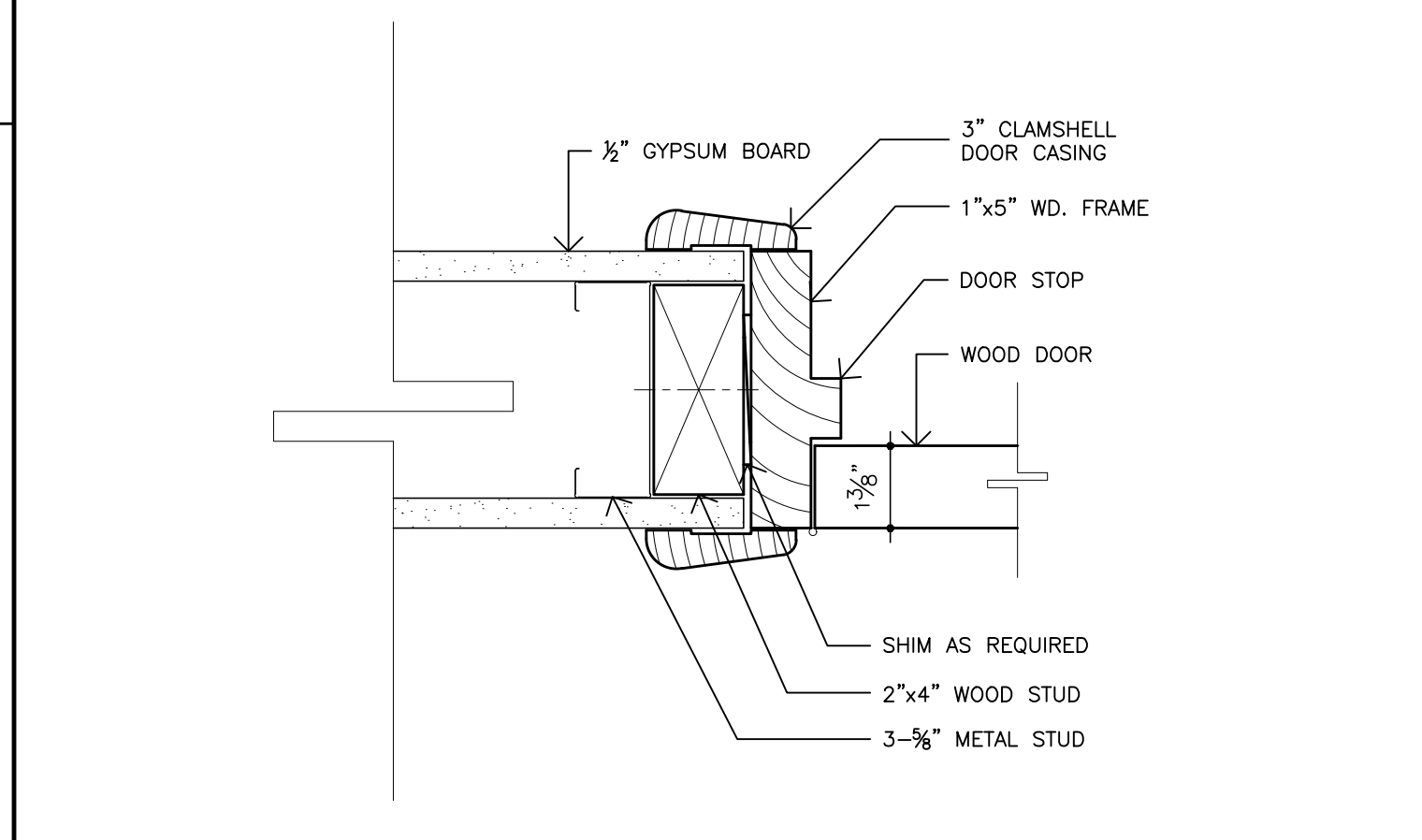
- SINGLE HUNG EGRESS TYPE WINDOW OPERABLE FROM THE INSIDE WITHOUT THE USE OF TOOLS & PROVIDING A CLEAR OPENING OF NOT LESS THAN 20" WIDTH, 24" HEIGHT & 5.7 S.F. IN AREA. THE BOTTOM OF THE OPENING SHALL NOT BE MORE THAN 44" ABOVE THE FLOOR. ONE EGRESS WINDOW TO BE INSTALLED IN EACH BEDROOM.
- PROVIDE TRANSLUCENT GLAZING AT BATHROOM WINDOWS.
- INTERIOR DOOR ROUGH OPENING SCHEDULE:  
SWING DOOR: WIDTH + 2", HEIGHT + 2"  
BI-FOLD DOOR: WIDTH + 2", HEIGHT + 2"

1 DOOR ELEVATIONS  
SCALE: 3/8" = 1'-0"

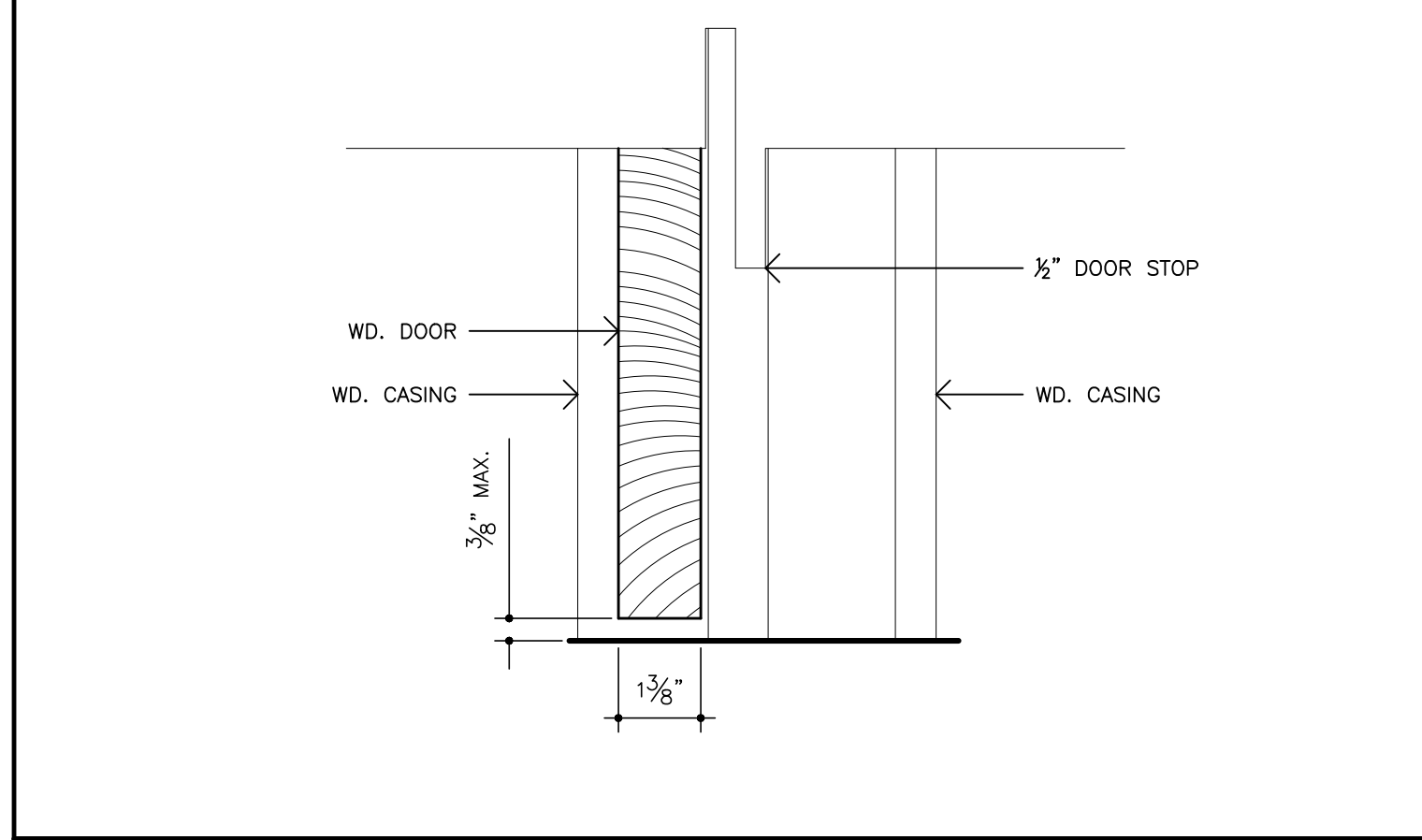
2 DOOR SCHEDULE AND NOTES  
SCALE: -



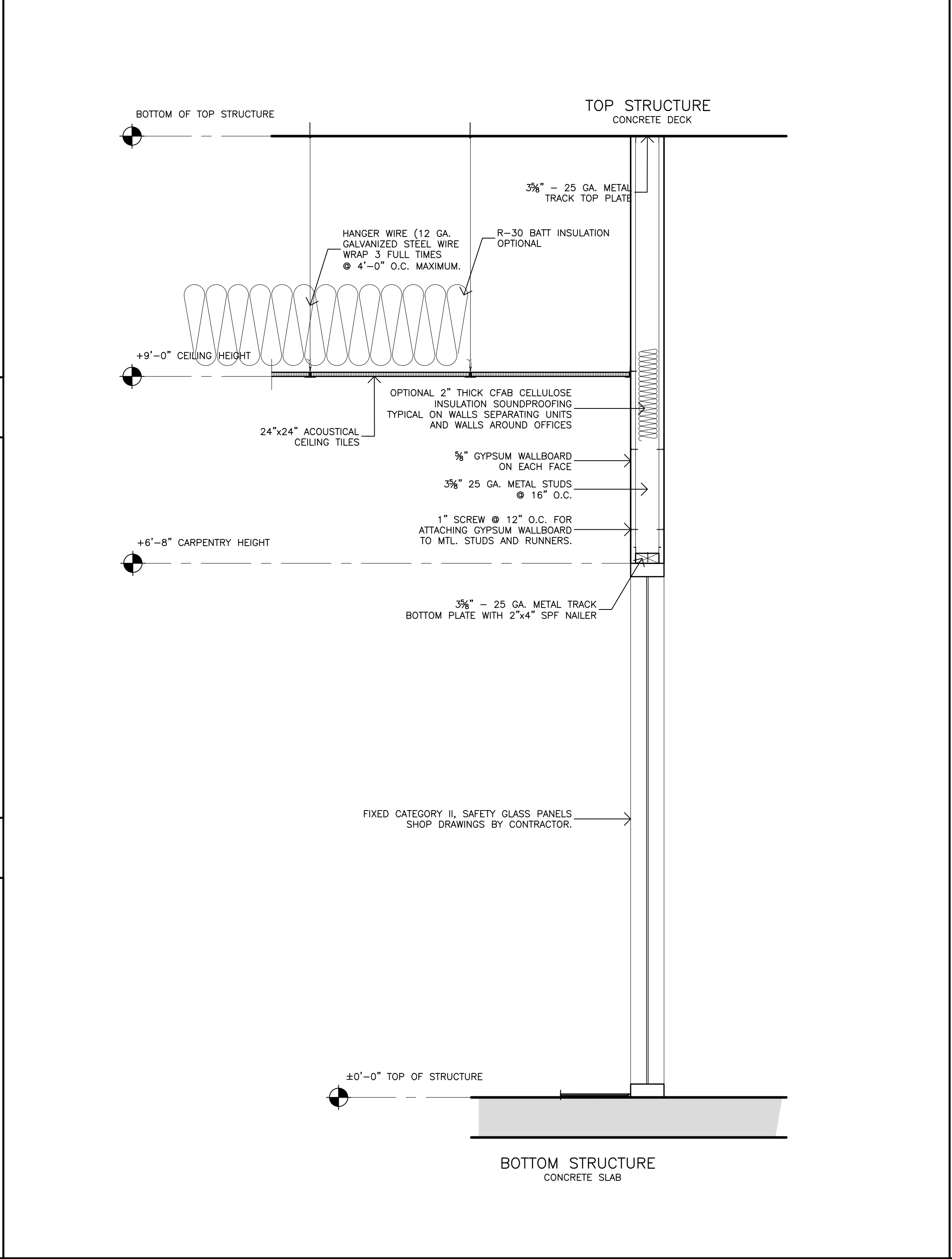
3 WOOD DOOR HEAD DETAIL (TYP.)  
SCALE: 4" = 1'-0"



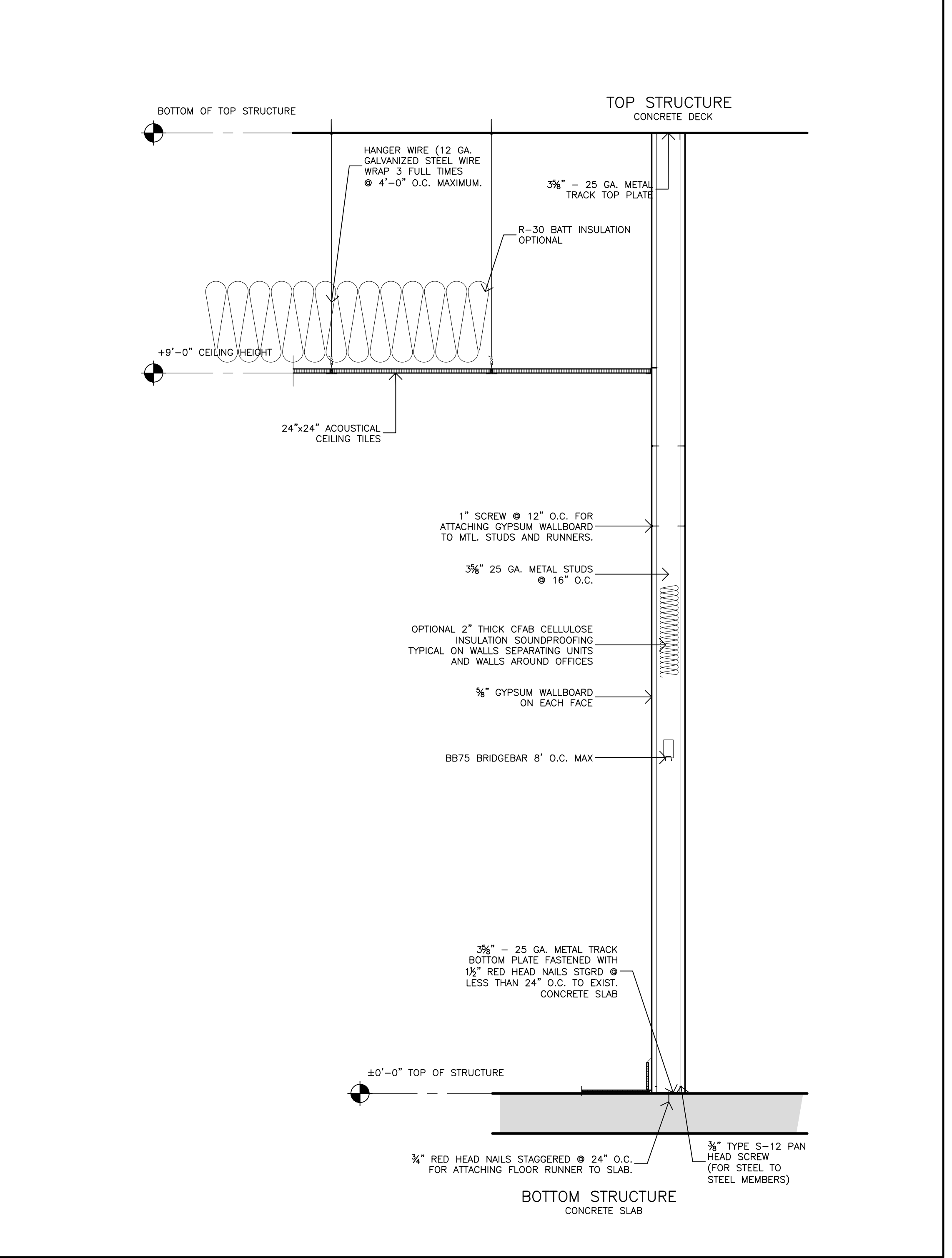
4 WOOD DOOR JAMB DETAIL (TYP.)  
SCALE: 4" = 1'-0"



5 WOOD DOOR SILL DETAIL (TYP.)  
SCALE: 4" = 1'-0"



6 TYPICAL PARTITION TYPE 1  
SCALE: 1" = 1'-0"



7 TYPICAL PARTITION TYPE 2  
SCALE: 1" = 1'-0"

CERTIFICATE OF AUTHORIZATION # 26074  
P.E. # 14170  
12355 SW 129 CT. SUITE 04  
MIAMI, FLORIDA 33186  
PHONE: (305) 608-8976  
FAX: (305) 251-9177

**ALFREDO M. CARBONELL, P.E. Inc.**  
CONSULTING ENGINEERS

Reviews:

Client: TOWN OF SURFSIDE  
Project: FIRST FLOOR OFFICE REMODELING  
Address: 9293 HARDING AVENUE SURFSIDE, FL 33154

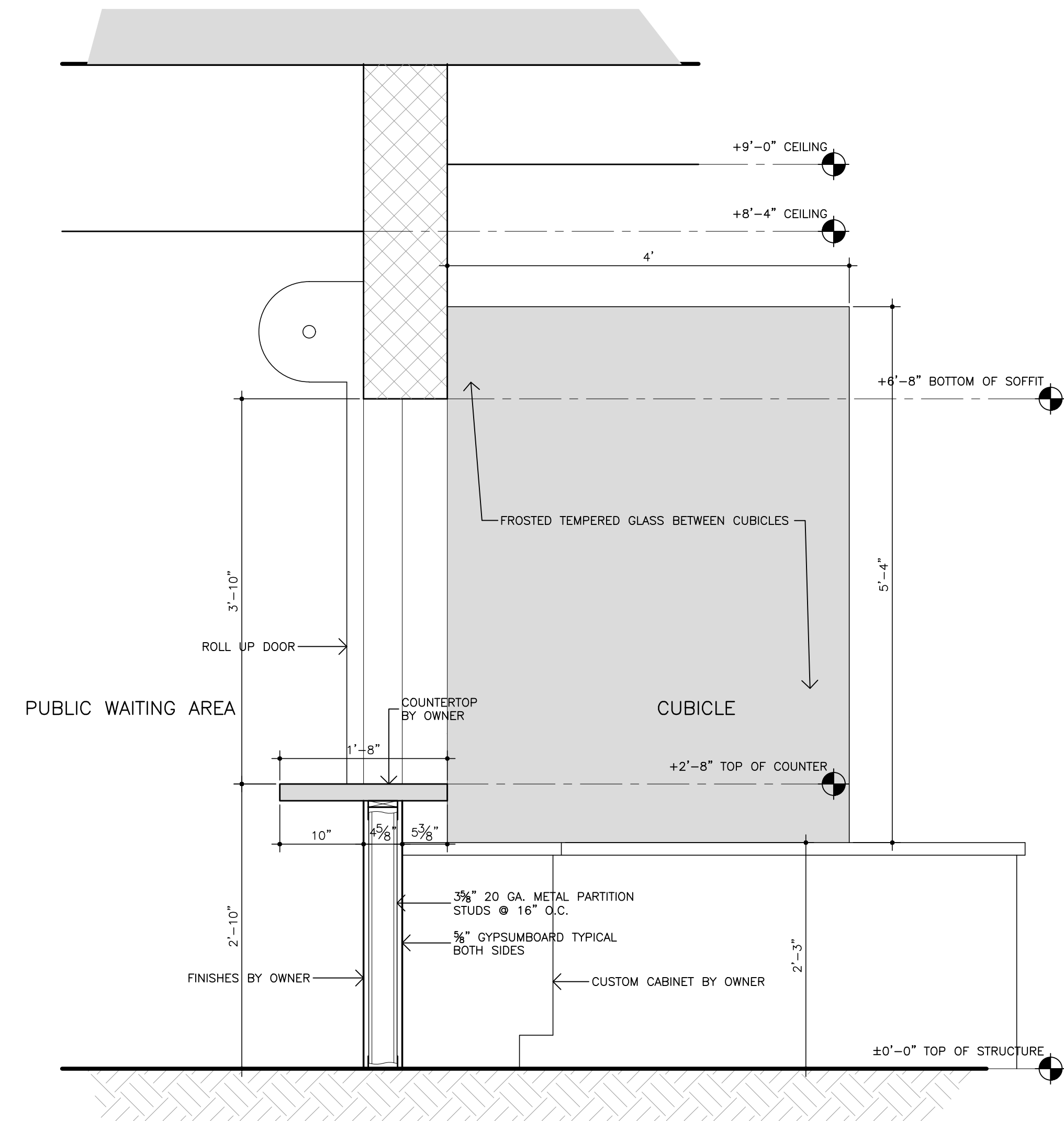
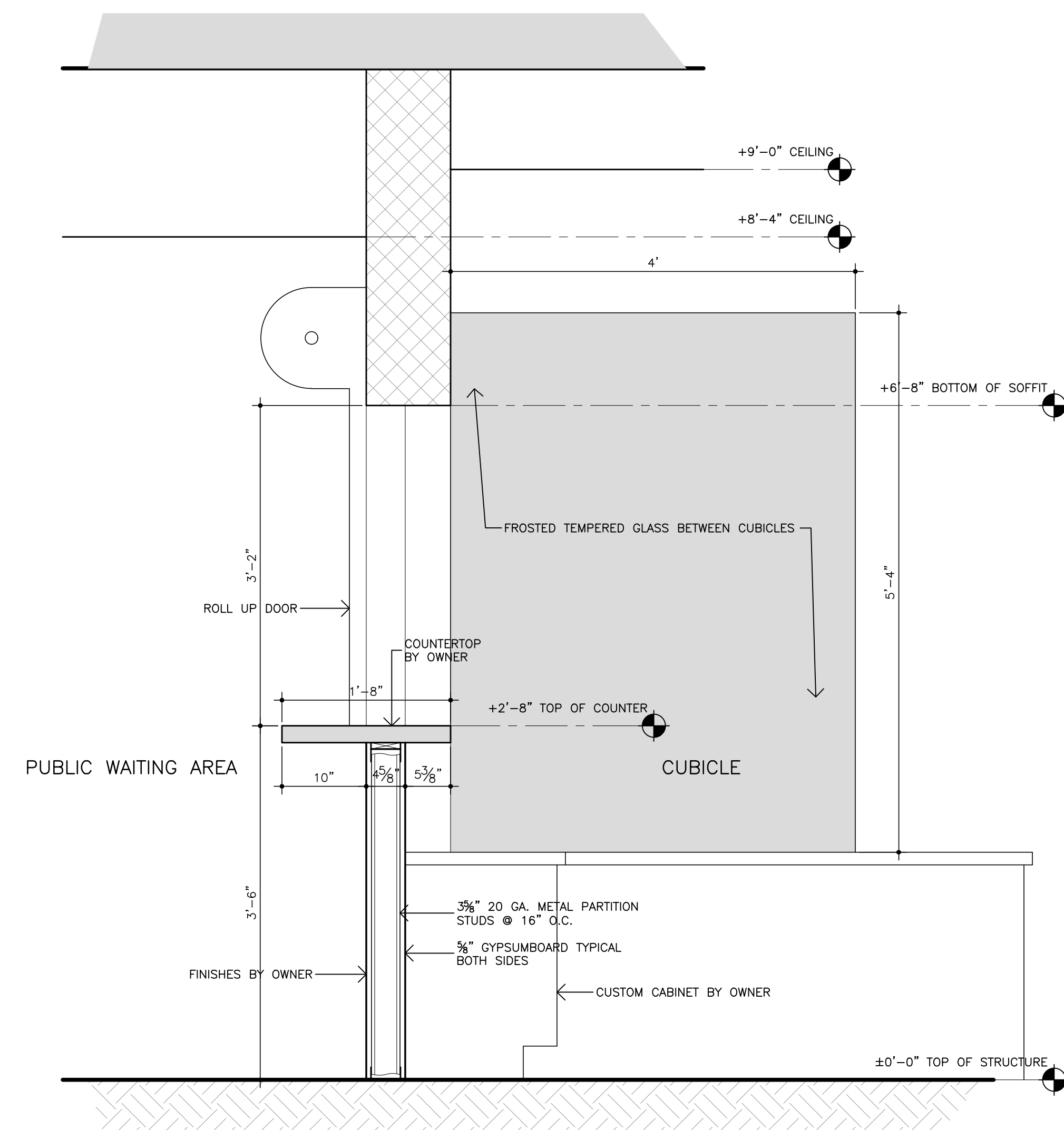
Plan Description:  
**WALL SECTIONS & DOOR SCHEDULE PLAN**

THIS ITEM HAS BEEN DIGITALLY SIGNED AND SEALED BY ALFREDO M. CARBONELL, P.E. ON THE DATE ADJACENT TO THE SEAL. PRINTED COPIES OF THIS DOCUMENT ARE NOT CONSIDERED SIGNED AND SEALED AND THE SIGNATURE MUST BE VERIFIED ON ANY ELECTRONIC COPIES.

ALFREDO M. CARBONELL  
No. 14170  
STATE OF FLORIDA  
PROFESSIONAL ENGINEER  
DATE  
FLA. REG. P.E. # 14170

Designed by: ALFREDO M. CARBONELL  
Drawn by: ERICK FLORIDO  
Revised & Sealed: ALFREDO M. CARBONELL  
Date:  
Scale: AS SHOWN  
Job #: 2021.08-17

Sheet:  
**A.300**  
5 of 6 Sheets



**A**  
SECTION A - TYPICAL COUNTER SECTION  
SCALE: 1" = 1'-0"

**B**  
SECTION B - ACCESSIBLE COUNTER SECTION  
SCALE: 1" = 1'-0"

CERTIFICATE OF AUTHORIZATION #: 26074  
P.E. #: 14170  
12355 SW 129 CT. SUITE 04  
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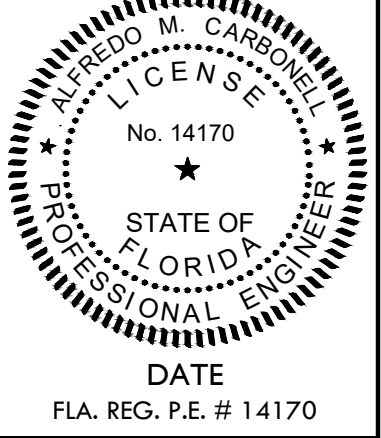
**ALFREDO M. CARBONELL, P.E. Inc.**  
CONSULTING ENGINEERS

Reviews:


Client: **TOWN OF SURFSIDE**  
Project: **FIRST FLOOR OFFICE REMODELING**  
Address: **9293 HARDING AVENUE SURFSIDE, FL 33154**

Plan Description:  
**ARCHITECTURAL DETAILS**

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Designed by: **ALFREDO M. CARBONELL**  
Drawn by: **ERICK FLORIDO**  
Revised & Sealed: **ALFREDO M. CARBONELL**  
Date: **2021-08-17**  
Scale: **AS SHOWN**  
Job #: **2021-08-17**

Sheet:  
**A.500**  
6 of 6 Sheets



**FIRE ALARM SYSTEM LEGEND**

- CEILING MOUNTED SMOKE DETECTOR
  - WALL MOUNTED SMOKE DETECTOR
  - BATTERY POWERED EMERGENCY LIGHT
  - COMBINED BATTERY POWERED EMERGENCY LIGHT AND ILLUMINATED EXIT SIGN
  - EXIT LIGHT & OUTLET BOX, DIRECTIONAL LIGHTS AS INDICATED, SHADED AREAS DENOTE FACES.
  - ABC TYPE FIRE EXTINGUISHER
  - K TYPE FIRE EXTINGUISHER
- ABBREVIATIONS:  
 EAD: EXIT ACCESS DISTANCE.  
 CPT: COMMON PATH OF TRAVEL.
- N DENOTES NEW DEVICE TO BE INSTALLED  
 E DENOTES EXISTING DEVICE TO REMAIN  
 R DENOTES RELOCATED DEVICE TO BE INSTALLED

**TYPICAL DOORS CAPACITIES**

72" DOOR	350 PEOPLE
36" DOOR	170 PEOPLE
32" DOOR	150 PEOPLE
30" DOOR	140 PEOPLE
24" DOOR	110 PEOPLE

ALL SINGLE DOOR ARE 36" WIDE U.O.N.

**OCCUPANT LOAD FACTORS**  
 ACCORDING NFPA 101 TABLE 7.3.1.2

SPACE DESCRIPTION:	SQ.FT./PERSON
OFFICE SPACES - BUSINESS USE	100
EXERCISE ROOMS WITH EQUIPMENT	50
ASSEMBLY WITHOUT FIXED SEATING	15
WAITING SPACE	5
STORAGE USE	500

**BUILDING INFORMATION**

CLASSIFICATION AS PER FFPC:  
 BUSINESS - B - CITY HALL OFFICES.

BUILDING TYPE: II-B.  
 BUILDING IS NOT PROTECTED BY FIRE SPRINKLER SYSTEM.  
 MAXIMUM COMMON PATH OF TRAVEL: 75 FT.  
 MAXIMUM DEAD END LIMIT: 50 FT. [EXISTING BUILDING]  
 MAXIMUM TRAVEL DISTANCE TO EXIT: 200 FT.  
 BUILDING IS EQUIPPED WITH FIRE ALARM SYSTEM.

NOTES:  
 1. FOR INTERIOR FINISHES CLASSIFICATION REFER TO NEXT CHART.  
 2. ALL WALL AND GLASS DOOR SHALL BE CATEGORY II, SAFETY GLASS AND SHALL COMPLY WITH ASTM C-1036 REQUIREMENTS.

**INTERIOR FINISHES**  
 AS PER TABLE A NFPA 101 SECTION 10.2.2

GROUP B - BUSINESS [EXISTING]	CLASS
EXITS	A OR B
EXIT ACCESS CORRIDORS	A OR B
OTHER SPACES	A, B OR C

INTERIOR WALLS AND CEILING FINISH:  
 CLASS A:  
 FLAME SPREAD INDEX 0-25; SMOKE-DEVELOPED INDEX 0-450.  
 CLASS B:  
 FLAME SPREAD INDEX 26-75; SMOKE-DEVELOPED INDEX 0-450.  
 CLASS C:  
 FLAME SPREAD INDEX 76-200; SMOKE-DEVELOPED INDEX 0-450.

INTERIOR FLOOR FINISH:  
 CLASS I: CRITICAL RADIANT FLUX, NOT LESS THAN 0.45 W/sq.cm.  
 CLASS II: CRITICAL RADIANT FLUX, NOT MORE THAN 0.22 W/sq.cm. BUT NOT LESS THAN 0.45 W/sq.cm.

CERTIFICATE OF AUTHORIZATION # 26074  
 P.E. # 14170  
 12355 SW 129 CT. SUITE 04  
 MIAMI, FLORIDA 33186  
 PHONE: (305) 608-8926  
 FAX: (305) 251-9177

**ALFREDO M. CARBONELL, P.E. Inc.**  
 CONSULTING ENGINEERS

Reviews:

Client: **TOWN OF SURFSIDE**  
 Project: **FIRST FLOOR OFFICE REMODELING**  
 Address: **9293 HARDING AVENUE SURFSIDE, FL 33154**

Plan Description:  
**SAFETY PLAN**

THIS ITEM HAS BEEN ELECTRONICALLY SIGNED AND SEALED BY ALFREDO M. CARBONELL, P.E. ON THE DATE ADDED TO THE SEAL. PRINTED COPIES OF THIS DOCUMENT ARE NOT CONSIDERED SIGNED AND SEALED AND THE SIGNATURE MUST BE VERIFIED ON ANY ELECTRONIC COPIES.

**ALFREDO M. CARBONELL**  
 LICENSE  
 No. 14170  
 STATE OF FLORIDA  
 PROFESSIONAL ENGINEER  
 DATE  
 FLA. REG. P.E. # 14170

Designed by:  
**ALFREDO M. CARBONELL**

Drawn by:  
**ERICK FLORIDO**

Revised & Sealed:  
**ALFREDO M. CARBONELL**

Date:  
 -

Scale:  
**AS SHOWN**

Job #:  
**2021.08-17**

Sheet:  
**LS.101**  
 1 of 1 Sheets

**FIRST FLOOR LIFE SAFETY PLAN**  
 SCALE: 1/8" = 1'-0".

ELECTRICAL / DATA FLOOR PLAN 3.5

Δ = DATA / TEL OUTLETS  
 # DUAL EX OUTLETS  
 (CIRCUITS A TO F)  
 \$ = LIGHT SWITCH



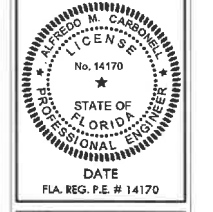
CERTIFICATE OF AUTHORIZATION # 26074  
 P.E. # 14170  
 12355 SW 129 CT. SUITE 04  
 MIAMI, FLORIDA 33186  
 PHONE: (305) 608-8926  
 FAX: (305) 251-9177

Review:

Client: TOWN OF SURFSIDE  
 Project: FIRST FLOOR OFFICE REMODELING  
 Address: 9293 HARDING AVENUE SURFSIDE, FL 33154

Plan Description:  
 ENLARGED  
 FIRST FLOOR  
 PLAN

THIS PLAN HAS BEEN ELECTRONICALLY SIGNED AND SEALED BY ALFREDO M. CARBONELL, P.E. ON THE DATE ADJACENT TO THE SEAL. PRINTED COPIES OF THIS DOCUMENT MUST BE CONSIDERED SIGNED AND SEALED AND THE SIGNATURE MUST BE VERIFIED ON ANY ELECTRONIC COPIES.



Designed by: ALFREDO M. CARBONELL  
 Drawn by: ERICK FLORIDO  
 Revised & Sealed: ALFREDO M. CARBONELL  
 Date: -  
 Title: AS SHOWN  
 Date: 2021.08-17

Sheet:  
**A.200**  
 3 of 6 Sheets

ENLARGED FIRST FLOOR PLAN  
 SCALE: 1/4" = 1'-0"

# ELECTRICAL FLOOR PLAN (DATA) 3.5





Town of Surfside  
 First Floor Offices Remodeling  
 9293 Harding Avenue  
 Surfside, FL 33154

Date: 5/11/2022  
 Square Feet: 2,565  
 Cost / SF: \$ 116.36

**Preliminary Budget per Attached Drawing Log**

Code	Trade Description	Estimated Cost	Subtotal Estimated Cost	% of Budget
020000	<b>EXISTING CONDITIONS</b>			
024000	Demolition	\$ 7,830		
024001	Remove Flooring	Inc. in 024000		
024002	Remove Ceilings	Inc. in 024000		
024003	Remove Partitions	Inc. in 024000		
024004	Remove Millwork	Inc. in 024000		
024005	Dumpsters	Inc. in 024000		
	--			
028000	Temporary Barricades	\$ 4,820		
028001	Temporary Wall, Painted - 100 LF	Inc. in 024000		
028002	Visqueen	Inc. in 024000		
	--			
	--			
	<b>TOTAL EXISTING CONDITIONS</b>		\$ 12,650	4%
060000	<b>CARPENTRY AND MILLWORK</b>			
064000	Millwork/Stone Tops	\$ 30,450		
064001	(5) Receiving Modules - Millwork Allowance (\$4,500 EA)	Inc. in 081400		
064002	Countertop at Receiving Modules	Inc. in 081400		
064003	Countertop at Code Office	Inc. in 081400		
064003	TBD Finish at Receiving Module Low Walls - Material Allowance of \$15/SF	Inc. in 081400		
	--			
	--			
	<b>TOTAL CARPENTRY AND MILLWORK</b>		\$ 30,450	10%
080000	<b>DOORS AND WINDOWS</b>			
081400	Doors/Frames/Hardware	\$ 2,500		
081402	(1) Type 2: 2-8 x 6-8 Sliding Wood Pocket Door w/ Glass + Film	Inc. in 081400		
	--			
083300	Rolling Doors/Windows - Allowance (No specification)	\$ 17,973		
083301	(1) Type 3: 3-0 x 6-8 Manual Metal Roll-up Door (Storage)	Inc. in 083300		
083302	(5) Type C: Manual Metal Roll-Up Window (Service Counters)	Inc. in 083300		
	--			



Preliminary Budget per Attached Drawing Log

Code	Trade Description	Estimated Cost	Subtotal Estimated Cost	% of Budget
088100	Windows/Glass	\$ 48,207		
088101	(1) Type A Window: 24" Single-Hung Window	Inc. in 088100		
088102	(1) Type B Window: Sliding Service Window	Inc. in 088100		
088103	(6) Type 1 Door: 3-0 x 6-8 Aluminum Door w/ Full View (Cat II Safety Glass)	Inc. in 088100		
088104	Type D Glass Partitions	Inc. in 088100		
	--			
	--			
	<b>TOTAL DOORS AND WINDOWS</b>		\$ 68,680	23%
090000	<b>FINISHES</b>			
092100	Drywall/Framing	\$ 25,525		
092101	Frame 3 5/8" 20-ga partitions to deck at 12'	Inc. in 092100		
092102	Hang 5/8" drywall to deck	Inc. in 092100		
092103	Level 4 Finish to 9' AFF	Inc. in 092100		
092104	Install R-11 Sound Batt in Walls	Inc. in 092100		
092104	Install R-30 Batt Insulation w/ paper above ACT (not encapsulated)	Inc. in 092100		
092105	Low Walls at Receiving Modules w/ Posts	Inc. in 092100		
092106	Drywall Ceilings at Public Area / Entrance	Inc. in 092100		
	--			
093000	Porcelain Tile	\$ 32,185		
093001	Floor Tile (Material Allowance at \$4/SF)	Inc. in 093000		
093002	Tile Baseboard (Material Allowance at \$4/LF)	Inc. in 093000		
093003	Transitions/Thresholds	Inc. in 093000		
093004	Installation	Inc. in 093000		
	--			
095100	ACT Ceilings	\$ 10,080		
095101	2x2 ACT Grid/Tile (Material Allowance at \$8/SF)	Inc. in 095100		
	--			
099100	Interior Painting	\$ 6,660		
099101	Paint Office Walls	Inc. in 099100		
099102	Paint Entry/Public Area Drywall Ceilings	Inc. in 099100		
	--			
	--			
	<b>TOTAL FINISHES</b>		\$ 74,450	25%
100000	<b>SPECIALTIES</b>			
104400	Fire Extinguisher Cabinets	\$ 350		
104401	(1) Fire Extinguisher Cabinet	Inc. in 104400		
	--			
	--			
	<b>TOTAL SPECIALTIES</b>		\$ 350	0%



Preliminary Budget per Attached Drawing Log

Code	Trade Description	Estimated Cost	Subtotal Estimated Cost	% of Budget
210000	<b>FIRE SPRINKLER</b>			
210010	Fire Sprinkler			
210011	Sprinklers - No Sprinkler System in Building	Excluded		
	--			
	--			
	<b>TOTAL FIRE SPRINKLER</b>		\$ -	0%
220000	<b>PLUMBING</b>			
230010	Plumbing	Below		
230011	Plumbing - No Work Shown in Restrooms	Excluded		
	--			
	--			
	<b>TOTAL PLUMBING</b>		\$ -	0%
230000	<b>MECHANICAL</b>			
230010	HVAC - Allowance (No Mechanical Plans)	\$ 10,600		
230011	S/A + R/A Diffusers & Grilles	Inc. in 230010		
230012	Rework Flex Duct Distribution as Required	Inc. in 230010		
230013	Misc. Hanging Materials	Inc. in 230010		
230014	Installation	Inc. in 230010		
	--			
	--			
	<b>TOTAL MECHANICAL</b>		\$ 10,600	4%
260000	<b>ELECTRICAL</b>			
260010	Electrical	\$ 17,600		
260011	Power Distribution	Inc. in 260010		
260012	(30) LED 2x2 Light Fixtures	Inc. in 260010		
260013	(10) Hi-Hats	Inc. in 260010		
	--			
	--			
	<b>TOTAL ELECTRICAL</b>		\$ 17,600	6%
270000	<b>DATA / COMMUNICATIONS</b>			
272000	Low Voltage / Data Cabling - Allowance	\$ 2,500		
272001	LV Cabling	Inc. in 260010		
	--			
	--			
	<b>TOTAL DATA / COMMUNICATIONS</b>		\$ 2,500	1%



Preliminary Budget per Attached Drawing Log

Code	Trade Description	Estimated Cost	Subtotal Estimated Cost	% of Budget
280000	<b>FIRE ALARM / SECURITY</b>			
283100	Fire Alarm System	Below		
283101	Fire Alarm System - Existing To Remain	Excluded		
	--			
	--			
	<b>TOTAL FIRE ALARM / SECURITY</b>		\$ -	0%
001000	<b>GENERAL CONDITIONS</b>			
001010	Pre construction Services (Permitting Costs)	Below		
001070	Interior Design Concept Consultant	\$ 2,500		
	--			
006000	Insurance and Fees	Below Subtotal		
008000	General Conditions - Indirect	\$ 21,930		
010000	General Conditions - Direct	\$ 15,150		
	--			
	<b>TOTAL GENERAL CONDITIONS</b>		\$ 39,580	13%
	<b>SUBTOTAL</b>		\$ 256,860	86%
	General Liability Insurance (1.20%)	\$ 3,082	\$ 3,082	1%
	Contingency Allowance (3.00%)	\$ 7,706	\$ 7,706	3%
	Contractor Fee (12.00%)	\$ 30,823	\$ 30,823	10%
	<b>SUBTOTAL</b>		\$ 41,611	14%
	<b>TOTAL</b>		\$ 298,471	100%





## MEMORANDUM

ITEM NO. 3H.

**To:** Honorable Mayor, Vice-Mayor and Members of the Town Commission  
**From:** Andrew Hyatt, Town Manager  
**Date:** June 14, 2022  
**Subject:** **Town of Surfside Social Media Policy - Revised**

---

Town Administration recommends approval of the revised Social Media Policy.

Social media has drastically changed the world of media, news and communications. When it comes to government and civic engagement, digital outlets such as Facebook, Twitter, Instagram, NextDoor and YouTube, make it possible for councils, commissions and public servants to communicate directly with their constituents and vice-versa. To expand on the importance of the medium, a Pew Research Center Study found that 69% of the public uses some form of social media. Meanwhile, 62% of adults receive the majority of their news from social media.

The Social Media Policy for the Town of Surfside establishes the official Town policy to provide guidance to the Town Commission, Town residents, and Town Staff when interacting with the Town's official social media networks. Social media includes all platforms used to communicate information on the Internet, including but not limited to personal websites (including blogs), Facebook, Twitter, Instagram, Yelp, LinkedIn, Pinterest, YouTube, NextDoor and SeeClickFix.

It's important the Town of Surfside abide by a professional, modern and efficient code of conduct on digital social platforms. Town Staff is requesting the Town Commission approve this Social Media Policy.

[Resolution Amending Social Media Policy TA v1.DOCX](#)

[Revisions to Social Media Policy 2022-6-6.docx](#)

**RESOLUTION NO. 2022-\_\_\_\_\_**

**A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, AMENDING THE SOCIAL MEDIA POLICY FOR THE TOWN; PROVIDING FOR IMPLEMENTATION AND AUTHORIZATION; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, on February 12, 2019, the Town of Surfside (“Town”) adopted Resolution No. 2019-2564, adopting a Social Media and Media Inquiry Policy for the Town (the “Social Media Policy”); and

**WHEREAS**, the Town Commission desires to amend the Social Media Policy, in substantially the form attached hereto as Exhibit “A,” in order to revise and update the use, administration, and retention of the Town’s content on social media sites; and

**WHEREAS**, the Town Commission further desires to authorize the Community Services and Public Communications Director and the Police Chief to establish additional administrative procedures, as needed, for the use of social media sites as approved by the Town Manager; and

**WHEREAS**, the Town Commission desires to adopt the amended Social Media Policy and finds that it is in the best interests of the Town and necessary for the proper conduct of the Town and dissemination of information.

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

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

**Section 2. Adoption and Approval of Social Media Policy.** The Social Media Policy, in substantially the form attached hereto as Exhibit “A,” is hereby adopted and approved, subject to any changes as may be directed and approved by the Town Manager and Town Attorney.

**Section 3. Implementation; Authorization.** That the Town Manager and Town Officials are hereby authorized to take any and all actions which are necessary to implement the Social

Media Policy and the purposes of this Resolution. The Community Services and Public Communications Director and Police Chief are authorized to establish additional administrative procedures, as needed, for the use of social media sites, as approved by the Town Manager.

**Section 4.** **Effective Date.** This Resolution shall become effective immediately upon adoption.

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

Motion By: \_\_\_\_\_  
Second By: \_\_\_\_\_

**FINAL VOTE ON ADOPTION:**

Commissioner Fred Landsman \_\_\_\_\_  
Commissioner Marianne Meischeid \_\_\_\_\_  
Commissioner Nelly Velasquez \_\_\_\_\_  
Vice Mayor Jeffrey Rose \_\_\_\_\_  
Mayor Shlomo Danzinger \_\_\_\_\_

\_\_\_\_\_  
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



## **Social Media Policy for the Town of Surfside**

### **Purpose and Scope**

The Social Media Policy ("Policy") for the Town of Surfside establishes general standards and responsibilities with respect to the official use of social media channels for the dissemination of important Town-related information to residents and the general public.

### **Social Media: Sites and Accounts**

The Town of Surfside will maintains official pages or accounts (each an "Official Account") on third-party websites (each a "Social Media Site") in order to disseminate Town-related information to residents and the general public. The Community Services and Public Communications Director is responsible for maintaining a current list of the Town's Official Accounts and the corresponding Social Media Sites hosting each Official Account.

The Town's social media presence should be limited to one Official Account per each Social Media Site (the "Town of Surfside Official Accounts"). For example, the Parks & Recreation Department for Surfside should not have a Facebook page that is separate from the Town. Instead, the Town's Facebook page should, when appropriate, incorporate information pertaining to Parks & Recreation. By doing so, important public information becomes more organized and residents know where to find such information, thus eliminating any layer of confusion or public misinformation.

Notwithstanding the above, the Police Department is permitted to maintain Official Accounts (the "Police Department Official Accounts") in addition to the Town of Surfside Official Accounts. This is deemed operationally essential, due to the frequency of information posted, the unique nature of the information disseminated, and the necessity to have emergency information released immediately for public safety. It is also an industry standard across Miami-Dade, Broward and Palm Beach Counties for Police Departments to maintain their own social media platforms as an indispensable means of communication to the public.

### **Ownership and Public Records**

All social media communications messages that are composed, sent or received on the Town of Surfside Official Accounts and the Police Department Official Accounts are the property of the Town of Surfside and subject to public records laws. The Town of Surfside reserves the right not to publish any posting or to later remove it if the comments violate the guidelines enumerated in the Policy.

### **Town Commission Conduct**

It is advisable that Town Commission strictly follow the state and Miami-Dade County ethics law codified in Chapter 112, Part III of the Florida Statutes and Section 2-11.1 of the Miami-Dade County Code and also comply with Florida's Sunshine Law and Public Records Law.

- Commission members must not communicate amongst themselves in a social media exchange or discussion regarding any matter that is before the board/commission for action or on any matter which foreseeably could be brought before the Commission for action.
- Commission members who use private social media platforms to communicate about Town business must follow the rules concerning the retention of public records.
- Commission members may not utilize the Town of Surfside Official Accounts or the Police Department Official Accounts for personal use, including posting personal content and/or opinions.
- Commission members should refrain from posting on social media in a manner that would suggest that they are representing the official position of the Town and Town government.
- In the event of an emergency, Town Commission may "share" posts of the Town of Surfside Official Accounts or the Police Department Official Accounts. It is not advisable to copy & paste a post or paraphrase content to ensure accuracy of information to public.

### **Conduct on Town Official Accounts**

The Town's use of Social Media Sites is generally limited in to the dissemination of Town-related information on the Town's Official Accounts and the Police Department Official Accounts.

The Town recognizes and appreciates the rights of all members of our online community to free speech and freedom of expression. The Town's Official Accounts and the Police Department Official Accounts, as well as all comments posted, however, are regularly monitored by administrators. Although the Town's Official Accounts are monitored on a regular basis, individuals should NOT use the Town's Official Accounts to report emergency situations or time-sensitive issues.

The Town's Official Accounts are a limited public forum, which affords the Town the right to reject posts/comments or remove such posts/comments when they violate the following guidelines:

- Graphic, obscene or explicit comments or submissions are prohibited, as well as comments that are abusive, threatening, hateful, or intended to defame anyone or any organization, or comments that suggest or encourage illegal activity.
- Content that promotes, fosters or perpetuates discrimination on the basis of race, creed, color, age, religion, gender, marital status, status with regard to public assistance, national origin, physical or mental disability, gender identity or sexual orientation will not be tolerated.
- Content posted by persons whose profile picture or avatar, username or e-mail address contains any of the aforementioned prohibited content will not be tolerated.
- Content should be related to the subject matter of the social media site where it is posted.
- Solicitations or advertisements are prohibited. This includes promotion or endorsement of any financial, commercial or non-governmental agency. Similarly, attempts to defame or defraud any person or financial, commercial or governmental agency are not permitted. Information intended to compromise the safety or security of the public or public systems is prohibited.

### **Other Considerations**

- Participation is voluntary and taken at one's own risk. Those who decide to post maintain personal responsibility for their comments, their username and/or any information provided.
- All comments are subject to Florida's public records law.
- The appearance of external links on this site does not constitute official endorsement on behalf of the Town of Surfside.
- Individuals are subject to the Terms of Use of the Social Media Sites. Any user in violation of the Terms of Use will be reported. For more information, consult the Social Media Sites' website's Terms of Use directly – [Facebook](#), [Twitter](#), [Instagram](#), NextDoor.
- This Social Media Policy is subject to amendment or modification at any time. Social media sites are a public forum, any content posted is subject to public records retention and disclosure pursuant to Florida law. Opinions expressed by individuals and visitors to the Town's Official Accounts or the Police Department

Accounts do not necessarily reflect the opinions of the Town government.

### **Social Media Procedures**

The Community Services and Public Communications Director and the Police Chief will establish procedures for the use of Social Media Platforms as approved administratively by the Town Manager.



## MEMORANDUM

ITEM NO. 31.

**To:** Honorable Mayor, Vice-Mayor and Members of the Town Commission

**From:** Andrew Hyatt, Town Manager

**Date:** June 14, 2022

**Subject:** **Authorization to Proceed with Award and Contracting for Engineering Services with Kimley-Horn and Associates, Inc. as a Result of Request for Qualifications (RFQ No. 2022-02), CDBG-MIT Town-wide Drainage Improvement and Flood Hazard Mitigation Plan**

---

Town Administration recommends the awarding of contract based on Evaluation Committee recommendation for RFQ No. 2022-02, CDBG-MIT Town-wide Drainage Improvement and Flood Hazard Mitigation Plan, to Kimley-Horn and Associates, Inc. in the not to exceed amount of \$255,000.

The Town of Surfside was awarded a Federally Funded Community Development Block Grant Mitigation Program (CDBG-MIT) in order to contract Town-wide Drainage Improvement and Flood Hazard Mitigation Plan services with a federally procured professional services firm. As a result, the Town issued Request for Qualifications (RFQ 2022-02), CDBG-MIT Town wide Drainage Improvement and Flood Hazard Mitigation Plan on January 3 2022 with opening date February 17 2022. A total of 4 (four) engineering firms responded to RFQ 2022-02 which were:

- Kimley Horn and Associates, Inc.
- KCI Technologies, Inc.
- KEITH
- Calvin Giordano and Associates (CGA)

After review by a Town Evaluation Committee on March 2, 2022, Kimley Horn and Associates, Inc. was tabulated to be the highest ranking firm. Final scoring was as follows:

- Kimley Horn and Associates, Inc. - 289 points
- KCI Technologies, Inc. - 258 points
- KEITH - 283 points
- Calvin Giordano and Associates (CGA) - 271 points

Some benefits of having the Town-wide Drainage Improvement and Flood Hazard Mitigation



Plan are:

- Determining planning phase projects for implementation to assist with regionalized flooding.
- Additional points towards CRS rating system (Town current score is a 6). This is directly related to flood insurance premiums.
- Opportunity for the Town to seek additional State and Federal funding for infrastructure projects.
- State compliance with FL STATUTE 373.4131

This project will be funded by \$107,500 from the CDBG-MIT grant, \$122,500 from Federal ARPA funds, and \$25,000 from the Public Works General Fund allocation for professional services.

[Resolution Approving PSA with Kimley-Horn - Drainage Improvement and Flood Hazard Mitigation Project.DOCX](#)

[DEO Approved Contract Agreement](#)

[Kimley Horn Proposal](#)

**RESOLUTION NO. 2022-\_\_\_\_\_**

**A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, SELECTING AND AWARDING A PROFESSIONAL SERVICES AGREEMENT TO KIMLEY-HORN AND ASSOCIATES, INC. FOR PROFESSIONAL ENGINEERING SERVICES RELATED TO THE COMMUNITY DEVELOPMENT BLOCK GRANT MITIGATION PROGRAM (CDBG-MIT) TOWNWIDE DRAINAGE IMPROVEMENT AND FLOOD HAZARD MITIGATION PLAN; AUTHORIZING THE TOWN MANAGER TO NEGOTIATE AND ENTER INTO AN AGREEMENT WITH KIMLEY-HORN AND ASSOCIATES, INC.; PROVIDING FOR IMPLEMENTATION; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, on January 3, 2022, the Town issued Request for Qualifications No. 2022-02 (the “RFQ”) for engineering and related professional services (the “Services”) for the Community Development Block Grant Mitigation Program (CDBG-MIT) Townwide Drainage Improvement and Flood Hazard Mitigation Plan (the “Project”); and

**WHEREAS**, the Town received four (4) responses to the RFQ; and

**WHEREAS**, on March 2, 2022, an Evaluation Committee appointed by the Town Manager (the “Evaluation Committee”) evaluated, ranked, and scored all proposals received; and

**WHEREAS**, Kimley-Horn and Associates, Inc. (the “Contractor”) was ranked as the highest ranking firm and most qualified to provide the Services for the Project; and

**WHEREAS**, the Town Commission desires to select the Contractor and award an agreement for the Project to the Contractor and authorize the Town Manager to negotiate and enter into an agreement, in substantially the form attached hereto as Exhibit “A,” with the Contractor in an amount not to exceed \$255,000 (the “Agreement”); and

**WHEREAS**, the Town Commission finds that approval of the Agreement is in the best interest of the Town.

**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 Agreement.** The Agreement with the Contractor is hereby approved in substantially the form attached hereto as Exhibit “A,” together with such non-material changes as may be acceptable as to form and legality by the Town Manager and the Town Attorney.

**Section 3. Authorization to Execute Agreement.** The Town Manager is authorized to negotiate and execute an Agreement, in substantially the form attached hereto as Exhibit “A,” with the Contractor in an amount not to exceed \$255,000.00 and to execute any documents or amendments related thereto, subject to the approval as to form and legality by the Town Manager and the Town Attorney.

**Section 4. Implementation.** The Town Manager and Town Officials are authorized to take any and all necessary action to implement the terms and conditions of the Agreement 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: \_\_\_\_\_  
Second By: \_\_\_\_\_

**FINAL VOTE ON ADOPTION:**  
Commissioner Fred Landsman \_\_\_\_\_  
Commissioner Marianne Meischeid \_\_\_\_\_

Commissioner Nelly Velasquez \_\_\_\_\_  
Vice Mayor Jeffrey Rose \_\_\_\_\_  
Mayor Shlomo Danzinger \_\_\_\_\_

\_\_\_\_\_  
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"**

**PROFESSIONAL SERVICES AGREEMENT**

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

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

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

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

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

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

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

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

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

**1. Scope of Services.**

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

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

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

## **2. Term/Commencement Date.**

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

## **3. Compensation and Payment.**

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

**4. Subcontractors.**

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

**5. Town's Responsibilities.**

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

**6. Contractor's Responsibilities; Representations and Warranties.**

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

**7. Conflict of Interest.**

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



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

## **8. Termination.**

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

## **9. Insurance.**

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

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

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

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

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

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

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

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

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

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

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

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

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

12. **Indemnification.**

12.1. Contractor shall indemnify and hold harmless the Town, and its officers and employees, from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of Contractor and other persons employed or utilized by the Contractor in the performance of this Agreement.

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

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

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

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

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

**15. Entire Agreement/Modification/Amendment.**

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

**16. Ownership and Access to Records and Audits.**

- 16.1. Contractor acknowledges that all inventions, innovations, improvements, developments, methods, designs, analyses, drawings, reports, compiled information, and all similar or related information (whether patentable or not) which relate to Services to the Town which are conceived, developed or made by Contractor during the term of this Agreement (“Work Product”) belong to the Town. Contractor shall promptly disclose such Work Product to the Town and perform all actions reasonably requested by the Town (whether during or after the term of this Agreement) to establish and confirm such ownership (including, without limitation, assignments, powers of attorney and other instruments).
- 16.2. Contractor agrees to keep and maintain public records in Contractor’s possession or control in connection with Contractor’s performance under this Agreement. The Town Manager or her designee shall, during the term of this Agreement and for a period of three (3) years from the date of termination of this Agreement, have access to and the right to examine and audit any records of the Contractor involving transactions related to this Agreement. Contractor additionally agrees to comply specifically with the provisions of Section 119.0701, Florida Statutes. Contractor shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed, except as authorized by law, for the duration of the Agreement, and following completion of the Agreement until the records are transferred to the Town.
- 16.3. Upon request from the Town’s custodian of public records, Contractor shall provide the Town with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided by Chapter 119, Florida Statutes, or as otherwise provided by law.
- 16.4. Unless otherwise provided by law, any and all records, including but not limited to reports, surveys, and other data and documents provided or created in connection with this Agreement are and shall remain the property of the Town.
- 16.5. Upon completion of this Agreement or in the event of termination by either party, any and all public records relating to the Agreement in the possession of the Contractor shall be delivered by the Contractor to the Town Manager, at no cost to the Town, within seven (7) days. All such records stored electronically by Contractor shall be delivered to the Town in a format that is compatible with the Town’s information technology systems. Once the public records have been delivered upon completion or termination of this

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

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

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

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

**Custodian of Records: Sandra McCready, MMC**

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

**Telephone number: 305-861-4863**

**Email: smccready@townofsurfsidefl.gov**

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

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

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

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

- 21. Waiver.** The failure of either party to this Agreement to object to or to take affirmative action with respect to any conduct of the other which is in violation of the terms of this Agreement shall not be construed as a waiver of the violation or breach, or of any future violation, breach or wrongful conduct.
- 22. Survival of Provisions.** Any terms or conditions of either this Agreement that require acts beyond the date of the term of the Agreement, shall survive termination of the Agreement, shall remain in full force and effect unless and until the terms or conditions are completed and shall be fully enforceable by either party.
- 23. Prohibition of Contingency Fees.** The Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Contractor, to solicit or secure this Agreement, and that it has not paid or agreed to pay any person(s), company, corporation, individual or firm, other than a bona fide employee working solely for the Contractor, any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award or making of this Agreement.
- 24. Public Entity Crimes Affidavit.** Contractor shall comply with Section 287.133, Florida Statutes (Public Entity Crimes Statute), notification of which is hereby incorporated herein by reference, including execution of any required affidavit.
- 25. Counterparts.** This Agreement may be executed in several counterparts, each of which shall be deemed an original and such counterparts shall constitute one and the same instrument.
- 26. Conflicts.** In the event of a conflict between the terms of this Agreement and any exhibits or attachments hereto, the terms of this Agreement shall control.
- 27. Boycotts.** The Contractor represents that it is not currently engaged in, and will not engage in, a boycott, as defined in Section 3-1.1 of the Town of Surfside Code of Ordinances.
- 28. E-Verify.** In accordance with Executive Order Number 11-116 from the Office of the Governor of the State of Florida, the Contractor is required to certify the U.S. Department of Homeland Security's E-Verify system will be used to verify the employment eligibility of all new employees hired by the Contractor during the Agreement term, and shall expressly require any Subcontractors performing work or providing services pursuant to the Agreement to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of new employees hired by the Subcontractor during the Agreement term; and shall provide documentation of such verification to the Town upon request.
- 29. Federally Required Clauses – Contract Provisions for Non-Federal Entity Contracts Under Federal Awards Under 2 CFR Part 200.**
- 29.1. Equal Employment Opportunity.** During the performance of this Agreement, the Contractor agrees as follows:
- 1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**29.6.1. Clean Air Act.**

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

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

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

**29.6.2. Federal Water Pollution Control Act**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**29.12. Access to Records.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Authorized Officer: \_\_\_\_\_

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

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

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

**E-VERIFY AFFIDAVIT**

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

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

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

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

In the presence of:

Signed, sealed and delivered by:

\_\_\_\_\_  
Witness #1 Print Name: \_\_\_\_\_

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

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

\_\_\_\_\_  
Witness #2 Print Name: \_\_\_\_\_

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

**ACKNOWLEDGMENT**

State of Florida

County of \_\_\_\_\_

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

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

- \_\_\_\_\_ Personally known to me; or
- \_\_\_\_\_ Produced identification (Type of Identification: \_\_\_\_\_)
- \_\_\_\_\_ Did take an oath; or
- \_\_\_\_\_ Did not take an oath



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

**TOWN OF SURFSIDE**

**CONTRACTOR**

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

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

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

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

Attest:

Entity: CONTRACTOR, a Florida Corporation

By: \_\_\_\_\_  
Sandra McCready, MMC  
Town Clerk

Approved as to form and legal sufficiency:

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

**Addresses for Notice:**

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

**Addresses for Notice:**

CONTRACTOR  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ (telephone)  
\_\_\_\_\_ (facsimile)  
\_\_\_\_\_ (email)

**With a copy to:**

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

**With a copy to:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ (telephone)  
\_\_\_\_\_ (facsimile)  
\_\_\_\_\_ (email)

**EXHIBIT “A”  
SCOPE OF SERVICES**

**Scope of Services**

The Contractor must provide the following services and tasks:

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

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

**Scope of Optional Services**

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

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

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

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

**EXHIBIT “C”  
RATE SCHEDULE**

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

**EXHIBIT “D”  
CONTRACTOR’S PROPOSAL**

[INSERT THE CONTRACTOR’S PROPOSAL]

May 17, 2022

Hector Gomez, Public Works Director  
Town of Surfside  
9293 Harding Avenue  
Surfside, Florida 33154

**Re: Professional Services Agreement  
CDBG-MIT Town-Wide Drainage Improvement and Stormwater Master Plan**

Dear Mr. Gomez,

Kimley-Horn and Associates, Inc. (“Kimley-Horn” or “Consultant”) is pleased to submit this letter agreement (the “Agreement”) to Town of Surfside (“Client” or “Town”) for providing Stormwater Master Planning services support to the Town.

### **Project Understanding**

The Town has requested that Kimley-Horn provide a stormwater master plan and associated services. This proposal is to be consistent with the terms of the contract between the Town of Surfside and the State of Florida Department of Economic Opportunity; Federally Funded Community Development Block Grant Mitigation Program (CDBG-MIT) Subrecipient Agreement.

### **Scope of Services**

Kimley-Horn will provide the services specifically set forth below.

### **Assumptions**

Kimley-Horn will provide Quality Control Review for all deliverables prior to submittal to the Town of Surfside unless explicitly directed otherwise in writing. Quality Control time will be shown in the Kimley-Horn workplan as principal time on each individual task item where QC will be provided.

## **Task 1: COLLECT, REVIEW, AND ANALYZE CURRENT MAPPING DATA**

### **1.1. PROJECT ADMINISTRATION**

#### **1.1.1. Project Kickoff Meeting**

- A. Kimley-Horn and its subconsultants will attend one (1) Project Kickoff Meeting with the Town to discuss the Project and anticipated improvements, as well as the scope of services, schedule, project administration, communication plan, and invoicing.
- B. Kimley-Horn will prepare a meeting agenda and meeting summary notes of the topics discussed during the Project Kickoff Meeting, including any action items that were agreed to during the meeting. Kimley-Horn will submit the meeting summary notes to the Town.

## 1.1.2. Progress Meetings

- A. Kimley-Horn will schedule and attend up to thirteen (13) progress meetings with the Town project manager and other Town staff. Kimley-Horn anticipates up to four of the meetings (approximately quarterly) will be in person and the remainder will be virtual. Number of progress meetings based on proposed 13-month project schedule. Additional meetings will be considered additional services.
- B. Kimley-Horn will prepare an agenda for each progress meeting as well as summary notes of the topics discussed, including any action items that were agreed to during any of the meetings.

## 1.1.3. Town Council Meetings

- A. Kimley-Horn will prepare for and attend up to three (3) Town Council meetings throughout the duration of the project. Kimley-Horn will be responsible for the development of presentation materials in coordination with Town staff to present to Council.

### ***Deliverables:***

- Meeting Agenda and Notes for each meeting – one (1) electronic copy in .pdf format per meeting
- Presentation materials for Town Council meetings

## 1.2. PUBLIC COORDINATION

### 1.2.1. Public Engagement

- A. Subconsultant will host and attend one resident educational workshop during the Stormwater Master Plan effort. The Town will be responsible for identifying a location and reserving the space for the workshop to be held.
- B. Subconsultant will develop educational materials for the Town. These are anticipated to include public service announcement brochures and similar documents for distribution to Town residents. All draft public engagement materials will be provided to Town staff for review and one (1) round of comment prior to finalizing.

### ***Deliverables:***

- Public meeting notes – one (1) electronic copy in .pdf format from each meeting

## 1.3. DATA COLLECTION AND DOCUMENTATION

### 1.3.1. Initial Data Collection and Review

- A. Kimley-Horn will coordinate with the Town and SFWMD to identify and obtain available data concerning the existing drainage/stormwater management systems within the Town. This data may include:
  - Existing reports/studies,
  - Roadway drainage plans,

- Permit files,
  - Building year-built information from the county property appraiser,
  - Building flooding records,
  - Building FFE information as available,
  - GIS files,
  - Topographic data,
  - NRCS soils,
  - Existing and future land use,
  - Geotechnical reports,
  - Gauge data,
  - NEXRAD data,
  - Historic rainfall data from available gauges,
  - Tidal water level records from available gauges,
  - Historic groundwater level information from well data, and
  - Past flooding documentation as available.
- B. Kimley-Horn will perform one (1) initial site visit to understand general locations of key infrastructure.

**1.3.2.Preliminary Data Gaps Map**

- A. Kimley-Horn will delineate preliminary drainage watersheds within the Town. These preliminary drainage watersheds will be used to develop the model scale for the study. The model scale will be based on the scale needed to define the existing conditions and capture the effects of anticipated improvements.
- B. Kimley-Horn will identify data gaps and locations where field data needs to be collected to obtain the information needed to create an existing conditions model.
- C. The Town will provide Kimley-Horn information regarding infrastructure data that is known to be incorrect and that require additional detail. Kimley-Horn will review this information and in coordination with the Town, determine if data collection is needed for this assessment.
- D. Kimley-Horn will prepare a Data Gaps Map which summarizes the nature and location of data gaps and where additional data is needed. The preliminary drainage basins will be included on the map. Kimley-Horn will provide the map to the Town for review.
- E. The Town will provide Kimley-Horn with any known information that exists in the field that may not have been included in the Data Gaps Map that would affect the model features or scale. Kimley-Horn will address one (1) round of consolidated comments provided by the City on the Data Gaps Map.

**1.3.3.Field Visits**

- A. Kimley-Horn will perform field visits to verify general drainage patterns and drainage structures to be modeled. Field staff will review the following information while in the field:



- Kimley-Horn will estimate the depth to pipe invert utilizing non-survey-grade equipment (e.g. “measure-down” from inlet to approximate invert; inlet elevation estimated from DEM or infrastructure GIS dataset). This effort is reserved for structures where GIS location information already exists in the Town’s GIS dataset. Depth estimates will be captured for catch basins, curb inlets, and unlocked manholes at locations where storm sewer invert information is currently missing.
- Kimley-Horn will also capture locations and approximate depth to pipe invert utilizing the methodology described above. This effort is reserved for structures where GIS location information does not exist in the Town’s GIS dataset, in the area generally bound by 94<sup>th</sup> Street, Collins Avenue, 96<sup>th</sup> Street, and Harding Avenue.
- This effort does not include measurements at manholes that are part of pump stations, manholes for which as-built drawings are available, and manholes within 25 feet of catch basin or curb inlet structures.
- Kimley-Horn will schedule field evaluations to coincide with recent significant rainfall events (greater than 1 hour in duration, or greater than 0.5” in total depth) to the extent possible.
- Field visits under this subtask are limited to up to 17 days in the field for 2 people.
- Effort for this task includes time for processing collected field data in the office.

**Deliverables:**

- Data Gaps Map (electronic deliverable) – one (1) electronic copy in .pdf format of draft and final in accordance with CDBG-MIT documentation requirements
- Data Collection Report in accordance with CDBG-MIT documentation requirements
- Field visit notes and photographs (electronic deliverable)

**1.4. MODEL RECOMMENDATIONS AND ANALYSIS**

**1.4.1. Analysis and Technical Memorandum**

Kimley-Horn will review available data and make recommendations in coordination with the Town for each of the following model items:

- A. Design storms. Kimley-Horn anticipates two design events to be selected by the Town for modeling.
- B. Existing sea level for the existing condition model tailwater
- C. Sea level rise and desired planning horizon
- D. Future groundwater levels for consideration in initial stages
- E. Target level of service

Kimley-Horn will prepare a technical memorandum summarizing the review and analysis performed, findings, and the final recommendations for each item.

The Town will review the technical memorandum for acceptance. Kimley-Horn will make address one (1) round of consolidated comments provided by the Town and provide an updated technical memorandum.

**1.4.2. Project DEM**

- A. Kimley-Horn will review the available topographic data from publicly available LiDAR data. Kimley-Horn will use the information to create a project DEM. It is anticipated that the 2018 Miami-Dade County DEM will be used as the basis for the project DEM and may be supplemented with field data collected under Task 1.3.3.

***Deliverables:***

- Model Recommendations Technical Memorandum – one (1) electronic copy in .pdf format of draft and final in accordance with CDBG-MIT documentation requirements Project DEM

**Task 2: PRODUCE A STORMWATER MODEL**

**2.1. EXISTING CONDITIONS MODEL**

**2.1.1. Model Development**

- A. Kimley-Horn will use the latest version of ICPR4 software, by Streamline Technologies, Inc. to conduct the 1D hydraulic/hydrologic stormwater modeling for this task.
- B. Kimley-Horn will develop an existing conditions stormwater hydraulic and hydrological model based on available data. The model will be developed based on the on the following approach:
  - B.1. Kimley-Horn will develop an existing conditions stormwater hydraulic and hydrological model based on available data and the refined drainage watersheds.
  - B.2. Infiltration losses are to be calculated using the Curve Number methodology. Percent imperviousness and directly connected impervious area (DCIA) will be assigned for each land use type.
  - B.3. Stage-storage relationships will be developed based on the project DEM.
  - B.4. Overland weirs will be developed based on the available project DEM.
  - B.5. Pipes, control structures, and channels (if applicable) will be modeled based on the best available data (survey data or as-built data when available or based on engineering judgement/assumptions when survey or as-built data is not available).
  - B.6. Groundwater is to be modeled as a time-stage node utilizing an assumed offset from known existing tidal conditions as identified in Task 1.4.
  - B.7. Other data such as boundary conditions and rainfall data will be based on the approved recommendations from Task 1.4.

## 2.1.2.Design Storm Model Runs

- A. Kimley-Horn will model the design storm events as recommended and approved in Task 1.4.
- B. Kimley-Horn will map the level pool floodplains for the study area for each design storm event.

### ***Deliverables:***

- Existing conditions flood depth inundation maps in accordance with CDBG-MIT documentation requirements (electronic deliverable)

## **Task 3: DEVELOP THE ADAPTATION STRATEGY**

### **3.1. ALTERNATIVES ANALYSIS**

#### **3.1.1.Needs Assessment**

- A. Kimley-Horn will review the results of the existing conditions model analysis and the field visits performed in Task 1.3.3. Kimley-Horn will meet with the Town one time to review stormwater complaints, identify the locations of stormwater problem areas and collect information relative to problem nature and severity. Kimley-Horn will discuss the results of the review and recommend up to five (5) areas upon which to focus for future stormwater projects.

#### **3.1.2.Alternatives Analysis**

- A. Based on the needs assessment review and the desired level of service, Kimley-Horn will propose up to ten (10) potential design alternatives, two (2) alternatives for each of the five (5) areas identified in Task 3.1.1. These alternatives may be a single improvement or consist of multiple different improvements in an area (e.g., raising roadways and pump stations). Kimley-Horn will consider water quality improvements in this task when selecting improvements for the alternatives analysis.

#### **3.1.3.Design Storm Model Runs**

- A. Kimley-Horn will model the design storm events for the improvement alternatives.
- B. For the improvement alternatives, Kimley-Horn will map the level pool floodplains for each improvement area and for each design storm event.

### ***Deliverables:***

- Alternatives Analysis summary memorandum
- Level pool floodplain maps for each of the ten improvement alternatives (electronic deliverable)

**3.2. FUTURE CONDITIONS ANALYSIS**

**3.2.1. Baseline Future Conditions Model**

- A. Kimley-Horn will modify the existing conditions model to include future condition items as recommended and approved in Task 1.4. These updates will include changes due to sea level rise which may result in changes to modeled boundary conditions, initial stages, and groundwater time-stage information. This updated model will be considered the baseline future conditions model.
- B. Kimley-Horn will model the design storm events for the baseline future conditions.
- C. Kimley-Horn will map the flood inundation depths for each design storm event.

**3.2.2. Improvement Alternatives Modeled Under Future Conditions**

- A. Kimley-Horn will incorporate the improvements proposed under the five improvement alternatives into the baseline future conditions models.
- B. Kimley-Horn will model the design storm events for each improvement alternative with future baseline conditions.
- C. Kimley-Horn will map the flood inundation depths for each improvement area, for each design storm event, and for each of the five improvement alternatives.

***Deliverables:***

- Flood inundation depths (electronic deliverable) for the improvement alternatives under future conditions scenario.
  - Future conditions resilient alternatives
  - Future conditions resilient alternatives under existing conditions

**Task 4: STORMWATER MASTER PLAN**

**4.1. ALTERNATIVES SELECTION**

- 4.1.1. Kimley-Horn will meet with the Town to present the results of the existing and future conditions alternatives analysis. The Town will review the results and provide direction as to which of the two potential design alternatives to be selected.

**4.2. PRELIMINARY OPINION OF PROBABLE COSTS**

- 4.2.1. Kimley-Horn will prepare preliminary opinions of probable cost for the final five alternatives.
  - A. Because the Consultant does not control the cost of labor, materials, equipment or services furnished by others, methods of determining prices, or competitive bidding or market conditions, any opinions rendered as to costs, including but not limited to opinions as to the costs of construction and materials and/or the cost of land acquisition, shall be made on the basis of its experience and represent its judgment as an experienced and qualified professional, familiar with the industry. The Consultant cannot and does not guarantee that proposals, bids, or actual costs will not vary from its opinions of cost. If the Client wishes greater assurance

as to the amount of any cost, it shall employ an independent cost estimator. Consultant's services required to bring costs within any limitation established by the Client will be paid for as Additional Services.

#### **4.3. CAPITAL IMPROVEMENT PLAN**

4.3.1. Kimley-Horn will, in coordination with the Town, prepare a narrative for each recommended alternative. This will serve as the basis for the Town's capital improvement program. If desired, the Town can provide a ranking of the recommended alternatives for inclusion within the Capital Improvement Plan.

4.3.2. The Town will review each narrative and provide input. Kimley-Horn will incorporate the input into the project's final report.

#### **4.4. FINAL TECHNICAL MEMORANDUM**

4.4.1. Kimley-Horn will prepare a draft technical memorandum that describes the analyses and modeling performed to determine the final recommendations.

4.4.2. The Town will review the draft memorandum and provide one (1) round of consolidated comments.

4.4.3. Kimley-Horn will incorporate Town comments and will provide a final memorandum for the Town's future reference and use.

#### **Deliverables:**

- Draft Capital Improvements Narratives in accordance with CDBG-MIT documentation requirements (pdf)
- Draft report (pdf)
- Final report in accordance with CDBG-MIT documentation requirements (pdf)
- Final presentation materials for Town Council meeting

#### **Additional Services**

Any services not specifically provided for in the above scope will be billed as additional services and performed at our then current hourly rates.

#### **Information Provided by Client**

We shall be entitled to rely on the completeness and accuracy of all information provided by the Client or the Client's consultants or representatives.

#### **Schedule**

We will provide our services as expeditiously as practicable with the goal of delivering Tasks 1 through 4 within the anticipated 13-month period of performance. Kimley-Horn anticipates a phasing plan will be developed to further refine the schedule and funding plan prior to project commencement.

**Fee and Expenses**

Kimley-Horn will perform the services in Tasks 1 – 4 on a labor fee plus expense basis with the maximum labor fee shown below.

Task 1	Collect, Review, and Analyze Current Mapping Data	<u>\$ 125,500</u>
Task 2	Produce a Stormwater Model	<u>\$ 49,500</u>
Task 3	Develop the Adaptation Strategy	<u>\$ 44,000</u>
Task 4	Stormwater Master Plan	<u>\$ 36,000</u>
<b>Maximum Labor Fee</b>		<b><u>\$ 255,000</u></b>

Kimley-Horn will not exceed the total maximum labor fee shown without authorization from the Client. Individual task amounts are provided for budgeting purposes only. Kimley-Horn reserves the right to reallocate amounts among tasks as necessary.

Labor fee will be billed on an hourly basis according to our then-current rates. As to these tasks, direct reimbursable expenses such as express delivery services, fees, air travel, and other direct expenses will be billed at 1.15 times cost. A percentage of labor fee will be added to each invoice to cover certain other expenses as to these tasks such as telecommunications, in-house reproduction, postage, supplies, project related computer time, and local mileage. Administrative time related to the project may be billed hourly. All permitting, application, and similar project fees will be paid directly by the Client. Should the Client request Kimley-Horn to advance any such project fees on the Client’s behalf, a separate invoice for such fees, with a fifteen percent (15%) markup, will be immediately issued to and paid by the Client.

Payment will be due within 25 days of your receipt of the invoice and should include the invoice number and Kimley-Horn project number.



## MEMORANDUM

ITEM NO. 3J.

**To:** Honorable Mayor, Vice-Mayor and Members of the Town Commission

**From:** Andrew Hyatt, Town Manager

**Date:** June 14, 2022

**Subject:** **Authorization to Award Disaster Debris Monitoring Services to Whitt O' Brien's per RFP 2022-01 Disaster Debris Monitoring Evaluation Committee Recommendation**

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Town Administration recommends awarding Disaster Debris Monitoring Services contract to Whitt O' Brien's for a period of 8 years, unless terminated earlier by the Town.

During a declared emergency, disaster debris may be encountered throughout the Town that requires removal. Since the Town seeks federal assistance through the Federal Emergency Management Administration (FEMA) for cost reimbursements, certain criteria's are required during the federal grant reimbursement process. These include, legal procurement of vendors used through a Federally approved Request for Proposal (RFP) and certification of all debris loads by a monitoring contractor. All procurement documents pertaining to RFP No. 2022-01, Disaster Debris Monitoring Services, were reviewed by Florida Department of Emergency Management (FDEM) for federal compliance.

On December 3, 2021, the Town issued RFP No. 2022-01, Disaster Debris Monitoring Services, with opening date occurring on January 27, 2022. After evaluation committee review, Whitt O' Brien's proposal was deemed responsive and recommended for contracting. There are no fiscal year budget impacts as the contract is only activated during a declared emergency as a result of generated disaster debris.

[Resolution Selecting and Awarding Contract to Witt O'Brien's LLC for Disaster Debris Monitoring Services.DOCX](#)

[Disaster Debris Monitoring Contract - Witt O Briens.PDF](#)

**RESOLUTION NO. 2022-\_\_\_\_\_**

**A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, SELECTING AND AWARDING AN AGREEMENT TO WITT O'BRIEN'S LLC FOR DISASTER DEBRIS MONITORING SERVICES PURSUANT TO RFP NO. 2022-01; PROVIDING FOR AUTHORIZATION; PROVIDING FOR IMPLEMENTATION; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, on December 3, 2021, the Town issued Request for Proposals (RFP) No. 2022-01 seeking qualified firms for disaster debris monitoring services (the "Services"); and

**WHEREAS**, in response to the RFP, the Town received one proposal; and

**WHEREAS**, after reviewing the proposal submitted by Witt O'Brien's LLC (the "Contractor"), the Evaluation Committee determined that the Contractor's proposal was responsive and recommended award of an Agreement to the Contractor based on the proposal; and

**WHEREAS**, based on the Evaluation Committee and Town Administration's recommendation, the Town Commission wishes to select the Contractor's proposal and award the Contractor an agreement for the Services in substantially the form attached hereto as Exhibit "A" (the "Agreement"), subject to final approval as to form and content by the Town Manager and legal sufficiency by the Town Attorney; and

**WHEREAS**, the Town Council finds that the award of an Agreement for the Services to the Contractor and this Resolution are in the best interest and welfare of the Town.

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

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



**Section 2. Selection of Contractor and Award of Agreement.** The Town Commission hereby selects the Contractor’s proposal and awards the Contractor an Agreement for the Services, in substantially the form attached hereto as Exhibit “A.”

**Section 3. Authorization to Execute Agreement.** The Town Manager is authorized to execute the Agreement, in substantially the form attached hereto as Exhibit “A,” with the Contractor on behalf of the Town, subject to the approval as to form and legal sufficiency by the Town Manager and Town Attorney.

**Section 4. Implementation.** That the Town Manager and Town Officials are hereby authorized to take any and all actions which are necessary to implement the Services, the Agreement for the Services, and the purposes of this Resolution.

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

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

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

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

**FINAL VOTE ON ADOPTION:**

Commissioner Fred Landsman \_\_\_\_\_

Commissioner Marianne Meischeid \_\_\_\_\_

Commissioner Nelly Velasquez \_\_\_\_\_

Vice Mayor Jeffrey Rose \_\_\_\_\_

Mayor Shlomo Danzinger \_\_\_\_\_

\_\_\_\_\_  
Shlomo Danzinger, Mayor

**ATTEST:**

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Sandra McCready, MMC  
Town Clerk

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

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

**PROFESSIONAL SERVICES AGREEMENT  
BETWEEN  
THE TOWN OF SURFSIDE  
AND  
WITT O'BRIEN'S LLC**

**THIS AGREEMENT** (this "Agreement" or this "Contract") is made effective as of the \_\_\_\_\_ day of \_\_\_\_\_, 2022 (the "Effective Date"), by and between the **TOWN OF SURFSIDE**, a Florida municipal corporation (hereinafter the "Town"), and **WITT O'BRIEN'S LLC**, a Delaware corporation (hereinafter, the "Consultant").

**WHEREAS**, on December 3, 2021, the Town issued Request for Proposals (RFP) No. 2022-01 seeking qualified firms for Disaster Debris Monitoring Services, which RFP is incorporated herein by reference; and

**WHEREAS**, Consultant submitted a proposal in response to the RFP for Disaster Debris Monitoring Services (the "Services"); and

**WHEREAS**, the Consultant and the Town, through mutual negotiation, have agreed upon Price Schedule for the Services; and

**WHEREAS**, the Town desires to engage the Consultant to perform the Services, and to 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.** The Consultant shall provide the Services as set forth in the Scope of Services and the Consultant's Proposal, which are attached hereto as Exhibits "A" and "B", respectively, and incorporated herein by reference (collectively, the "Services"). The Consultant shall perform the Services in compliance and in accordance with FEMA guidelines, including the FEMA Public Assistance Program and Policy Guide (PAPPG), as may be amended or superseded, and the FEMA Public Assistance Debris Monitoring Guide, as may be amended or superseded (hereinafter, the "FEMA Guidelines").

**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 commence on the Effective Date and continue for eight (8) years thereafter, unless earlier terminated in accordance with Paragraph 8.

**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.

**3. Compensation and Payment.**

**3.1. Compensation for Services.** Consultant will invoice the Town and be paid for the contracted Service in accordance with the rates as set forth in the Price Submittal Schedule Form for Disaster Debris Monitoring Services attached hereto as Exhibit “C.”

**3.2.** In the event that the FEMA Guidelines are amended or superseded, the Consultant may request reasonable and necessary adjustments to the Rates to the extent the revised FEMA Guidelines require modifications or additions to the scope of Services in order to remain eligible for reimbursement by FEMA. Any adjustment to the Rates may be negotiated by the Town Manager and must be approved by the Town Manager in writing. The Rates for portions of the Services that are not modified or expanded by such changes to the FEMA Guidelines shall remain firm and fixed. The Consultant must make any request for adjustment at least 60 days before June 1 or after November 30 of each year.

**3.3.** Consultant shall deliver an invoice to Town no more often than once per month detailing Services completed and the amount due to Consultant under this Agreement. Fees shall be paid in arrears each month, pursuant to Consultant’s invoice, which shall be based upon the percentage of work completed for each task invoiced. The Town shall pay the Consultant in accordance with the Florida Prompt Payment Act after approval and acceptance of the Services by the Town Manager.

**4. Subcontractors.**

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

**4.2.** Consultant 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 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.** 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. 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 Consultant’s Deliverables or Services are incorrect, not properly rendered, defective, or fail to conform to Town requests, the

Consultant shall at Consultant's sole expense, immediately correct its Deliverables or Services.

**6.2.** 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.** 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 services to any private sector entities (corporations, developers, corporations, real estate investors, etc.), with any current, or foreseeable, adversarial issues in the Town related to this Agreement and the performance of the Services.

## **8. Termination.**

**8.1.** The Town Manager, without cause, may terminate this Agreement upon five (5) 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 Services unless directed otherwise by the Town Manager.

**8.3.** In the event of termination by the Town, Consultant shall be paid for all Services 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.** 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 fourteen (14) days from the date of the written notice of termination or the date of expiration of this Agreement.

**8.5.** In the event the Town is in default with the terms of this Agreement, the Consultant shall provide written notice to the Town Manager of such default and provide the Town seven (7) calendar days to cure such default. If the Town remains in default seven (7) calendar days after providing the Town Manager written notice of such default, the Consultant may terminate 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.** 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 the final 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. 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. 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. 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 reasonable 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.** Consultant 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, to the extent 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 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 to the extent 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.

**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 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 Consultant during the term of this Agreement ("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@townofsursidefl.gov](mailto:smccready@townofsursidefl.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.** 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.**
- 20.1.** Consultant shall comply with all applicable laws, ordinances, rules, regulations, and lawful orders of public authorities in carrying out Services under this Agreement, including federal, State of Florida, Miami-Dade County, the Town, and shall obtain all required permits from all jurisdictional agencies to perform the Services under this Agreement at its own expense. The Consultant shall provide the Services in compliance with Resolution No. 2019-2646, incorporated herein by this reference and made a part hereof, and Chapter 90, Article VIII, "Landscape Requirements" of the Town Code of Ordinances.
- 20.2.** The Consultant will comply with all applicable Federal law, regulations, executive orders, FEMA policies, procedures, and directives.
- 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.** 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.** This document, without exhibits or attachments, is the “Base Agreement.” In the event of a conflict between the terms of the Base Agreement and any exhibits or attachments hereto, the terms of the Base Agreement shall control.

In the event of a conflict between the terms of any exhibits or attachments hereto, or any documents incorporated herein by reference, the conflict shall be resolved in the following order of priorities and the more stringent criteria for performance of the Services shall apply:

- 26.1.** First Priority: Exhibit D – FEMA Contract Provisions Guide;
  - 26.2.** Second Priority: this Base Agreement;
  - 26.3.** Third Priority: Exhibit C – Rate Schedule;
  - 26.4.** Fourth Priority: Exhibit A – Scope of Services;
  - 26.5.** Fifth Priority: the RFP; and
  - 26.6.** Sixth Priority: Exhibit B – Consultant’s Proposal.
- 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 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 entering into this Agreement, the Consultant 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.
- 29. Federally Required Clauses.** In the performance of all Services under this Agreement, the Consultant shall adhere to (1) the FEMA Guidelines (as may be amended or superseded), (2) the contract provisions listed under 2 CFR Part 200, Appendix II, and (3) all applicable contract provisions and guidance in the FEMA Contract Provisions Guide, as may be amended from time to time and which is attached hereto as Exhibit “D.” The Consultant shall comply with the following terms and provisions for all Disaster Debris Monitoring Services:
- 29.1. Equal Employment Opportunity.** During the performance of this Agreement, the Consultant agrees as follows:
- 1) The Consultant will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender

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

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

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

remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

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

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

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

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

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

**29.2. Compliance with the Davis-Bacon Act.** As applicable, during the performance of this Agreement, the Consultant agrees as follows:

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

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

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

**29.3. Compliance with the Copeland “Anti-Kickback” Act.** As applicable, during the performance of this Agreement, the Consultant agrees as follows:

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

b. Subcontracts. The Consultant or subcontractor shall insert in any subcontracts the clause above and such other clauses as FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Consultant shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.

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

**29.4. Compliance with the Contract Work Hours and Safety Standards Act.** As applicable, during the performance of this Agreement, the Consultant agrees as follows:

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

**29.4.2. Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in paragraph (1) of this section the Consultant and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, the Consultant and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (a) of this

section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (a) of this section.

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

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

**29.5.        Rights to Inventions Made under this Agreement.**

**29.5.1.** As applicable, if the Consultant is engaged for the performance of experimental, developmental, or research, the Consultant's work shall provide for the rights of the Federal Government and the recipient in any resulting invention in accordance with 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the Federal Government.

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

**29.6.1. Clean Air Act.**

29.6.1.1. The Consultant agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.

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

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

**29.6.2. Federal Water Pollution Control Act**

- 29.6.2.1. The Consultant agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
- 29.6.2.2. The Consultant agrees to report each violation to the Town and understands and agrees that the Town will, in turn, report each violation as required to assure notification to The State of Florida, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- 29.6.2.3. The Consultant agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.
- 29.7. Suspension and Debarment.** During the performance of this Agreement, the Consultant agrees as follows:
- 29.7.1.** This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the Consultant is required, and will, verify that neither Consultant, its principals (defined at 2 C.F.R. § 180.995), nor its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
- 29.7.2.** The Consultant will comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters.
- 29.7.3.** Consultant's certification is a material representation of fact relied upon by the Town. If it is later determined that the Consultant did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to The State of Florida, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
- 29.7.4.** The Consultant agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C throughout the period this Agreement. The Consultant further agrees to include a provision requiring such compliance in its lower-tier covered transactions.
- 29.8. Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended).** During the performance of this Agreement, the Consultant agrees as follows:
- 29.8.1.** The Consultant certifies to the Town that it has not and will not use Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. *The required Certification is attached to this Addendum to the Agreement.*
- 29.8.2.** Consultant will also ensure that each tier of subcontractor(s) shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures will be forwarded from tier-to-tier up to the Town.
- 29.9. Procurement of Recovered Materials.** As required by federal program legislation, Consultant agrees to the following:



**29.9.1.** In the performance of this contract, the Consultant shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired:

29.9.1.1. competitively within a timeframe providing for compliance with the contract performance schedule;

29.9.1.2. meeting contract performance requirements; or

29.9.1.3. at a reasonable price.

**29.9.2.** Information about this requirement, along with the list of EPA-designate items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

**29.9.3.** The Consultant also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

**29.10. DHS Seals, Logos, and Flags.** The Consultant shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.

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

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

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

**29.14. Access to Records.**

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

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

**29.14.3.** The Consultant agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.

**29.14.4.** In compliance with the Disaster Recovery Act of 2018, the Town and the Consultant acknowledge and agree that no language in this Agreement is intended to

prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

**29.15. Affirmative Socioeconomic Steps/Small and Minority Businesses, Women’s Business Enterprises.**

**29.15.1.** Consultant shall comply with 2 C.F.R. § 200.321, “Contracting with small and minority businesses, women’s business enterprises, and labor surplus area firms.”

**29.15.2.** If subcontracts are to be let, the Consultant is required to take all necessary steps identified in 2 C.F.R. § 200.321(b)(1)-(5) to ensure that small and minority businesses, women’s business enterprises, and labor surplus area firms are used when possible.

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

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

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

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

**29.17. Remedies.** Town confirms that it is entitled to exercise all administrative, contractual, or other remedies permitted by law to enforce Consultant’s compliance with the terms of this Agreement, except to the extent expressly provided otherwise by this Agreement.

**29.18. Prohibition on Contracting for Covered Telecommunications Equipment or Services.** If applicable, the Consultant shall agree as follows:

**29.18.1.** The Town and the Consultant must comply with the Section 889(b)(1) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (FY2019)

NDAA) and 2 C.F.R. 200.216, which prohibits the obligation or expending of federal award funds on certain telecommunication products or from certain entities for national security reasons. Towards that end, the Consultant shall ensure that the Consultant and its subcontractors do not:

**29.18.2.** Procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;

**29.18.3.** Enter into, extend, or renew a contract to procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as substantial or essential component of any system or as critical technology of any system; or

**29.18.4.** Enter into, extend or renew contracts with entities that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

Additional information, including definitions for this requirement can be found in FEMA Policy 405-143-1. Prohibitions on Expending FEMA Award Funds for Covered Telecommunications Equipment or Services (Interim).

**29.19. Domestic Preference for Procurements.** As appropriate, and to the extent consistent with law, the Consultant should, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States. This includes, but is not limited to iron, aluminum, steel, cement, and other manufactured products. For purposes of this clause:

**29.19.1.** *Produced in the United States* means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

**29.19.2.** *Manufactured products* mean items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

**29.20. License and Delivery of Works Subject to Copyright and Data Rights and Privacy Training.** If applicable, the Consultant shall agree as follows:

**29.20.1.** The Consultant grants to the Town, a paid-up, royalty-free, nonexclusive, irrevocable, worldwide license in data first produced in the performance of this contract to reproduce, publish, or otherwise use, including prepare derivative works, distribute copies to the public, and perform publicly and display publicly such data. For data required by the contract but not first produced in the performance of this contract, the Consultant will identify such data and grant to the Town or acquires on its behalf a license of the same scope as for data first produced in the performance of this contract. Data, as used herein, shall include any work subject to copyright under

17 U.S.C. § 102, for example, any written reports or literary works, software and/or source code, music, choreography, pictures or images, graphics, sculptures, videos, motion pictures or other audiovisual works, sound and/or video recordings, and architectural works. Upon or before the completion of this contract, the Consultant will deliver to the Town data first produced in the performance of this contract and data required by the contract but not first produced in the performance of this contract in formats acceptable by the Town.

**29.21. Safeguarding of Sensitive Information and Information Technology Security and Privacy Training.**

**29.21.1.** Applicability. This clause is applicable when the Consultant has access to sensitive information or the Consultant’s IT system as defined in the agreement that are used to input, store, process, output and/or transmit sensitive data. If applicable, this clause shall apply to the Consultant, its subcontractors, and Consultant employees (hereafter referred to collectively as “Consultant”). The Consultant shall insert the substance of this clause in all subcontracts.

**29.21.2.** Definitions. As used in this clause— “Personally Identifiable Information (PII)” means information that can be used to distinguish or trace an individual’s identity, such as name, social security number, or biometric records, either alone, or when combined with other personal or identifying information that is linked or linkable to a specific individual, such as date and place of birth, or mother’s maiden name. The definition of PII is not anchored to any single category of information or technology. Rather, it requires a case-by-case assessment of the specific risk that an individual can be identified. In performing this assessment, it is important for an agency to recognize that non-personally identifiable information can become personally identifiable information whenever additional information is made publicly available—in any medium and from any source—that, combined with other available information, could be used to identify an individual.

PII is a subset of sensitive information. Examples of PII include, but are not limited to: name, date of birth, mailing address, telephone number, Social Security number (SSN), email address, zip code, account numbers, certificate/license numbers, vehicle identifiers including license plates, uniform resource locators (URLs), static Internet protocol addresses, biometric identifiers such as fingerprint, voiceprint, iris scan, photographic facial images, or any other unique identifying number or characteristic, and any information where it is reasonably foreseeable that the information will be linked with other information to identify the individual.

(a) *Sensitive Information*, as used in this clause, means any information, which if lost, misused, disclosed, or, without authorization is accessed, or modified, could adversely affect the national or homeland security interest, the conduct of Federal programs, or the privacy to which individuals are entitled under section 552a of title 5, United States Code (the Privacy Act), but which has not been specifically authorized under criteria established by an Executive Order or an Act of Congress to be kept secret in the interest of national defense, homeland security or foreign policy. This definition includes the following categories of information:

- (1) Protected Critical Infrastructure Information (PCII) as set out in the Critical Infrastructure Information Act of 2002 (Title II, Subtitle B, of the Homeland Security Act, Pub. L. 107-296, 196 Stat. 2135), as amended, the implementing regulations thereto (Title 6, Code of Federal Regulations, part 29) as amended, the applicable PCII Procedures Manual, as amended, and any supplementary guidance officially communicated by an authorized official of the Department of Homeland Security (including the PCII Program Manager or his/her designee);
  - (2) Sensitive Security Information (SSI), as defined in Title 49, Code of Federal Regulations, part 1520, as amended, "Policies and Procedures of Safeguarding and Control of SSI," as amended, and any supplementary guidance officially communicated by an authorized official of the Department of Homeland Security (including the Assistant Secretary for the Transportation Security Administration or his/her designee);
  - (3) Information designated as "For Official Use Only," which is unclassified information of a sensitive nature and the unauthorized disclosure of which could adversely impact a person's privacy or welfare, the conduct of Federal programs, or other programs or operations essential to the national or homeland security interest; and
  - (4) Any information that is designated "sensitive" or subject to other controls, safeguards or protections in accordance with subsequently adopted homeland security information handling procedures.
- (b) "Information Technology Resources" include, but are not limited to, computer equipment, networking equipment, telecommunications equipment, cabling, network drives, computer drives, network software, computer software, software programs, intranet sites, and internet sites.
- (c) Consultant employees working on this contract must complete such forms as may be necessary for security or other reasons, including the conduct of background investigations to determine suitability. Completed forms shall be submitted as directed by the Contracting Officer. Upon the Contracting Officer's request, the Consultant's employees shall be fingerprinted, or subject to other investigations as required. All Consultant's employees requiring recurring access to Government facilities or access to sensitive information or IT resources are required to have a favorably adjudicated background investigation prior to commencing work on this contract unless this requirement is waived under Departmental procedures.
- (d) The Contracting Officer may require the Consultant to prohibit individuals from working on the contract if the Government deems their initial or continued employment contrary to the public interest for any reason, including, but not limited to, carelessness, insubordination, incompetence, or security concerns.
- (e) Work under this contract may involve access to sensitive information. Therefore, the Consultant shall not disclose, orally or in writing, any sensitive information to any person unless authorized in writing by the Contracting Officer. For those Consultant employees authorized access to sensitive information, the Consultant shall ensure that these persons receive training concerning the protection and disclosure of sensitive information both during and after contract performance.

(f) The Consultant shall include the substance of this clause in all subcontracts at any tier where the subcontractor may have access to Government facilities, sensitive information, or resources.

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

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

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

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

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

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

Authorized Officer: \_\_\_\_\_

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

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

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

**E-VERIFY AFFIDAVIT**

In accordance with 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**

**WITT O'BRIEN'S LLC:**

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

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

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

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

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

Attest:

By: \_\_\_\_\_  
Sandra McCready, MMC  
Town Clerk

Approved as to form and legal sufficiency:

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

**Addresses for Notice:**

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

**Addresses for Notice:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ (telephone)  
\_\_\_\_\_ (facsimile)  
\_\_\_\_\_ (email)

**With a copy to:**

Weiss Serota Helfman Cole & Bierman, P.L.  
Attn: Lillian M. Arango, Esq.  
Town of Surfside Attorney  
2800 Ponce de Leon Boulevard, Suite 1200  
Coral Gables, FL 33134  
larango@wsh-law.com (email)

**With a copy to:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ (telephone)  
\_\_\_\_\_ (facsimile)  
\_\_\_\_\_ (email)

**EXHIBIT "A"**  
**SCOPE OF SERVICES**

**SECTION 3**  
**SCOPE OF SERVICES**

**3.1.INTRODUCTION.**

Communities with a debris management plan are better prepared to restore public services and ensure the public health and safety in the aftermath of a disaster, and are better positioned to receive the full level of assistance available from Federal Emergency Management Agency (“FEMA”) and other participating entities. The Town of Surfside (the “Town”) is soliciting proposals for disaster debris removal monitoring services to support the oversight and management of debris recovery contractors and submit and/or assist in Town applications for public assistance from FEMA, the State of Florida, the Florida Division of Emergency Management (“FDEM”), and other relevant agencies. The Contractor shall have a comprehensive understanding of FEMA’s Public Assistance Program and shall provide oversight and management of debris recovery contractors. The Contractor’s management of debris recovery contractors shall include, but is not limited to: field monitoring of debris removal and reduction, truck certification, damage assessment, training, emergency planning, and other related services as needed and/or requested by the Town. Other related services include facilitating communication with FEMA, the State of Florida, FDEM, and other federal agencies, and coordination with the FDEM’s FEMA liaison. Finally, the Contractor shall submit and/or assist in the submission of Town applications for public assistance from FEMA, the State of Florida, FDEM, and other relevant agencies.

Towards that end, Successful Proposers will be required to provide the services detailed herein.

**3.2.PROJECT MANAGEMENT.**

The Contractor shall:

- 3.2.1. Provide trained staff and necessary equipment to properly provide the services outlined throughout this solicitation. The Contractor’s equipment shall include, but not be limited to personal protective equipment (e.g., traffic vest, hard hat, gloves, etc.), safety equipment (e.g., traffic cones, barricades, etc.), transportation, and electronic and telecommunication devices (e.g., digital cameras, tablets, lap tops, communication devices, Global Positioning Systems (GPS) etc.) at no additional cost to the Town.
- 3.2.2. Monitor and manage the debris removal contractors. The Contractor shall schedule work for all project management team members and debris recovery contractors on a daily basis.
- 3.2.3. Determine the impact and magnitude of the disaster event before federal assistance is requested, identify damaged locations and facilities, prepare pre and post disaster estimates of debris quantities, document eligible costs and describe the physical and financial impact of the disaster.
- 3.2.4. Assign a Project Manager and an Operations Manager. The Project Manager shall be assigned as the Town’s point of contact. The Operations Manager shall oversee and manage each debris recovery contractor and shall be supported by Field Supervisors. At the discretion of the Town, the Project Manager may be physically located in the Town’s Emergency Operations Center or other location specified by the Town. The Project Manager shall be supported by the full array of Contractor’s resources to enhance efficiency and expedite deliverables.
- 3.2.5. Monitor progress of debris recovery contractors, including issuance and electronic

recording of load tickets, develop/implement recommendations to improve efficiency speeding up recovery work.

- 3.2.6. Provide post debris staging services including certifying volumetric capacity of trucks designated to remove debris from the site; monitor and record each and every contractor or other entities removing debris, document the type of debris removed and the volume of each load removed from the staging site and document the final disposal location(s) for each removed load; when requested by the Town, prepare the staging site closure plan; oversee and document staging area contractor restoration and site closure activities, certify completion of site closure in accordance with plan, and provide final site closure report to Town, FEMA and any regulatory agencies having jurisdiction over the site or activities.
- 3.2.7. Provide and use hand-held electronic device(s) and state-of-the-art technology for documentation and data management including Automated Debris Management Systems (ADMS). The ADMS solution shall include automatic truck certification, right-of-way (ROW) collection, tree work (leaners/hangers/stumps), private property debris removal (PPDR), demolitions, haul out/disposal, and monitor time management. A web-based application shall be provided to allow access to viewing by Town Staff, Officials, and the general public. Ability to provide querying, sorting, reporting, mapping and managing project related data and documents. This shall include a web-based GIS application that integrates geospatial and relational data to enhance management and public information capabilities. Additionally, the software shall include a web-based portal that serves as the client and contractor information center for project costs, electronic tickets, accounting transactions and invoices. In addition to the general specifications of the ADMS systems, the following features must be supported:
  - 3.2.7.1. Generation of electronic load and disposal tickets with encrypted QR codes.
  - 3.2.7.2. Electronic registration of contractor vehicles and equipment.
  - 3.2.7.3. Disconnected operational mode to ensure functionality regardless of cellular network
  - 3.2.7.4. Multi-point GPS tagging that include load origin and disposal location documented via GPS
  - 3.2.7.5. Ability to digitally capture field documents in PDF form.
  - 3.2.7.6. Redundant data storage and duplicate databases for contractor and government use.
- 3.2.8. Conduct inspections and certify load capacity of each truck used by debris recovery contractors including: development and maintenance of a certified truck database with records of measurements, truck photos, certified truck capacity and other pertinent vehicle information (e.g. owner, vehicle registration, company etc.).
- 3.2.9. Upon request by the Town, the Contractor shall assist the Town in responding to public concerns regarding property damage assessment, replacement of damaged property, status of clean-up, clean-up target dates, etc.
- 3.2.10. Document damages caused to private properties and public lands this includes obtaining proper Right of Entry, if applicable.
- 3.2.11. Review and reconcile contractor invoices for payment and prepare FEMA work sheets for reimbursement for debris hauling, monitoring, reduction, and disposal efforts. The Contractor, in performing services related to review of invoices and

payment requests and the rejection and approval thereof, agrees to perform all of its services for the Town in strict compliance with this Solicitation and Part VII of Chapter 218 of the Florida Statutes titled “Local Government Prompt Payment Act” as if it were the local government entity. If a dispute arises between the Contractor and the debris recovery contractor concerning payment of an invoice or payment request, the Contractor shall immediately notify the Town in writing of such dispute.

- 3.2.12. The Contractor shall submit and/or assist in the submission of Town applications for public assistance from FEMA, the State of Florida and other relevant agencies.
- 3.2.13. Make available project documents and data, in hard copy and through an electronic database, to designated Town personnel. The Town shall have access to hard copy project documents and data during normal business hours (Monday through Friday 8:00 a.m. to 5:00 p.m.). The Town shall have complete access all electronic documents 24 hours a day during the entire term and of the contract and following the completion of the contract.
- 3.2.14. Digitize all source documentation in PDF format, such as load tickets supplied to the Town with each invoice, as required by FEMA and to be compatible with the Town system that utilizes Microsoft Office.
- 3.2.15. Establish a Project Management Team to support the Project Manager listed in item two of this section. Members of the Project Management Team may include, but are not limited to the following:
  - (a) Project Manager
  - (b) Operations Manager/Assistant Project Manager
  - (c) FEMA Reimbursement Manager
  - (d) Field Supervisor
  - (e) Truck Certifier
  - (f) Staff Scheduler/Truck Dispatcher
  - (g) Damage/Debris Assessment Specialist
  - (h) Collection Monitor, Disposal Monitor, Flagmen/Traffic Controllers
  - (i) Data Clerk
  - (j) Engineer/Scientist

The Contractor may add other positions to the Project Management Team, as necessary, with the written approval of the Town’s Project Manager. The Contractor is encouraged to utilize local work force as available, as travel and lodging are not covered by the Town.

### **3.3.RESPONSE TIME AND MOBILIZATION.**

The Town has the sole discretion to determine whether an event is predicted or unpredicted. The Contractor shall respond to predicted events and unpredicted events as follows:

- 3.3.1. *Predicted Events.* A “Predicted Event” shall mean a debris generating event that can be anticipated at least 24 hours before it affects the Town, for example a tropical weather system. The Contractor, when requested by the Town, shall report to the location designated by the Town, at a minimum of 24 hours prior to a predicted emergency event.
- 3.3.2. *Unpredicted Events.* An “Unpredicted Event” shall mean a debris generating event that cannot be anticipated at least 24 hours before it affects the Town, for example a

tornado. Emergencies other than predicted events, the Contractor shall report within six (6) hours of notification to the location specified by the Town authorized representative. The Contractor shall mobilize a staff of sufficient size to adequately administer and monitor debris operations, as indicated herein.

### **3.4.MEETING AND COMMUNICATIONS.**

The Contractor shall:

- 3.4.1. Maintain open, timely conversations and written documentation with the Town, FDEM and FEMA to provide successful completion of the disaster response.
- 3.4.2. Meet with Town representatives as directed and coordinate with the Town throughout the execution of the recovery operations.
- 3.4.3. Attend pre-work conferences(s) for the debris recovery contractors, as directed by the Town, and convene and attend regular progress and coordination meetings, as directed by the Town.
- 3.4.4. Provide minutes in an electronic format of all meetings to the Town. Minutes shall be provided the next business day after the meeting occurs.
- 3.4.5. Coordinate daily briefings, work in progress, staffing, and other key items with the Town's Project Manager.

### **3.5.OPERATIONAL REPORTS AND OTHER DOCUMENTATION.**

The Contractor shall prepare and submit to the Town throughout the duration of the recovery operations the following reports:

- 3.5.1. Operational Reports shall document the current status of the Contractor's operational details such personnel levels, equipment status, status of debris management sites, summary of the Daily Reports as required below, and items as may be required by the Town. The reporting frequency for the Operational Reports is to be determined by the Town.
- 3.5.2. Daily Reports shall document the debris recovery contractors' activities and progress from the previous day. The daily reports shall be submitted by 8:00 a.m. of the following day to a distribution list established by the Town's Project Manager. Each daily report submitted shall contain at a minimum the following information:
  - (a) Name of each Contractor;
  - (b) Number of Contractors including the number of crew members working each day, number of loads removed, estimated cubic yards removed for the day and the respective number of cumulative loads and cubic yards removed;
  - (c) Reports and graphs that document the production rate of crews, equipment, progress by area and estimation of total quantities remaining, estimated time to completion, and daily cumulative cubic yards of debris removed, processed and hauled); and
  - (d) Geographic Information Systems (GIS) mapping data updates and digitized reports. All required GIS layers will be provided to the Contractor by the Town's authorized representative, prior to an event or as soon as possible to ensure up to data files and consistency in field structure.
  - (e) Report of cubic yards, converted to tonnage, if available, of debris delivered to the facilities.
  - (f) Other reports as required by FEMA.

Customized reports shall be made available by the Contractor to the Town at no additional cost. Upon request for a customized report, the Contractor will make every reasonable effort to provide the Town with a draft of the report within 48 hours or less for the Town's review and approval. If the complexity of the report requires in excess of 48 hours, the Contractor's Project Manager will keep the Town informed as to the progress and expected delivery and if possible, provide the requested data in a temporary format (such as Excel) until the final report can be delivered. *At the Town's sole discretion, additional reporting information and data may be required.*

### **3.6.FIELD MONITORING.**

Each debris recovery location shall have at minimum (1) collection monitor. The Collection Monitor shall oversee the debris recovery crew for contract compliance, efficiency and regulatory compliance. The Collection Monitor shall provide feedback to the Town through a Field Supervisor. Responsibilities of Contractor's Project Manager, and the Project Management Team, including the Collection Monitors, shall include, but not be limited to:

- 3.6.1. Document daily and weekly recovery work and costs ensuring that proper records are maintained for load tickets, using a hand-held electronic data management device. This documentation is required as evidence to support and document recovery costs and reimbursement of the Town.
- 3.6.2. Inspect the means and methods, according to FEMA's guidelines for reimbursement, to measure and record work, recommending changes that may be needed.
- 3.6.3. Stop work in progress that is not being performed or documented in the appropriate manner.
- 3.6.4. Inspect work in progress to ensure that removal efforts include debris of the proper type according to Town and FEMA classification in the proper areas as assigned by Town authorized representative.
- 3.6.5. Check work in progress to ensure that the proper work authorizations, permits, and other regulatory requirements and prerequisites have been received and approved.
- 3.6.6. Verify that all debris sites and staging areas have adequate access control and security.
- 3.6.7. Recommend any improvements in work assignments and/or efficiency and productivity that may be appropriate.
- 3.6.8. Maintain digital photo documentation of recovery work, as required by the Town.

### **3.7.DEBRIS SITE AND STAGING AREA MONITORING.**

The Contractor shall ensure that a minimum of four (4) Disposal Monitors per debris site and/or staging area are deployed upon establishment of each site to assess and record load volumes and provide coordination and perform other related activities necessary for reimbursement by FEMA. The Town authorized representative will advise if additional Disposal Monitors are required depending on the size of the debris site and/or staging areas.

### **3.8.PUBLIC AND PRIVATE PROPERTY DAMAGE ASSESSMENTS.**

The Contractor shall assign Damage Assessment Specialists to document field damages to private properties and public lands and to notify contractors of their responsibilities in repairing damages.

In the event that damages are not repaired to the satisfaction of the homeowner and/or government entity, and where the debris removal contractor claims no further responsibility, the documentation from each of these incidents shall be turned over to the Town's Public Works Department for final resolution.

### **3.9.PRIVATE PROPERTY DEBRIS REMOVAL (PPDR) MONITORING AND RIGHTS-OF-ENTRY (ROE).**

The Contractor shall ensure that PPDR occurs in conformance with FEMA Public Assistance (PA) guidance and related governmental legal requirements. Private property debris removal can be deemed ineligible for FEMA reimbursement unless the Contractor follows FEMA guidance and complies with the below:

- 3.9.1. The Contractor in coordination with the Town can satisfactorily demonstrate (including providing relevant documentation) that the PPDR was in the public interest.
- 3.9.2. The Contractor has ensured in coordination with the Town that the proper legal authority exists to perform debris removal activities on private property this includes the relevant indemnifications of the federal government to include FEMA.
- 3.9.3. The Contractor has monitored for applicable permits or approvals for the locations of temporary debris staging and reduction sites and final debris disposal sites, and the Contractor has ensured the satisfaction of all legal processes and obtained permission from the property owners (rights-of-entry or other unconditional authorization) and agreements to indemnify and hold harmless the Federal government.
- 3.9.4. ROEs should be developed in coordination with the Town for approval and review by FDEM/FEMA prior to use.
- 3.9.5. Debris Removal from Commercial Property Removal of debris from commercial properties, such as industrial parks, golf courses, cemeteries, apartments, condominiums, and trailer parks, is generally ineligible because commercial enterprises are expected to retain insurance that covers debris removal. In very limited, extraordinary circumstances, FEMA may provide an exception.

### **3.10. WATERWAY - WATERBORNE AND BEACH DEBRIS MONITORING.**

The Contractor shall ensure Debris Monitors are assigned to also validate and monitor the removal of marine, canal and waterborne debris, including derelict vessels, beach debris and vegetative debris.

Waterway debris (or incident waterway debris) is used in lieu of the term marine debris. In 33 U.S.C. § 1956(3), marine debris is defined as any persistent solid material that is manufactured or processed and directly or indirectly, intentionally or unintentionally, disposed of or abandoned into the marine environment or Great Lakes. Although vegetative debris is not included in the legal definition for marine debris, Florida stakeholders have identified it as a common debris stream of concern following disasters in the state. To account for both marine debris and vegetative debris, the term waterway debris is used and includes any solid material, including but not limited to vegetative debris and debris exposed to or that has the potential to release oil, hazardous substances, pollutants or contaminants, that enters a waterway following an acute incident and poses a threat to the natural or man-made environment.

### **3.11. DIFFERENT TYPES OF DEBRIS.**



The Contractor must ensure its team is capable and assigned to identify and separate different types of debris as needed to facilitate the FEMA review and reimbursement process and/or at the Town's request.

### **3.12. LEANERS AND HANGERS.**

The Contractor must ensure its team is capable and assigned to identify and determine eligibility of leaners and hangers based on criteria in the FEMA Public Assistance Program and Policy Guide (PAPPG) V4.

### **3.13. TECHNICAL EXPERTISE AND GUIDANCE.**

Per event, when directed by the Town, the Contractor shall:

- 3.13.1. Develop and submit a comprehensive emergency management plan to include plan development, review, and revisions.
- 3.13.2. Provide damage assessments of facilities; assessment plan development, procedure development, staff training, staff augmentation, and deployment.
- 3.13.3. Develop a comprehensive mitigation program to include development of a mitigation plan, cost benefit analysis, project management, and environmental review.
- 3.13.4. Provide the Town all relevant data and supporting documentation as may be required by the Town Council, Town Manager, Town Public Works Director and Town Senior Management Staff.
- 3.13.5. Provide other reports and data as required by the Town.

### **3.14. FINAL REPORT.**

A final report of volume and any other information collected for each event, as requested by the Town, shall be prepared by the Contractor and shall be submitted to a distribution list as established. Provide technical support and assistance in developing public information by the Town's Project Manager, within 30 days of completion of the recovery operations. Recovery operations include remediation of sites, closure of sites and conclusion of all related operations. At a minimum, the following information shall be included in the report.

- 3.14.1. Discussion of lessons learned and recommendation for future disaster response, including the Town's recovery contract requirements and results.
- 3.14.2. Recommendation for future disaster response strategies.
- 3.14.3. Digital copies of manifests, certificates, and related documents.
- 3.14.4. All other data taken during the implementation of the Disaster Response Plan.

### **3.15. EVENT CLOSURE.**

The Contractor shall review and process requests for payment by the debris removal contractors. As part of this process, the Contractor shall reconcile contractor invoices for payment and prepare FEMA work sheets for reimbursement by FEMA for debris hauling and monitoring efforts. The Contractor shall prepare final reports necessary for reimbursement by FEMA and any other applicable agencies involved in disaster recovery efforts.

### **3.16. TRAINING SERVICES.**

Contractor shall conduct onsite training, as requested by the Town, with the content to be defined at the time of request. Training may include the following groups, as needed: operational/field staff, administrative/managerial staff, or technical staff and cover topics such as the provision

of services, the emergency management plan and/or preparation. The duration of each training shall be mutually agreed upon. All training shall include reference documentation. All reference documentation shall be submitted to the Town for review and approval prior to completion of training. If additional training is needed, Contractor has the ability to provide online, web-based training as well. Contractor will provide an executive level training of no more than half a day in length. The level of detail provided during the training class will be consistent with the level of ongoing involvement of Town staff.

**3.17. ADDITIONAL SERVICES.**

At the Town’s sole discretion, the Contractor may be required to perform any of the following additional services, but not limited to:

3.17.1. Provide aerial photographs of debris sites or other areas as requested by the Town and per FEMA specifications.

3.17.2. Provide other related emergency management and consulting services identified and required by the Town.

In situations where the Contractor may be required to provide these additional services, a formal written proposal shall be provided with the scope of work and price to be submitted for review and approval by the Town’s Project Manager. The hourly rates for these services shall not exceed those stipulated in Section IV, Proposal Form. Reimbursement for equipment, material and for subcontracted services not stipulated in the Proposal Form shall be included in the formal written proposal and will be considered on a case-by- case basis.

**END OF THIS SECTION**

**EXHIBIT "B"**  
**WITT O'BRIEN'S PROPOSAL**

# THE TOWN OF SURFSIDE

## DISASTER DEBRIS MONITORING

RFP: 2022-01

Date: February 17, 2022

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## COVER LETTER

February 17, 2022

Sandra McCready, MMC  
Town Clerk  
9293 Harding Avenue  
Surfside, FL 33154

RE: Disaster Debris Monitoring Services, RFP 2022-01

Dear Ms. McCready:

Witt O'Brien's is pleased to submit this proposal to the Town of Surfside, Florida (the Town) to provide as-needed, emergency debris monitoring and recovery services. As a leading public safety and emergency management firm, we offer a complete range of planning, mitigation, preparation, and prevention services that can help the Town be better prepared before a crisis occurs, and to provide professional and timely services after a disaster. We are ready to assist the Town with pre-event planning and post-event debris monitoring efforts to support your disaster response activities and maximize your reimbursements.

Witt O'Brien's is a full-service company that supports our clients – and their communities – through the entire disaster life cycle. We earn the trust of our clients because we deliver. Our success is based on the combination of experience, capacity, tools, knowledge, and relationships:

- **Nationally recognized, full-service disaster recovery firm.** Since 2001, Witt O'Brien's has helped state and local clients prepare for, respond to, and recover from more than 40 major disasters, including Hurricanes Katrina, Sandy, Harvey, Laura, Isaias, Zeta, and Ida. Witt O'Brien's remains a leader in the industry we helped build. Our team has managed the recovery of **50 million cubic yards of debris** across 135 projects, resulting in **\$375 million in hauling costs**. We have helped our clients secure and use more than **\$65 billion in disaster recovery funding** across the spectrum of available sources, including \$10B in COVID-related funding.
- **Capacity to respond to multiple disasters.** Witt O'Brien's meets our debris monitoring clients' needs, even with multiple, simultaneous activations. We maintain a robust program management system for pro-active management of clients, contracts, and staff. We supplement our cadre of 135 supervisory staff and network of 700 trained and vetted monitors with full-service recruiting for local hires. In the **recent 2021 hurricane season, we successfully managed 5 different projects involving more than 650 staff, all with full implementation of COVID-19 protocols.**
- **ADMS for secure and accurate data collection and management.** A cornerstone of our approach is the use of our proprietary Automated Debris Management System (ADMS), **DebrisPro™**, a securely hosted, multi-device supported, web-enabled system that allows for the electronic tracking and collection of data in the field to ensure thorough documentation for all cost recovery activities. **DebrisPro™** integrates the best of the technology, tools, server infrastructure, hand-held devices, and a web portal to simplify the tasks of managing debris monitoring and removal operations.

- ***Real-time progress reporting and performance improvement.*** Using our GIS tools and ***DebrisPro***,™ we will provide frequent updates on debris removal progress along with the detailed metrics. To provide the Town with recommendations to improve efficiency, we will regularly analyze collection quantity data against project goals to determine where operational improvements can be made.
- ***Focus on staff preparedness through training and safety.*** Witt O'Brien's requires all debris monitoring staff to complete a comprehensive training program that focuses on safety as well as FEMA requirements. We perform drug screening, criminal background checks, and motor vehicle operating record reviews for all of our temporary employees. We have developed a COVID management program for operating during a COVID environment -- ***throughout the pandemic, we have not lost any days of work in debris operations.***
- ***Knowledge of Federal programs informs how we conduct debris management and monitoring—with knowledge of how to ensure maximum reimbursement.*** Our corporate and personnel experience and capabilities span all Federal funding programs, and our staff remain on the cutting edge of policy and program changes. Both our full-time and on-call debris monitoring staff are trained on any updates to FEMA's PAPPG (e.g., Version 4) and FEMA's PA Debris Monitoring Guide (updated March 2021).

Witt O'Brien's appreciates your time and consideration and stands ready to assist the Town. We reserve the right to negotiate terms and conditions applicable to any final agreement and, if selected, will negotiate in good faith with the Town to enter into a mutually agreeable formal written agreement. For any questions about this proposal or our capabilities, please contact Charles Bryant, Director of Debris Operations, at 337-476-0158 or [cbryant@wittobriens.com](mailto:cbryant@wittobriens.com), cc: [contractrequests@wittobriens.com](mailto:contractrequests@wittobriens.com).

Respectfully,

**Witt O'Brien's, LLC**



**Jonathan Hoyes**  
Senior Managing Director  
Government Solutions

## 1. REQUIRED FORMS

Form 1. Proposal Form Package Acknowledgement.

Form 2A. Proposer's Certification (if Company or Corporation)

Form 2B. Proposer's Certification (if Partnership)

Form 3. Single Execution Affidavits

Form 4. Dispute Disclosure

Form 5. Certification Regarding Debarment, Suspension, & Other Responsibility Matters Primary Covered Transactions

Form 6. Proposer's Qualifications Survey

Form 7. Small and Minority Businesses and Women's Business Enterprises Subcontractors

Form 8. Price Submittal Schedule Form

Form 9. Reference List

Form 10. Federally Required Clauses Affidavit



**FORM 1  
PROPOSAL FORM PACKAGE ACKNOWLEDGEMENTS**

I hereby propose to furnish the goods and services specified in the Request for Proposals, RFP No. 2022-01. I agree that my proposal will remain firm for a period of 180 days after opened by the Town in order to allow the Town adequate time to evaluate the proposals.

I certify that all information contained in this proposal is truthful to the best of my knowledge and belief. I further certify that I am duly authorized to submit this proposal on behalf of the Firm named as the Proposing Firm and that said Firm is ready, willing, and able to perform if awarded the Agreement.

I further certify, under oath, that this proposal is made without prior understanding, agreement, connection, discussion, or collusion with any other person, firm or corporation submitting a proposal; no officer, employee or agent of the Town of Surfside or any other proposer has an interest in said proposal. Furthermore, I certify that the undersigned executed this Proposal Form with full knowledge and understanding of matters therein contained and was duly authorized.

I further certify that the Proposer acknowledges receipt of all Addenda issued by the Town in connection with the RFP (Check the box next to each addendum received).

<input checked="" type="checkbox"/> Addendum 1 <input checked="" type="checkbox"/> Addendum 2 <input type="checkbox"/> Addendum 3 <input type="checkbox"/> Addendum 4 <input type="checkbox"/> Addendum 5	<input type="checkbox"/> Addendum 6 <input type="checkbox"/> Addendum 7 <input type="checkbox"/> Addendum 8 <input type="checkbox"/> Addendum 9 <input type="checkbox"/> Addendum 10
-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

Attached hereto are the following forms/documents which form a part of this proposal:

- Form 1. Proposal Form Package Acknowledgement.
- Form 2A. Proposer’s Certification (if Company or Corporation)
- Form 2B. Proposer’s Certification (if Partnership)
- Form 3. Single Execution Affidavits
- Form 4. Dispute Disclosure
- Form 5. Certification Regarding Debarment, Suspension, & Other Responsibility Matters Primary Covered Transactions
- Form 6. Proposer’s Qualifications
- Form 7. Small and Minority Businesses, and Women’s Business Enterprises Subcontractors
- Form 8. Price Submittal Schedule Form
- Form 9. Reference List
- Form 10. Federally Required Clauses Affidavit

**Form 1 – Proposal Form Package Acknowledgements (continued)**

Witt O'Briens  
NAME OF PROPOSER FIRM

*Jonathan Hoyes*  
SIGNATURE OF PROPOSER

Senior Managing Director, Government Solutions  
NAME & TITLE, TYPED OR PRINTED

MAILING ADDRESS  
1201 15th Street NW, suite 600

Washington, DC 2005

(202 ) 585-0780  
TELEPHONE NUMBER

**ACKNOWLEDGMENT**

STATE OF FLORIDA )  
 ) ss:  
COUNTY OF Indian River )

The foregoing instrument was acknowledged before me by means of  physical presence or  online notarization this 15 day of February 2022 ~~2021~~ by Jonathan Hoyes, on behalf of Witt O'Briens, LLC. She/He  is personally known to me or  has produced \_\_\_\_\_ as \_\_\_\_\_ identification.



[SEAL]

**JULIE I. GLENN**  
Commission # HH 136201  
Expires June 1, 2025  
Bonded Thru Budget Notary Services

*Julie Glenn*  
Notary Public  
Julie Glenn  
Print Name

FORM 2A  
PROPOSER'S CERTIFICATION  
(if Company or Corporation)

CERTIFICATE

STATE OF Florida )  
 ) SS  
COUNTY OF Indian River )

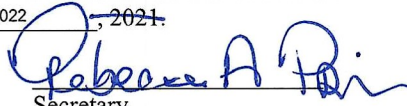
I HEREBY CERTIFY that a meeting of the Board of Directors of  
Witt O'Briens

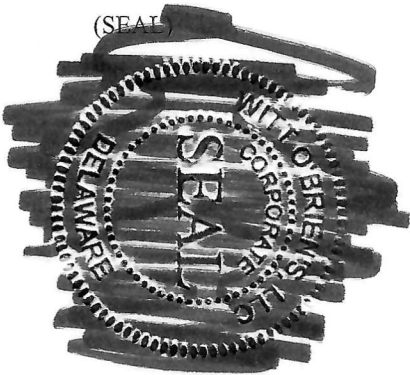
a corporation or company existing under the laws of the State of Deleware,  
held on \_\_\_\_\_, 2022-01, the following resolution was duly passed and  
adopted:

RESOLVED, that, as Senior Manging Director of the Corporation/Company, be and is hereby  
authorized to execute the proposal dated, February 17, 2022, 2021 to the Town of Surfside for  
RFP No. 2022-01 Disaster Debris Monitoring Services, and that this execution thereof,  
attested by the Secretary of the Corporation/Company, and with the Corporate/Company  
Seal affixed, shall be the official act and deed of this Corporation/Company.

I further certify that said resolution is now in full force and effect.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of  
corporation/company on this the February of 17, 2022, 2021.

  
Secretary



**FORM 3  
SINGLE EXECUTION AFFIDAVITS**

**THIS FORM MUST BE SIGNED AND SWORN TO IN THE PRESENCE OF A NOTARY PUBLIC  
OR OTHER OFFICIAL AUTHORIZED TO ADMINISTER OATHS.**

**THIS FORM COMBINES SEVERAL AFFIDAVIT STATEMENTS TO BE SWORN TO BY THE PROPOSER OR BIDDER AND NOTARIZED BELOW. IN THE EVENT THE PROPOSER OR BIDDER CANNOT SWEAR TO ANY OF THESE AFFIDAVIT STATEMENTS, THE PROPOSER OR BIDDER IS DEEMED TO BE NON-RESPONSIBLE AND IS NOT ELIGIBLE TO SUBMIT A PROPOSAL/BID. THESE SINGLE EXECUTION AFFIDAVITS ARE SUBMITTED TO THE TOWN OF SURFSIDE AND ARE STATEMENTS MADE:**

By: Jonathan Hoyes

For (Name of Proposing or Bidding Entity): Witt O'Briens

Whose business address is: 1201 15th Street NW, Washington, DC 20005

And (if applicable) its Federal Employer Identification Number (FEIN) is: 27-278-3923

(if the entity does not have an FEIN, include the Social Security Number of the individual signing this sworn statement. SS#: \_\_\_\_\_)

**Americans with Disabilities Act Compliance Affidavit**

The above named firm, corporation or organization is in compliance with and agrees to continue to comply with, and assure that any subcontractor, or third party contractor under this project complies with all applicable requirements of the laws listed below including, but not limited to, those provisions pertaining to employment, provision of programs and services, transportation, communications, access to facilities, renovations, and new construction.

- The American with Disabilities Act of 1990 (ADA), Pub. L. 101-336, 104 Stat 327, 42 USC 1210112213 and 47 USC Sections 225 and 661 including Title I, Employment; Title II, Public Services; Title III, Public Accommodations and Services Operated by Private entities; Title IV, Telecommunications; and Title V, Miscellaneous Provisions.
- The Florida Americans with Disabilities Accessibility Implementation Act of 1993, Section 553.501-553.513, Florida Statutes:
- The Rehabilitation Act of 1973, 229 USC Section 794;
- The Federal Transit Act, as amended 49 USC Section 1612;
- The Fair Housing Act as amended 42 USC Section 3601-3631.

*JH*

\_\_\_\_\_  
Proposer Initials

**Public Entity Crimes Affidavit**

I understand that a "public entity crime" as defined in Paragraph 287.133(1)(g), Florida Statutes,

means a violation of any state or federal law by a person with respect to and directly related to the transaction of business with any public entity or with an agency or political subdivision of any other state or of the United States, including but not limited to, any bid or contract for goods or services to be provided to any public entity or an agency or political subdivision of any other state or of the United States and involving antitrust, fraud, theft, bribery, collusion, racketeering, conspiracy, or material misrepresentations.

I understand that “convicted” or “conviction” as defined in Paragraph 287.133(1)(b), Florida Statutes, means a finding of guilt or a conviction of a public entity crime, with or without an adjudication of guilt, in any federal or state trial court of record relating to charges brought by indictment or information after July 1, 1989, as a result of a jury verdict, non-jury trial, or entry of a plea of guilty or nolo contendere.

I understand that an “affiliate” as defined in Paragraph 287.133(1)(a), Florida Statutes, means:

1. A predecessor or successor of a person convicted of a public entity crime; or
2. An entity under the control of any natural person who is active in the management of the entity and who has been convicted of a public entity crime. The term “affiliate” includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in the management of an affiliate. The ownership by one person of shares constituting a controlling interest in another person, or a pooling of equipment or income among persons when not for fair market value under an arm’s length agreement, shall be a prima facie case that one person controls another person. A person who knowingly enters into a joint venture with a person who has been convicted of a public entity crime in Florida during the preceding 36 months shall be considered an affiliate.

I understand that a “person” as defined in Paragraph 287.133(1)(e), Florida Statutes, means any natural person or entity organized under the laws of any state or of the United States with the legal power to enter into a binding contract and which bids or applies to bid on contracts for the provision of goods or services let by a public entity, or which otherwise transacts or applies to transact business with a public entity. The term “person” includes those officers, directors, executives, and partners, shareholders, employees, members, and agents who are active in management of an entity.

Based on information and belief, the statement, which I have marked below, is true in relations to the entity submitting this sworn statement.

**(INDICATE WHICH STATEMENT APPLIES.)**

Neither the entity submitting this sworn statement, nor any of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, nor any affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989.

The entity submitting this sworn statement, or one or more of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, or an affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989.

The entity submitting this sworn statement, or one or more of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, or an affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989. However, there has been a subsequent proceeding before a Hearing Officer of the State of Florida , Division of Administrative Hearings and the final Order entered by the Hearing Officer determined that it was not in the public interest to place the entity submitting this sworn statement on the convicted vendor list (attach a copy of the final order).

I understand that the submission of this form to the contracting officer for the public entity identified in paragraph 1 above is for that public entity only and that this form is valid through December 31 of the calendar year in which it is filed. I also understand that I am required to inform the public entity prior to entering into a contract in excess of the threshold amount provided in Section 287.017, Florida Statutes for category two of any change in the information contained in this form.

JH

\_\_\_\_\_  
Proposer Initials

**No Conflict of Interest or Contingent Fee Affidavit**

Proposer warrants that neither it nor any principal, employee, agent, representative nor family member has paid or will pay any fee or consideration that is contingent on the award or execution of a contract arising out of this solicitation. Proposer also warrants that neither it nor any principal, employee, agent, representative nor family member has procured or attempted to procure this contract in violation of any of the provisions of the Miami-Dade County and Town of Surfside conflict of interest or code of ethics ordinances. Further, Proposer acknowledges that any violation of these warrants will result in the termination of the contract and forfeiture of funds paid or to be paid to the Proposer should the Proposer be selected for the performance of this contract.

JH

\_\_\_\_\_  
Proposer Initials

**Business Entity Affidavit**

Proposer hereby recognizes and certifies that no elected official, board member, or employee of the Town of Surfside (the " Town") shall have a financial interest directly or indirectly in this transaction or any compensation to be paid under or through this transaction, and further, that no Town employee, nor any elected or appointed officer (including Town board members) of the Town, nor any spouse, parent or child of such employee or elected or appointed officer of the Town, may be a partner, officer, director or proprietor of Proposer or Vendor, and further, that no such Town employee or elected or appointed officer, or the spouse, parent or child of any of them, alone or in combination, may have a material interest in the Vendor or Proposer. Material interest means direct or indirect ownership of more than 5% of the total assets or capital stock of the Proposer. Any exception to these above described restrictions must be expressly provided by applicable law or ordinance and be confirmed in writing by Town. Further, Proposer recognizes that with respect to this transaction or bid, if any Proposer violates or is a party to a violation of the ethics ordinances or rules of the Town, the provisions of Miami-Dade County Code Section 2-11.1, as applicable to Town, or the provisions of Chapter 112, part III, Fla. Stat., the Code of Ethics for Public Officers and Employees, such Proposer may be disqualified from furnishing the goods

or services for which the bid or proposal is submitted and may be further disqualified from submitting any future bids or proposals for goods or services to Town.

JH

Proposer Initials

**Anti-Collusion Affidavit**

1. Proposer/Bidder has personal knowledge of the matters set forth in its Proposal/Bid and is fully informed respecting the preparation and contents of the attached Proposal/Bid and all pertinent circumstances respecting the Proposal/Bid;
2. The Proposal/Bid is genuine and is not a collusive or sham Proposal/Bid; and
3. Neither the Proposer/Bidder nor any of its officers, partners, owners, agents, representatives, employees, or parties in interest, including Affiant, has in any way colluded, conspired, connived, or agreed, directly or indirectly with any other Proposer/Bidder, firm, or person to submit a collusive or sham Proposal/Bid, or has in any manner, directly or indirectly, sought by agreement or collusion or communication or conference with any other Proposer/Bidder, firm, or person to fix the price or prices in the attached Proposal/Bid or of any other Proposer/Bidder, or to fix any overhead, profit, or cost element of the Proposal/Bid price or the Proposal/Bid price of any other Proposer/Bidder, or to secure through any collusion, conspiracy, connivance or unlawful agreement any advantage against the Town or any person interested in the proposed Contract.

JH

Proposer Initials

**Scrutinized Company Certification**

1. Proposer certifies that it and its subcontractors are not on the Scrutinized Companies that Boycott Israel List. Pursuant to Section 287.135, F.S., the Town may immediately terminate the Agreement that may result from this RFP at its sole option if the Proposer or its subcontractors are found to have submitted a false certification; or if the Proposer, or its subcontractors are placed on the Scrutinized Companies that Boycott Israel List or is engaged in the boycott of Israel during the term of the Agreement.
2. If the Agreement that may result from this RFP is for more than one million dollars, the Proposer certifies that it and its subcontractors are also not on the Scrutinized Companies with Activities in Sudan, Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaged with business operations in Cuba or Syria as identified in Section 287.135, F.S. pursuant to Section 287.135, F.S., the Town may immediately terminate the Agreement that may result from this RFP at its sole option if the Proposer, its affiliates, or its subcontractors are found to have submitted a false certification; or if the Proposer, its affiliates, or its subcontractors are placed on the Scrutinized Companies with Activities in Sudan List, or Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaged with business operations in Cuba or Syria during the term of the Agreement.
3. The Proposer agrees to observe the above requirements for applicable subcontracts entered into for the performance of work under the Agreement that may result from this RFP. As

provided in Subsection 287.135(8), F.S., if federal law ceases to authorize the above-stated contracting prohibitions then they shall become inoperative.

JH

\_\_\_\_\_  
Proposer Initials

**Drug-Free Workplace Affidavit**

Proposer hereby recognizes that, pursuant to F.S. § 287.087, preference shall be given to businesses with drug-free workplace programs when two bids/proposals are equal with respect to price, quality, and service. Proposer understands that in order to qualify as a drug-free workplace, proposer must:

- a) Publish a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the workplace and specifying the actions that will be taken against employees for violations of such prohibition.
  
- b) Inform employees about the dangers of drug abuse in the workplace, the Proposer’s policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation, and employee assistance programs, and the penalties that may be imposed upon employees for drug abuse violations.
  - 1) Give each employee engaged in providing commodities or contractual services under the RFP a copy of the statement specified in subsection (1).
  - 2) Notify employees that, as a condition of working on the commodities or contractual services under the RFP, the employee must abide by the terms of the statement and will notify the employer of any conviction of, or plea of guilty or nolo contendere to, any violation of chapter 893 or of any controlled substance law of the United States or any state, for a violation occurring in the workplace no later than five (5) days after such conviction.
  - 3) Impose a sanction on, or require the satisfactory participation in a drug abuse assistance or rehabilitation program if such is available in the employee’s community, by any employee who is so convicted.
  - 4) Make a good faith effort to continue to maintain a drug-free workplace through the implementation of this section.

Based on information and belief, the statement, which I have marked below, is true in relations to the entity submitting this sworn statement.

**(INDICATE WHICH STATEMENT APPLIES.)**

The entity submitting this sworn statement is a drug-free workplace and is in full compliance with the requirements set forth under F.S. § 287.087.

The entity submitting this sworn statement is not a drug-free workplace.

JH

\_\_\_\_\_  
Proposer Initials



**Town Non-Discrimination Requirements Affidavit**

Proposer understands that pursuant to Section 3-1.1 of the Code of the Town of Surfside, the Town will not enter into or award a contract to an entity engaged in a boycott.

Proposer understands that “Boycott” as defined under Section 3-1.1 of the Code of the Town of Surfside means to blacklist, divest from, or otherwise refuse to deal with a nation or country, or to blacklist or otherwise refuse to deal with a person or entity when the action is based on race, color, national origin, religion, sex, gender identity, sexual orientation, marital or familial status, age, or disability in a discriminatory manner. The term boycott does not include a decision based upon business or economic reasons, or boycotts, embargoes, trade restrictions, or divestments that are specifically authorized or required by federal law or state law.

Proposer certifies that it is not engaged in a boycott, and is in full compliance with Section 3-1.1 of the Code of the Town of Surfside.



\_\_\_\_\_  
Proposer Initials

**Acknowledgment, Warranty, and Acceptance**

1. Contractor warrants that it is willing and able to comply with all applicable state of Florida laws, rules and regulations.
2. Contractor warrants that it has read, understands, and is willing to comply with all requirements of **RFP No. 2022-01** and any addendum/addenda related thereto.\*\*\*
3. Contractor warrants that it will not delegate or subcontract its responsibilities under an agreement without the prior written permission of the Town Commission or Town Manager, as applicable.
4. Contractor warrants that all information provided by it in connection with this Proposal is true and accurate.

\*\*\* Upon notification of award Witt O'Brien's will actively work with the client to negotiate and finalize any contracting needs in a fair and reasonable manner.



\_\_\_\_\_  
Proposer Initials

**[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK.  
SIGNATURE PAGE FOLLOWS]**

**In the presence of:**

*Kelly Stouffer*

\_\_\_\_\_  
**Witness #1 Print Name:** Kelly Stouffer

*Rebecca Price*

\_\_\_\_\_  
**Witness #2 Print Name:** Rebecca Price

**Signed, sealed and delivered by:**

*Jonathan Hoyes*

\_\_\_\_\_  
**Print Name:** Jonathan Hoyes

\_\_\_\_\_  
**Title:** Senior Managing Director, Government Solutions

**ACKNOWLEDGMENT**

STATE OF FLORIDA )

) ss:

COUNTY OF Indian River )

The foregoing instrument was acknowledged before me by means of  physical presence or  online notarization this 15 day of February 2022 ~~2021~~ by Jonathan Hoyes, on behalf of Witt O'Brien's, LLC. She(He)  is personally known to me or  has produced N/A as identification.



**JULIE I. GLENN**  
Commission # HH 136201  
Expires June 1, 2025  
Bonded Thru Budget Notary Services

*Julie Glenn*  
\_\_\_\_\_  
Notary Public

*Julie Glenn*  
\_\_\_\_\_  
Print Name

[SEAL]

**FORM 4  
DISPUTE DISCLOSURE**

**Answer the following questions by placing an "X" after "Yes" or "No". If you answer "Yes", please explain in the space provided, or on a separate sheet attached to this form.**

1. Has your firm or any of its officers, received a reprimand of any nature or been suspended by the Department of Professional Regulations or any other regulatory agency or professional associations within the last five (5) years?

YES \_\_\_\_\_ NO X \_\_\_\_\_

2. Has your firm, or any member of your firm, been declared in default, terminated or removed from a contract or job related to the services your firm provides in the regular course of business within the last five (5) years?

YES \_\_\_\_\_ NO X \_\_\_\_\_

3. Has your firm had against it or filed any requests for equitable adjustment, contract claims, Bid protests, or litigation in the past five (5) years that is related to the services your firm provides in the regular course of business?

YES \_\_\_\_\_ NO X \_\_\_\_\_

If yes, state the nature of the request for equitable adjustment, contract claim, litigation, or protest, and state a brief description of the case, the outcome or status of the suit and the monetary amounts of extended contract time involved.

I hereby certify that all statements made are true and agree and understand that any misstatement or misrepresentation of falsification of facts shall be cause for forfeiture of rights for further consideration of this Proposal or Bid for the Town of Surfside.

**Signed, sealed and delivered by:**

*Jonathan Hoyes*

**Print Name:** Jonathan Hoyes

**Title:** Senior Managing Director, Government Solutions

**ACKNOWLEDGMENT**

STATE OF FLORIDA )

) ss:

COUNTY OF Indian River )

The foregoing instrument was acknowledged before me by means of  physical presence or  online notarization this 15 day of February 2022 ~~2021~~ by Jonathan Hoyes, on behalf of W.H. O'Brien's, LLC. She/He  is personally known to me or  has produced N/A as identification.



**JULIE I. GLENN**  
Commission # HH 138201  
Expires June 1, 2025  
Bonded Thru Budget Notary Services

[SEAL]

*Julie Glenn*

Notary Public

Julie Glenn  
Print Name

**FORM 5  
CERTIFICATION REGARDING  
DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS  
PRIMARY COVERED TRANSACTIONS**

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 13 CFR Part 145. The regulations were published as Part VII of the May 26, 1988 *Federal Register* (pages 19160-19211). Copies of the regulations are available from local offices of the U.S. Small Business Administration.

- (1) The prospective primary participant certifies to the best of its knowledge and belief that it and its principals:
  - (a) Are not presently debarred, suspended, proposed for disbarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
  - (b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
  - (c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
  - (d) Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default.
  
- (2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective primary participant shall attach an explanation to this Statement of Qualifications.

Business Name Witt O'Brien's

Date 02/15/2021

By:  \_\_\_\_\_  
Signature of Authorized Representative

Jonathan Hoyes, Senior Managing Director,  
Government Solutions  
\_\_\_\_\_  
Name and Title of Authorized Representative

**FORM 6  
PROPOSER'S QUALIFICATIONS SURVEY**

**NOTE: This statement of Proposer's Qualification must be completely filled out, properly executed and returned as part of your Proposal.**

[Provide documentation evidencing the experience of the proposer and demonstrating that the proposer has successfully provided services similar to those specified herein to other agencies of similar size and needs as the Town. The proposer firm shall be currently engaged in Disaster Debris Monitoring Services on a full time basis and shall have been in existence and continuous operation providing these services for a minimum of five (5) years]

1. List the true, exact and proper names of the company, partnership, corporation, and trade or fictitious name under which you do business and principals by names and titles:

Name of Firm: Witt O'Brien's  
Address: 1201 15th Street NW, Suite 600  
Washington, DC 20005

Principals: Brad Gair Titles: Senior Managing Director  
Tim Whipple CEO  
Jonathan Hoyes Senior Managing Director

2. a. Are you licensed, as may be required, in the designated area(s) of Miami-Dade County, Florida?

YES  \_\_\_\_\_ NO \_\_\_\_\_

- b. List Principals Licensed:

Name(s): Jonathan Hoyes Title: Senior Managing Director

Remarks: Sunbiz certificate attached in Appendix A.

3. How long has your Firm been in business and so licensed? 2008

4. If Proposer is an individual, corporation, company or a partnership, answer the following:

a. Date of Organization December 28, 2012

- b. Name, address and ownership units of all directors, officers, members, principals or partners:

Jonathan Hoyes, 1201 15th Street NW, Suite 600 Washington, DC 20005

**Form 6 – Proposer’s Qualifications Survey (continued)**

- 
- 
- c. State whether general or limited partnership: \_\_\_\_\_
- d. State whether a corporation or company LLC. Date and State of incorporation Deleware December 28, 2012.

If Proposer is other than an individual, corporation, company or partnership, describe the organization and give the name and address of principals.

- 
- 
5. If Proposer is operating under a fictitious name, submit evidence of compliance with the Florida Fictitious Name Statute.
6. How many years has your firm been in business under its present business name?  
13 years

- a. Under what other former names has your firm operated?  
Witt Group Holdings, LLC. , James Lee Witt & Associates,  
O'Brien's Response Management
- b. Is the firm or its principals now or in the past five (5) years been involved as a defendant in litigation concerning the performance of your Firm’s services or operations? If so list:  
No

7. a. List the pertinent experience of the key individuals of your Firm (continue on insert sheet, if necessary).  
Please see the Proposal.
- 
- 
- 

- b. State the name of the individual(s) who will have personal supervision and key roles for the Services:
- 
-

**Form 6 – Proposer’s Qualifications Survey (continued)**

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8. List name and title of persons in your Firm who are authorized to enter into an Agreement with the Town of Surfside, Florida for the proposed Services should your Firm be the successful Proposer.

Name Jonathan Hoyes \_\_\_\_\_

Title Senior Manging Director \_\_\_\_\_

10. Describe your Firm's experience in providing services to other municipalities or governmental agencies similar to the services to be provided herein.

Please see the Proposal.

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Attach additional sheets if necessary.

**FORM 7**  
**SMALL AND MINORITY BUSINESSES,**  
**AND WOMEN'S BUSINESS ENTERPRISES SUBCONTRACTORS**

List all small and minority businesses and women's business enterprises that are to be hired and/or will be used in providing the Services. Please indicate the corresponding qualifying category (e.g. minority-owned, women's business enterprise, etc.) for each proposed subcontractor. Additional copies of this form may be completed and submitted as part of the Proposal Form Package as necessary.

*Subcontractor Name:* **Garrie Harris**                      *Subcontractor Name:* -

---

*Company Name:*        **Alpha 1**                                      *Company Name:*

---

*Mailing Address:*        **1111 Park Centre Blvd,  
Suite #105D**                      *Mailing Address:*

---

*City, State, Zip Code:* **Miami, FL 33169**                      *City, State, Zip Code:*

---

*Telephone:*                      **855-525-7421**                      *Telephone:*

---

*Qualifying Category:* **WMBE**                                      *Qualifying Category:*

---

*Subcontractor Name:* -                                      *Subcontractor Name:* -

---

*Company Name:*                                      *Company Name:*

---

*Mailing Address:*                                      *Mailing Address:*

---

*City, State, Zip Code:*                                      *City, State, Zip Code:*

---

*Telephone:*                                      *Telephone:*

---

*Qualifying Category:*                                      *Qualifying Category:*

---

*Subcontractor Name:* -                                      *Subcontractor Name:* -

---

*Company Name:*                                      *Company Name:*

---

*Mailing Address:*                                      *Mailing Address:*

---

*City, State, Zip Code:*                                      *City, State, Zip Code:*

---

*Telephone:*                                      *Telephone:*

---

*Qualifying Category:*                                      *Qualifying Category:*

---



Form 8: PRICE SUBMITTAL SCHEDULE

Below we provide a table of positions and rates for debris monitoring services. These rates are fully burdened with all travel and ODCs, as the RFP indicated that the travel and lodging are not covered by the Town. Should travel / ODCs be reimbursable with no mark-up, Witt O'Brien's would be happy to adjust rates accordingly.

<u>POSITIONS</u>	<u>HOURLY RATE</u>
Project Manager	\$ 80.00
Operations Manager / Assistant Project Manager	\$ 62.00
GIS Specialist	\$ 68.00
Field Supervisor	\$ 49.00
Debris Site / Tower Monitors	\$ 32.50
Load Site / Field Monitors	\$ 32.50
Data Manager	\$ 52.00
Data Entry Clerks	\$ 32.00
Administrative Assistant	\$ 32.00
Billing Invoice Analyst	\$ 49.00

The Scope of Work indicates that in addition to debris monitoring, the Town may also require comprehensive services to support oversight and management of FEMA Public Assistance applications. The Town may also need assistance in developing a comprehensive emergency management plan (CEMP) and mitigation program. Below we provide a table of positions and rates for these additional services. These rates are also fully burdened with all travel and ODCs.

<u>Positions</u>	<u>Hourly Rate</u>
Project Manager – Grants	\$ 168.00
Subject Matter Expert	\$ 155.00
Senior Grants Manager	\$ 164.20
Grant Manager	\$ 154.90
Senior Planner	\$ 120.00
Planner	\$ 90.00
Senior Mitigation Advisor	\$ 155.00
Mitigation Specialist	\$ 130.00
Document Control Specialist	\$ 79.00
Administrative Assistant – Grants	\$ 45.00

**FORM 9  
REFERENCE LIST**

**IN ADDITION TO THE INFORMATION REQUIRED ON THIS FORM,  
CONTRACTOR TO PROVIDE A MINIMUM OF THREE REFERENCE LETTERS.**

**REFERENCE #1**

Public Entity Name: Town of Miami Lakes, Florida

Reference Contact Person/Title/Department: Ismael Diaz, Chief Financial Officer,  
Town of Miami Lakes

Contact Number & Email (305) 827-4014; diazi@miamilakes-fl.gov

Public Entity Size/Number of Residents/Square Mileage: Population: 30,467; 6.8 square miles

Event(s) Completed (include Name of Project/Event, Date of Event Start/Completion, Details on Size/Scope of Work/Complexity) Disaster debris monitoring following Hurricane Irma (9/17 - 3/18). Monitored the removal of 97,550 CY of vegetative and C&D debris and 9,549 hazardous trees/limbs

Total Reimbursement Requested from FEMA, State, Insurance or Other Sources: Total hauling and monitoring costs requested was \$1,520,197.

Final Reimbursement (if available) Approved by FEMA, State, Insurance or Other Sources: not available

Is the Contract still Active? Yes \_\_\_\_\_ No X

REFERENCE #2

Public Entity Name: City of New Orleans, Louisiana

Reference Contact Person/Title/Department: Matt Torri, Deputy Director, Department of Sanitation

Contact Number & Email 504-658-7646 Mtorri@nola.gov

Public Entity Size/Number of Residents/Square Mileage: Population 383,551; 349 square miles

Event(s) Completed (include Name of Project/Event, Date of Event Start/Completion, Details on Size/Scope of Work/Complexity) Disaster debris monitoring (September 2021 - ongoing) following Hurricane Ida. Monitored the removal of 220,073 CY of vegetative debris, 74,431 CY of mulch, 61,981 CY of C&D, 16,730 hazardous trees/limbs, and 80 hazardous stumps. Also monitored removal fo 8,306,665 lbs of solid waste

Total Reimbursement Requested from FEMA, State, Insurance or Other Sources: not available, as invoicing is not yet complete. Hauling and monitoring costs to date are \$9.3 million.

Final Reimbursement (if available) Approved by FEMA, State, Insurance or Other Sources: n/a

Is the Contract still Active? Yes  No

REFERENCE #3

Public Entity Name: New Hanover County, North Carolina

Reference Contact Person/Title/Department: Kim Roane, Business Officer, Environmental Management Department

Contact Number & Email (910) 798-4402; kroane@nhcgov.com

Public Entity Size/Number of Residents/Square Mileage: Population: 225,702; 328 square miles

Event(s) Completed (include Name of Project/Event, Date of Event Start/Completion, Details on Size/Scope of Work/Complexity) Disaster debris monitoring following Hurricane Isaias (8/20 - 10/20). Monitored the removal of 173,787 CY of vegetative and C&D debris and 743 hazardous trees, limbs, and stumps

Total Reimbursement Requested from FEMA, State, Insurance or Other Sources: Total hauling and monitoring costs requested were \$2,861,744

Final Reimbursement (if available) Approved by FEMA, State, Insurance or Other Sources: not available

Is the Contract still Active? Yes \_\_\_\_\_ No X



4876 HIGHWAY 1 • MATHEWS, LA 70375  
 P.O. BOX 425 • MATHEWS, LA 70375  
 985.537.7603 • 800.794.3160 • FAX 985.532.8292

www.lafourchegov.org

Archie Chaisson, III, *Parish President*

Department of Solid Waste

March 29<sup>th</sup>, 2021

**Subject: Witt O'Brien's  
 Rodney Byrd, Regional Manager, Debris**

The Lafourche Parish Government is currently contracted with Witt O'Brien's for Disaster Debris Monitoring and Technical Assistance. Witt O'Brien's has delivered the following in accordance with our contractual agreement.

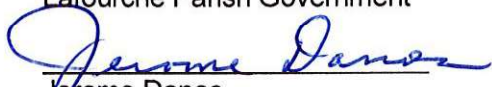
- A comprehensive Debris Management Plan for Lafourche Parish, approved by FEMA, allowing the Parish to participate in the Increased Federal Share Incentive component of the Public Assistance Program
- Multi-year Disaster Debris Removal & Recovery Service Contract
- Multi-year Disaster Debris Monitoring Contract
- Several months of direct technical and monitoring assistance with the Parish relative to the activation of contracts in the wakes of hurricanes that have impacted Lafourche Parish since 2012
- Provided guidance and instruction with Lafourche Parish Government staff in all aspects of emergency response

Lafourche Parish Government specifically recognizes Mr. Rodney Byrd's knowledge, expertise, willingness, cooperation, professionalism, and diligence in ensuring that the needs of our local governments and citizens were met in every way possible.

Lafourche Parish Government does not hesitate to utilize the outstanding services of Witt O'Brien's, including Mr. Rodney Byrd, should our need arise. We strongly recommend Witt O'Brien's for services under your consideration.

Sincerely,

Lafourche Parish Government

  
 Jerome Danos  
 Solid Waste Manager

---

<b>ARCHIE CHAISSON, III</b>	<b>PARISH PRESIDENT</b>	<b>JIM WENDELL</b>	<b>DISTRICT 5</b>
<b>JERRY JONES</b>	<b>DISTRICT 1</b>	<b>COREY PERRILLIOUX</b>	<b>DISTRICT 6</b>
<b>WILLIAM "T-BOO" ADAMS</b>	<b>DISTRICT 2</b>	<b>ARMAND AUTIN</b>	<b>DISTRICT 7</b>
<b>MICHAEL GROS</b>	<b>DISTRICT 3</b>	<b>D'LYNN BOUDREAUX</b>	<b>DISTRICT 8</b>
<b>AARON "BO" MELVIN</b>	<b>DISTRICT 4</b>	<b>DANIEL LORRAINE</b>	<b>DISTRICT 9</b>



July 15, 2020

Mr. Charles Bryant  
Director, Debris Monitoring  
Witt O'Brien's, LLC  
818 Town and County Blvd  
Houston, TX 77024

Re: Witt O'Brien's Letter of Reference – Edgewater, FL

Dear Mr. Bryant:

On behalf of the Edgewater, FL, I would like to express our appreciation for the dedication and outstanding service that Witt O'Brien's provided the City of Edgewater.

Witt O'Brien's performed debris monitoring services for us in 2016 & 2017 in response to Hurricanes Matthew & Irma. They were on the ground and mobilized quickly. Some of Witt O'Brien's notable accomplishments include:

- Monitoring the removal of 295,034 CY of vegetative debris
- Monitoring the removal of 10,360 CY of C&D debris
- Monitoring the removal of 30,903 CY of mulch
- Monitoring the removal of 2,832 hazardous limbs and trees
- All this was completed in a professional and courteous manner

We would not hesitate to hire Witt O'Brien's again for our debris monitoring and removal needs, as well as recommend them to any local government entity in need of comprehensive disaster debris monitoring services.

Regards,

Brenda L. Dewees

Director

[BDewees@cityofedgewater.org](mailto:BDewees@cityofedgewater.org)

**From:** Dave Mayes <[Dave.Mayes@wilmingtonnc.gov](mailto:Dave.Mayes@wilmingtonnc.gov)>  
**Sent:** Monday, February 25, 2019 2:09 PM  
**To:** Rodney Byrd <[RByrd@wittobriens.com](mailto:RByrd@wittobriens.com)>  
**Subject:** Post Florence

Rodney

The City thanks you for your dedicated service during our post Hurricane Florence clean up activities. Now that the site is clean and you have delivered all documentation, the City acknowledges the completion of your work here in the City. Should future administrative issues arise, we will be in touch.

thanks

*David B. Mayes, P.E.*

Public Services Director  
City of Wilmington, Public Services Department  
209 Coleman Dr | PO Box 1810  
Wilmington, NC 28402  
Ph: 910.341.5880 | Cell: 910.470.1869  
[dave.mayes@wilmingtonnc.gov](mailto:dave.mayes@wilmingtonnc.gov)  
[www.wilmingtonnc.gov](http://www.wilmingtonnc.gov)



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**FORM 10**  
**FEDERALLY REQUIRED CLAUSES AFFIDAVIT**  
**THIS FORM MUST BE SIGNED AND SWORN TO IN THE PRESENCE OF A NOTARY PUBLIC**  
**OR OTHER OFFICIAL AUTHORIZED TO ADMINISTER OATHS.**

**THIS PROCUREMENT SHALL CONFORM IN ALL RESPECTS TO THE “FEDERALLY REQUIRED CLAUSES” INCLUDING, BUT NOT LIMITED TO THOSE CLAUSES LISTED BELOW. PROPOSER SHALL WARRANT THAT IT HAS READ, UNDERSTANDS, AND IS WILLING TO COMPLY OR ASSIST THE TOWN IN COMPLYING WITH ALL THE “FEDERALLY REQUIRED CLAUSES” LISTED BELOW. IN THE EVENT THE PROPOSER FAILS TO SWEAR TO ANY PART OF THIS AFFIDAVIT, THE PROPOSER SHALL BE DEEMED TO BE NON-RESPONSIBLE AND IS NOT ELIGIBLE TO SUBMIT A PROPOSAL. THIS AFFIDAVIT IS SUBMITTED TO THE TOWN OF SURFSIDE AND ARE STATEMENTS MADE:**

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

Jonathan Hoyes, Senior Managing Director

For (Name of Proposing or Bidding Entity): Witt O'Briens

Whose business address is: 1201 15th Street NW, suite 600 Washington, DC 2005

And (if applicable) its Federal Employer Identification Number (FEIN) is: 27-278-3923

(if the entity does not have an FEIN, include the Social Security Number of the individual signing this sworn statement. SS#: \_\_\_\_\_)

**A. 2 C.F.R. §200.213 - Suspension and debarment**

Non-federal entities are subject to the non-procurement debarment and suspension regulations implementing Executive Orders 12549 and 12689, 2 CFR part 180. These regulations restrict awards, sub awards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs or activities.

*JH*

\_\_\_\_\_  
**Proposer Initials**

**B. 2 C.F.R. §200.317 - Procurements by states**

When procuring property and services under a Federal award, a state must follow the same policies and procedures it uses for procurements from its non-Federal funds. The state will comply with §200.322 Procurement of recovered *materials* and ensure that every purchase order or other contract includes any clauses required by section §200.326 Contract provisions. All other non-Federal entities, including sub recipients of a state, will follow §200.318 General procurement standards through 200.326 Contract provisions.

*JH*

\_\_\_\_\_  
**Proposer Initials**



## C. 2 C.F.R. §200.318 - General procurement standards

(a) The non-Federal entity must use its own documented procurement procedures which reflect applicable State, local and tribal laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in this part.

(b) Non-Federal entities must maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

(c)(1) The non-Federal entity must maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts. No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. The officers, employees, and agents of the non-Federal entity may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. However, non-Federal entities may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the non-Federal entity.

(2) If the non-Federal entity has a parent, affiliate, or subsidiary organization that is not a state, local government, or Indian tribe, the non-Federal entity must also maintain written standards of conduct covering organizational conflicts of interest. Organizational conflicts of interest means that because of relationships with a parent company, affiliate, or subsidiary organization, the non-Federal entity is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization. (d) The non-Federal entity's procedures must avoid acquisition of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.

(e) To foster greater economy and efficiency, and in accordance with efforts to promote cost-effective use of shared services across the Federal Government, the non-Federal entity is encouraged to enter into state and local intergovernmental agreements or inter-entity agreements where appropriate for procurement or use of common or shared goods and services.

(f) The non-Federal entity is encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.

(g) The non-Federal entity is encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost.

(h) The non-Federal entity must award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources. See also §200.213 Suspension and debarment.

(i) The non-Federal entity must maintain records sufficient to detail the history of procurement. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

(j)(1) The non-Federal entity may use a time and materials type contract only after a determination that no other contract is suitable and if the contract includes a ceiling price that the contractor exceeds at its own risk. Time and materials type contract means a contract whose cost to a non-Federal entity is the sum of:

- (i) The actual cost of materials; and
- (ii) Direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit.

(2) Since this formula generates an open-ended contract price, a time-and-materials contract provides no positive profit incentive to the contractor for cost control or labor efficiency. Therefore, each contract must set a ceiling

price that the contractor exceeds at its own risk. Further, the non-Federal entity awarding such a contract must assert a high degree of oversight in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.

(k) The non-Federal entity alone must be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve the non-Federal entity of any contractual responsibilities under its contracts. The Federal awarding agency will not substitute its judgment for that of the non-Federal entity unless the matter is primarily a Federal concern. Violations of law will be referred to the local, state, or Federal authority having proper jurisdiction.



### **Proposer Initials**

#### **D. 2 C.F.R. §200.319 - Competition**

(a) All procurement transactions must be conducted in a manner providing full and open competition consistent with the standards of this section. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals must be excluded from competing for such procurements. Some of the situations.

- (1) Placing unreasonable requirements on firms in order for them to qualify to do business;
- (2) Requiring unnecessary experience and excessive bonding;
- (3) Noncompetitive pricing practices between firms or between affiliated companies;
- (4) Noncompetitive contracts to consultants that are on retainer contracts;
- (5) Organizational conflicts of interest;
- (6) Specifying only a “brand name” product instead of allowing “an equal” product to be offered and describing the performance or other relevant requirements of the procurement; and
- (7) Any arbitrary action in the procurement process.

(b) The non-Federal entity must conduct procurements in a manner that **prohibits the use of statutorily or administratively imposed state, local, or tribal geographical preferences in the evaluation of bids or proposals**, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts state licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

(c) The non-Federal entity must have written procedures for procurement transactions. These procedures must ensure that all solicitations:

- (1) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description must not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured and, when necessary, must set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a “brand name or equivalent” description may be used as a means to define the performance or other salient requirements of procurement. The specific features of the named brand which must be met by offers must be clearly stated; and
- (2) Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

(d)The non-Federal entity must ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, the non-Federal entity must not preclude potential bidders from qualifying during the solicitation period.

JH

**Proposer Initials**

**E. 2 C.F.R. §200.321 - Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms**

(a)The non-Federal entity must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

(b)Affirmative steps must include:

- (1)Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- (2)Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- (3)Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
- (4)Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
- (5)Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
- (6)Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (1) through (5) of this section.

JH

**Proposer Initials**

**F. 2 C.F.R. §200.322 - Procurement of recovered materials**

A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

JH

**Proposer Initials**

**G. 2 C.F.R. §200.324 - Federal awarding agency or pass-through entity review**

(a)The non-Federal entity must make available, upon request of the Federal awarding agency or pass-through entity, technical specifications on proposed procurements where the Federal awarding agency or pass-through entity believes such review is needed to ensure that the item or service specified is the one being proposed for acquisition. This review generally will take place prior to the time the specification is incorporated into a solicitation document. However, if the non-Federal entity desires to have the review accomplished after a solicitation has been developed,

the Federal awarding agency or pass through entity may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.

(b) The non-Federal entity must make available upon request, for the Federal awarding agency or pass-through entity pre-procurement review, procurement documents, such as requests for proposals or invitations for bids, or independent cost estimates, when:

- (1) The non-Federal entity's procurement procedures or operation fails to comply with the procurement standards in this part;
- (2) The procurement is expected to exceed the Simplified Acquisition Threshold and is to be awarded without competition or only one bid or offer is received in response to a solicitation;
- (3) The procurement, which is expected to exceed the Simplified Acquisition Threshold, specifies a "brand name" product;
- (4) The proposed contract is more than the Simplified Acquisition Threshold and is to be awarded to other than the apparent low bidder under a sealed bid procurement; or
- (5) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the Simplified Acquisition Threshold.

(c) The non-Federal entity is exempt from the pre-procurement review in paragraph (b) of this section if the Federal awarding agency or pass-through entity determines that its procurement systems comply with the standards of this part.

(1) The non-Federal entity may request that its procurement system be reviewed by the Federal awarding agency or pass-through entity to determine whether its system meets these standards in order for its system to be certified. Generally, these reviews must occur where there is continuous high-dollar funding, and third party contracts are awarded on a regular basis;

(2) The non-Federal entity may self-certify its procurement system. Such self-certification must not limit the Federal awarding agency's right to survey the system. Under a self-certification procedure, the Federal awarding agency may rely on written assurances from the non-Federal entity that it is complying with these standards. The non-Federal entity must cite specific policies, procedures, regulations, or standards as being in compliance with these requirements and have its system available for review.

  
\_\_\_\_\_  
**Proposer Initials**

#### **H. §200.326 Contract provisions.**

The non-Federal entity's contracts must contain the applicable provisions described in Appendix II to Part 200—Contract Provisions for non-Federal Entity Contracts Under Federal Awards.

  
\_\_\_\_\_  
**Proposer Initials**

#### **I. 2 C.F.R. § 200.326 and 2 C.F.R. Part 200, Appendix II, Required Contract Clauses**

Requirements under the Uniform Rules. A non-Federal entity's contracts must contain the applicable contract clauses described in Appendix II to the Uniform Rules (Contract Provisions for non-Federal Entity Contracts Under Federal Awards), which are set forth below. 2 C.F.R. §200.326. For some of the required clauses we have included sample language or a reference a non-Federal entity can go to in order to find sample language. Please be aware that this is sample language only and that the non-Federal entity alone is responsible ensuring that all language included in their contracts meets the requirements of 2 C.F.R. § 200.326 and 2 C.F.R. Part 200, Appendix II. We do not include sample language for certain required clauses (remedies, termination for cause and

convenience, changes) as these must necessarily be written based on the non-Federal entity's own procedures in that area.

1. Remedies.

- a. Standard: Contracts for more than the simplified acquisition threshold (\$150,000) must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate. See 2 C.F.R. Part 200, Appendix II, A.
- b. Applicability: This requirement applies to all FEMA grant and cooperative agreement programs.

2. Termination for Cause and Convenience.

- a. All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement. See 2 C.F.R. Part 200, Appendix II, B.
- b. Applicability. This requirement applies to all FEMA grant and cooperative agreement programs.

3. Equal Employment Opportunity.

- a. Standard. Except as otherwise provided under 41 C.F.R. Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 C.F.R. § 60-1.3 must include the equal opportunity clause provided under 41 C.F.R. § 60- 1.4(b), in accordance with Executive Order 11246, *Equal Employment Opportunity* (30 Fed. Reg. 12319, 12935, 3 C.F.R. Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, *Amending Executive Order 11246 Relating to Equal Employment Opportunity*, and implementing regulations at 41 C.F.R. Part 60 (Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor). See 2 C.F.R. Part 200, Appendix II, ¶ C.

b. Key Definitions.

- (a) Federally Assisted Construction Contract. The regulation at 41 C.F.R.

§ 60-1.3 defines a "federally assisted construction contract" as any agreement or modification thereof between any applicant and a person for construction work which is paid for in whole or in part with funds obtained from the Government or borrowed on the credit of the Government pursuant to any Federal program involving a grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, or any application or modification thereof approved by the Government for a grant, contract, loan, insurance, or guarantee under which the applicant itself participates in the construction work.

- (b) Construction Work. The regulation at 41 C.F.R. § 60-1.3 defines "construction work" as the construction, rehabilitation, alteration, conversion, extension, demolition or repair of buildings, highways, or other changes or improvements to real property, including facilities providing utility services. The term also includes the supervision, inspection, and other onsite functions incidental to the actual construction.

- c. Applicability. This requirement applies to all FEMA grant and cooperative agreement programs.
- d. The regulation at 41 C.F.R. Part 60-1.4(b) requires the insertion of the following contract clause:

"During the performance of this contract, the contractor agrees as follows:

- (a) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination;

rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

- (b) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.
- (c) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (d) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (e) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (f) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions as may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided bylaw.
- (g) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, That in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the contractor may request the United States to enter into such litigation to protect the interests of the United States."

#### 4. Davis Bacon Act and Copeland Anti-Kickback Act.

a. Applicability of Davis-Bacon Act. The Davis-Bacon Act only applies to the emergency Management Preparedness Grant Program, Homeland Security Grant Program, Nonprofit Security Grant Program, Tribal Homeland Security Grant Program, Port Security Grant Program, and Transit Security Grant Program. **It does not apply to other FEMA grant and cooperative agreement programs, including the Public Assistance Program.**

- (a) All prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. §§ 3141-3144 and 3146-3148) as supplemented by Department of Labor regulations at 29 C.F.R.

Part 5 (Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction)). See 2 C.F.R. Part 200, Appendix II, ¶ D.

- (b) In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week.
- (c) The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.
- (d) In contracts subject to the Davis-Bacon Act, the contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. § 3145), as supplemented by Department of Labor regulations at 29 C.F.R. Part 3 (Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States). The Copeland Anti- Kickback Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to FEMA.
- (e) The regulation at 29 C.F.R. § 5.5(a) does provide the required contract clause that applies to compliance with both the Davis-Bacon and Copeland Acts. However, as discussed in the previous subsection, the Davis-Bacon Act does not apply to Public Assistance recipients and subrecipients. **In situations where the Davis-Bacon Act does not apply, neither does the Copeland “Anti-Kickback Act.”** However, for purposes of grant programs where both clauses do apply, FEMA requires the contract clause listed under section 4(b), “Compliance with the Copeland “Anti-Kickback” Act.”

b. “Compliance with the Copeland “Anti-Kickback” Act.

- (a) Contractor. The contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.
- (b) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as the FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.
- (c) Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.”

5. Contract Work Hours and Safety Standards Act.

a. Applicability: This requirement applies to all FEMA grant and cooperative agreement programs.

b. Where applicable (see 40 U.S.C. § 3701), all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. §§ 3702 and 3704, as supplemented by Department of Labor regulations at 29 C.F.R. Part 5. See 2 C.F.R. Part 200, Appendix II, ¶ E.

c. Under 40 U.S.C. § 3702, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard

work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the workweek.

d. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

e. The regulation at 29 C.F.R. § 5.5(b) provides the required contract clause concerning compliance with the Contract Work Hours and Safety Standards Act:

“Compliance with the Contract Work Hours and Safety Standards Act.

- (a) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- (b) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.
- (c) Withholding for unpaid wages and liquidated damages. The (write in the name of the Federal agency or the loan or grant recipient) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.
- (d) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.”

6. Rights to Inventions Made Under a Contract or Agreement.

a. Stafford Act Disaster Grants. This requirement **does not apply to the Public Assistance**, Hazard Mitigation Grant Program, Fire Management Assistance Grant Program, Crisis Counseling Assistance and Training Grant Program, Disaster Case Management Grant Program, and Federal Assistance to Individuals and Households – Other Needs Assistance Grant Program, as FEMA awards under these programs do not



meet the definition of “funding agreement.”

b. If the FEMA award meets the definition of “funding agreement” under 37 C.F.R. § 401.2(a) and the non-Federal entity wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the non-Federal entity must comply with the requirements of 37 C.F.R. Part 401 (Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements), and any implementing regulations issued by FEMA. See 2 C.F.R. Part 200, Appendix II, ¶ F.

c. The regulation at 37 C.F.R. § 401.2(a) currently defines “funding agreement” as any contract, grant, or cooperative agreement entered into between any Federal agency, other than the Tennessee Valley Authority, and any contractor for the performance of experimental, developmental, or research work funded in whole or in part by the Federal government. This term also includes any assignment, substitution of parties, or subcontract of any type entered into for the performance of experimental, developmental, or research work under a funding agreement as defined in the first sentence of this paragraph.

7. Clean Air Act and the Federal Water Pollution Control Act. Contracts of amounts in excess of \$150,000 must contain a provision that requires the contractor to agree to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act (42 U.S.C. §§ 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. §§ 1251-1387). Violations must be reported to FEMA and the Regional Office of the Environmental Protection Agency. See 2 C.F.R. Part 200, Appendix II, ¶ G.

a. The following provides a sample contract clause concerning compliance for contracts of amounts in excess of \$150,000:

(a) “Clean Air Act

- i. The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
- ii. The contractor agrees to report each violation to the (name of the state agency or local or Indian tribal government) and understands and agrees that the (name of the state agency or local or Indian tribal government) will, in turn, report each violation as required to assure notification to the (name of recipient), Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- iii. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

(b) Federal Water Pollution Control Act

- i. The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
- ii. The contractor agrees to report each violation to the (name of the state agency or local or Indian tribal government) and understands and agrees that the (name of the state agency or local or Indian tribal government) will, in turn, report each violation as required to assure notification to the (name of recipient), Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- iii. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.”

8. Debarment and Suspension.

- a. Applicability: This requirement applies to all FEMA grant and cooperative agreement programs.
- b. Non-federal entities and contractors are subject to the debarment and suspension regulations implementing Executive Order 12549, *Debarment and Suspension* (1986) and Executive Order 12689, *Debarment and Suspension* (1989) at 2 C.F.R. Part 180 and the Department of Homeland Security's regulations at 2 C.F.R. Part 3000 (Nonprocurement Debarment and Suspension).
- c. These regulations restrict awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs and activities. See 2 C.F.R. Part 200, Appendix II, ¶ H; and *Procurement Guidance for Recipients and Subrecipients Under 2 C.F.R. Part 200 (Uniform Rules): Supplement to the Public Assistance Procurement Disaster Assistance Team (PDAT) Field Manual* Chapter IV, ¶ 6.d, and Appendix C, ¶ 2 [hereinafter *PDAT Supplement*]. A contract award must not be made to parties listed in the SAM Exclusions. SAM Exclusions is the list maintained by the General Services Administration that contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549. SAM exclusions can be accessed at [www.sam.gov](http://www.sam.gov). See 2 C.F.R. § 180.530; *PDAT Supplement*, Chapter IV, ¶ 6.d and Appendix C, ¶ 2.
- d. In general, an "excluded" party cannot receive a Federal grant award or a contract within the meaning of a "covered transaction," to include subawards and subcontracts. This includes parties that receive Federal funding indirectly, such as contractors to recipients and subrecipients. The key to the exclusion is whether there is a "covered transaction," which is any nonprocurement transaction (unless excepted) at either a "primary" or "secondary" tier. Although "covered transactions" do not include contracts awarded by the Federal Government for purposes of the nonprocurement common rule and DHS's implementing regulations, it does include some contracts awarded by recipients and subrecipient.
- e. Specifically, a covered transaction includes the following contracts for goods or services:
- (a) The contract is awarded by a recipient or subrecipient in the amount of at least \$25,000.
  - (b) The contract requires the approval of FEMA, regardless of amount.
  - (c) The contract is for federally-required audit services.
  - (d) A subcontract is also a covered transaction if it is awarded by the contractor of a recipient or subrecipient and requires either the approval of FEMA or is in excess of \$25,000.
- d. The following provides a debarment and suspension clause. It incorporates an optional method of verifying that contractors are not excluded or disqualified:

"Suspension and Debarment

- (a) This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the contractor is required to verify that none of the contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
- (b) The contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
- (3) This certification is a material representation of fact relied upon by (insert name of subrecipient). If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to (name of state agency serving as recipient and name of subrecipient), the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

- (4) The bidder or proposer agrees to comply with the requirements of 2C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.”

9. Byrd Anti-Lobbying Amendment.

- a. Applicability: This requirement applies to all FEMA grant and cooperative agreement programs.
- b. Contractors that apply or bid for an award of \$100,000 or more must file the required certification. See 2 C.F.R. Part 200, Appendix II, ¶ I; 44 C.F.R. Part 18; PDAT Supplement, Chapter IV, 6.c; Appendix C, ¶ 4.
- c. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. § 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award. See PDAT Supplement, Chapter IV, ¶ 6.c and Appendix C, ¶ 4.
- d. The following provides a Byrd Anti-Lobbying contract clause:

“Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended)

Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.”

APPENDIX A, 44 C.F.R. PART 18 – CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements (To be submitted with each bid or offer exceeding \$100,000)

The undersigned [Contractor] certifies, to the best of his or her knowledge, that:

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

grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

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

The Contractor, Witt O'Brien's, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. § 3801 *et seq.*, apply to this certification and disclosure, if any.



\_\_\_\_\_  
Signature of Contractor's Authorized Official

Jonathan Hoyes, Senior Managing Director

\_\_\_\_\_  
Name and Title of Contractor's Authorized Official

2/15/2022

\_\_\_\_\_  
Date

10. Procurement of Recovered Materials.

a. Applicability: This requirement applies to all FEMA grant and cooperative agreement programs.

b. A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with Section 6002 of the Solid Waste Disposal Act, Pub. L. No. 89-272 (1965) (codified as amended by the Resource Conservation and Recovery Act at 42 U.S.C. § 6962). See 2 C.F.R. Part 200, Appendix II, ¶ J; 2 C.F.R. § 200.322; PDAT Supplement, Chapter V, ¶ 7.

c. The requirements of Section 6002 include procuring only items designated in guidelines of the EPA at 40 C.F.R. Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired by the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

d. The following provides the clause that a state agency or agency of a political subdivision of a state and its contractors can include in contracts meeting the above contract thresholds:

“(1) In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA- designated items unless the product cannot be acquired—

- (i) Competitively within a timeframe providing for compliance with the contract performance schedule;
- (ii) Meeting contract performance requirements; or
- (iii) At a reasonable price.

(2) Information about this requirement, along with the list of EPA- designate items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.”

11. Additional FEMA Requirements.

a. The Uniform Rules authorize FEMA to require additional provisions for non-Federal entity contracts. FEMA, pursuant to this authority, requires or recommends the following:

b. Changes.

To be eligible for FEMA assistance under the non-Federal entity's FEMA grant or cooperative agreement, the cost of the change, modification, change order, or constructive change must be allowable, allocable, within the scope of its grant or cooperative agreement, and reasonable for the completion of project scope. FEMA recommends, therefore, that a non-Federal entity include a changes clause in its contract that describes how, if at all, changes can be made by either party to alter the method, price, or schedule of the work without breaching the contract. The language of the clause may differ depending on the nature of the contract and the end-item procured.

c. Access to Records.

All non-Federal entities must place into their contracts a provision that all contractors and their successors, transferees, assignees, and subcontractors acknowledge and agree to comply with applicable provisions governing Department and FEMA access to records, accounts, documents, information, facilities, and staff. See DHS Standard Terms and Conditions, v 3.0, ¶ XXVI (2013).

d. The following provides a contract clause regarding access to records:

“Access to Records. The following access to records requirements apply to this contract:

- (1) The contractor agrees to provide (insert name of state agency or local or Indian tribal government), (insert name of recipient), the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.
- (2) The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- (3) The contractor agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.”

12. DHS Seal, Logo, and Flags.

a. All non-Federal entities must place in their contracts a provision that a contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval. See DHS Standard Terms and Conditions, v 3.0, ¶ XXV (2013).

b. The following provides a contract clause regarding DHS Seal, Logo, and Flags: “The contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.”

13. Compliance with Federal Law, Regulations, and Executive Orders.

a. All non-Federal entities must place into their contracts an acknowledgement that FEMA financial assistance will be used to fund the contract along with the requirement that the contractor will comply with all applicable federal law, regulations, executive orders, and FEMA policies, procedures, and directives.

b. The following provides a contract clause regarding Compliance with Federal Law, Regulations, and

Executive Orders: "This is an acknowledgement that FEMA financial assistance will be used to fund the contract only. The contractor will comply will all applicable federal law, regulations, executive orders, FEMA policies, procedures, and directives."

14. No Obligation by Federal Government.

- a. The non-Federal entity must include a provision in its contract that states that the Federal Government is not a party to the contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.
- b. The following provides a contract clause regarding no obligation by the Federal Government: "The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract."

15. Program Fraud and False or Fraudulent Statements or Related Acts.

- a. The non-Federal entity must include a provision in its contract that the contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to its actions pertaining to the contract.
- b. The following provides a contract clause regarding Fraud and False or Fraudulent or Related Acts: "The contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the contractor's actions pertaining to this contract."

JH  
Proposer Initials

**In the presence of:**

**Signed, sealed and delivered by:**

Kelly Stouffer  
**Witness #1 Print Name:** Kelly Stouffer  
Rebecca Price  
**Witness #2 Print Name:** Rebecca Price

Jonathan Hoyes  
**Print Name:** Jonathan Hoyes  
**Title:** Senior Managing Director, Government Solutions

**ACKNOWLEDGMENT**

STATE OF FLORIDA )  
 ) ss:  
 COUNTY OF Indian River )

The foregoing instrument was acknowledged before me by means of  physical presence or  online notarization this 15 day of February 2021 by Jonathan Hoyes, on behalf of W.H. O'Brien's, LLC. She/He  is personally known to me or  has produced \_\_\_\_\_ as \_\_\_\_\_ identification.



**JULIE I. GLENN**  
 Commission # HH 136201  
 Expires June 1, 2025  
 Bonded Thru Budget Notary Services

[SEAL]

Julie Glenn  
 Notary Public  
 Print Name

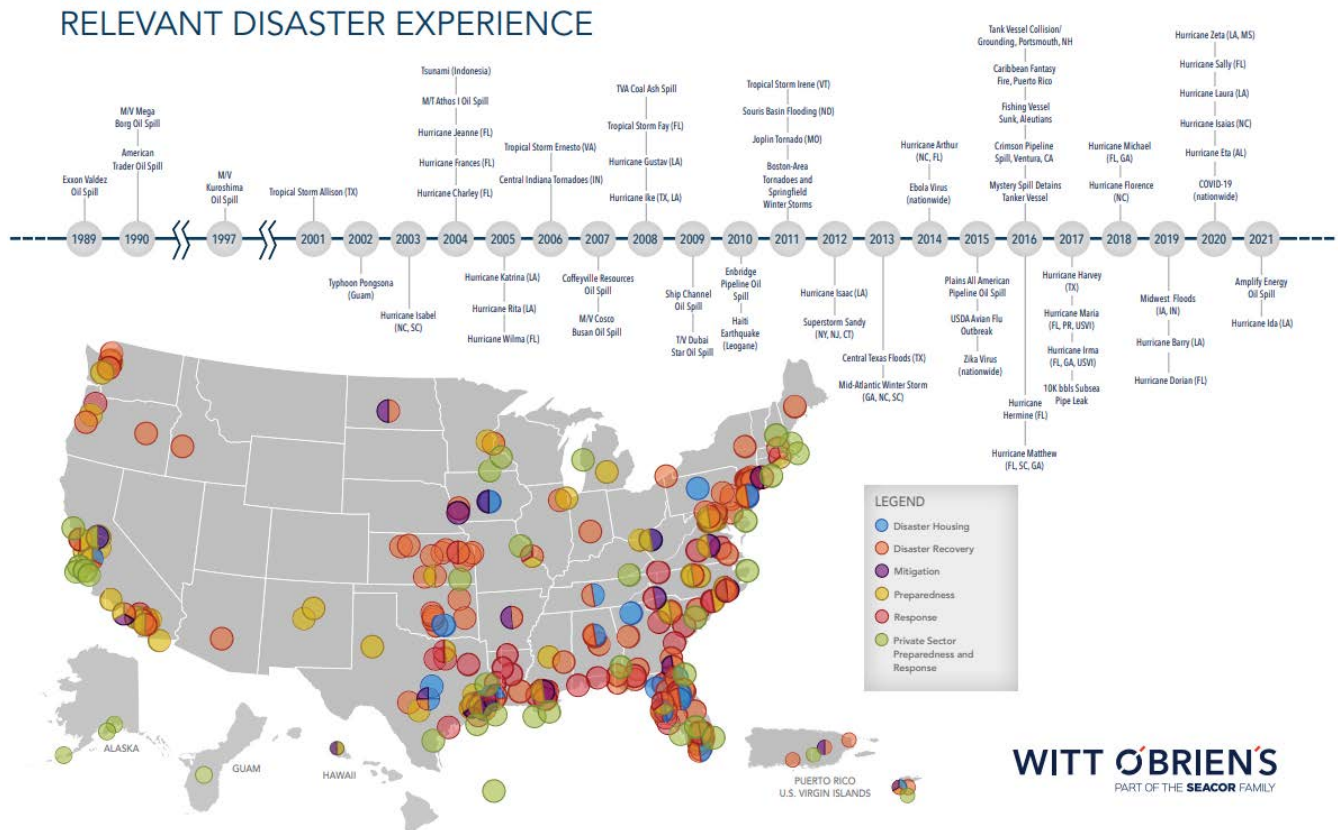
**Exhibit "A"**  
**Sample Agreement**

## 2. QUALIFICATIONS AND EXPERIENCE

**Witt O'Brien's is with you when it counts.** Unlike other firms that might have a single division working in emergency and crisis management, Witt O'Brien's is fully dedicated to developing innovative solutions to help state and local governments, communities, and businesses recover from disasters and emergencies. We are staffed by top experts in preparedness, crisis management, and disaster response and recovery operations. While we are nimble enough to respond quickly to the Town of Surfside's needs, we possess the depth of resources, experience, and expertise necessary to produce high-quality, reliable work.

The history of Witt O'Brien's is intertwined with the history of emergency management. Formed in 2009 by a merger between O'Brien's Response Management (formed in 1983) and Witt Associates (formed 2001), Witt O'Brien's, LLC has supported our clients in preparing for, responding to, and recovering from some of the most significant disasters in our Nation's history (see **Exhibit 1**). Throughout our support, we strive to make the communities we serve more resilient, maximize all sources of funding, and seize every opportunity to rebuild facilities that are hardened to future threats.

*Exhibit 1: Witt O'Brien's Disaster Management Experience*



To address the requirements of the RFP, the sections below highlight our experience and qualifications in (1) debris removal monitoring and waste management; (2) coordinating with federal, state, and local agencies; (3) implementing federal funding sources and reimbursement processes; and (4) providing special disaster recovery services.

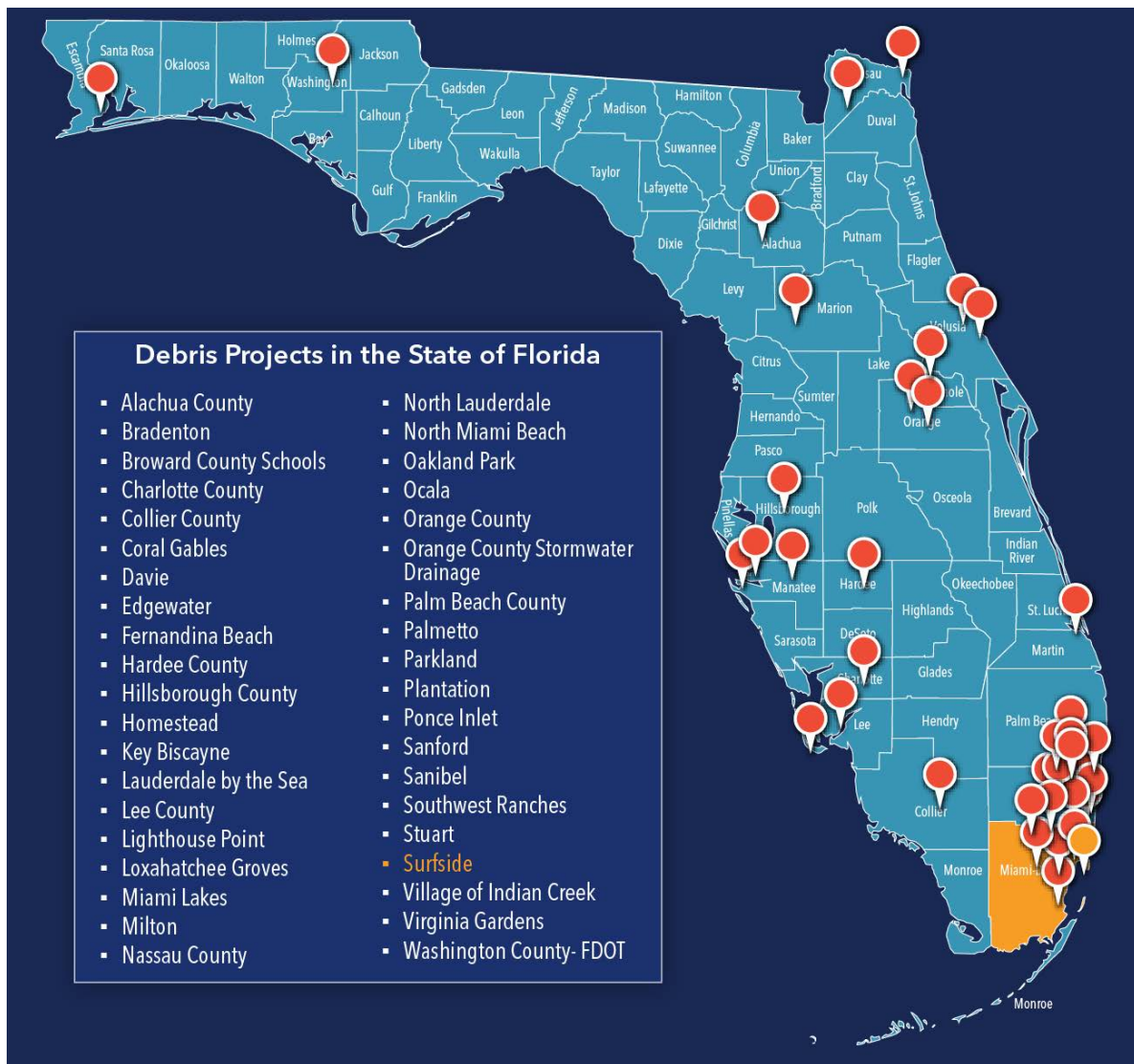


## 2.1 EXPERIENCE IN DEBRIS REMOVAL, SOLID WASTE, AND HAZARDOUS WASTE MANAGEMENT

**For nearly 20 years**, Witt O'Brien's has overseen nearly 140 debris management projects totaling more than 50 million CY of debris and \$375 million in hauling costs. We have also monitored removal of more than 8 million pounds of solid waste. Our firm currently holds about 70 debris monitoring contracts, all of which involve cooperation and collaboration with our local clients, statewide emergency and environmental agencies, and FEMA. In the State of Florida alone, we have conducted dozens of debris monitoring projects (as well as FEMA public assistance grants management), including for Surfside (see **Exhibit 2**).

<b>100</b> Debris Supervisory Staff	<b>700+</b> Trained and Vetted Monitors
<b>70+</b> Stand-by Contracts	<b>50</b> Million CY of Debris
<b>\$375</b> Million Hauling Costs	<b>40+</b> Major Disasters
<b>41</b> Simultaneous Activations	

**Exhibit 2: Witt O'Brien's Debris Monitoring Projects in Florida**



We can offer expertise and technical advice on all debris management activities, such as developing FEMA-compliant debris monitoring and action plans; hiring and training field staff; identifying ineligible debris, measuring and certifying trucks; managing hazardous debris; monitoring residential drop-off; tracking and reporting damages;; managing and reporting data; disseminating information to the public; and documenting removal costs. We can **supplement this support with planning (i.e., developing comprehensive emergency management plans), conducting training and exercises, and assisting with grants management of recovery funding.**

We consistently receive accolades attesting to the professional manner in which we implement improved practices; decrease unnecessary work; and facilitate safe, accurate, and FEMA-compliant completion of debris management projects. Our automated debris management system (ADMS) **DebrisPro™** enables us to capture and document debris operations in real-time, reducing the likelihood of errors or lost records. We mobilize rapidly, adjust to fluid circumstances, seamlessly implement our field-tested and proven operating procedures, and provide successful debris monitoring services.

In addition, we have a long history of successfully handling simultaneous contract activations throughout the Gulf Coast and southeast. Our strengths are:

- **Pre-Event Planning:** We have a robust program management structure for pre-event planning to ensure we have the most up-to-date information prior to an event.
- **Staffing Capacity for Mobilization:** We maintain a deep bench of 100 supervisory staff and network of 700 pre-vetted monitors available for re-hire, along with a pro-active recruiting program with a preference for local hires following activation.
- **Coordination for Multiple Activations:** In the event of multiple activations, our Debris Practice coordinates with internal corporate resources to ensure we meet obligations.

**We recently completed monitoring both debris and solid waste removal in New Orleans following Hurricane Ida, while also concurrently conducting debris monitoring for four other organizations. Across these efforts, we deployed 50 debris monitoring supervisors, trained 630 monitors, and monitored the removal of more than 1.6m CY of vegetative and C&D debris, 25k hazardous trees/limbs/limbs, 8.3m pounds of solid waste, and 2,600 pieces of white goods.**

Witt O'Brien's Proven Ability to Respond to Multiple Disasters



ALDOT\_02

Witt O'Brien's has provided debris monitoring services at the state, county, and city level in response to a wide range of events, including hurricanes, floods, tornadoes, and winter storms. While most of our projects have involved debris removal from public property and public rights-of-way (ROW), we also have experience in situations requiring special handling and compliance, including private property debris removal (PPDR), waterway debris removal, and operations near environmental or historic sites. **Exhibit 3** presents a select list of our debris monitoring efforts by state to demonstrate the range of our experience across debris types, debris volume, and jurisdiction sizes.

*Exhibit 3: Select Examples of Witt O'Brien's Debris Monitoring Experience*

Client/Event	Debris Types/Amounts
<b>Florida</b>	
<b>Alachua County, FL</b> (population: 269,043) Hurricane Irma (2017)	<b>Debris type: Vegetative, C&amp;D, and hazardous trees/limbs</b> Monitored the removal of 227,412 CY of vegetative and C&D debris and 32,528 hazardous trees/limbs.
<b>Coral Gables, FL</b> (population: 50,999) Hurricane Irma (2017)	<b>Debris type: Vegetative, C&amp;D, and hazardous trees/limbs</b> Provided debris monitoring for 656,334 CY of vegetative and C&D debris and 17,093 hazardous trees/limbs.
<b>Davie, FL</b> (population: 91,992) Hurricane Irma (2017)	<b>Debris type: Vegetative, C&amp;D, and hazardous trees/limbs</b> Provided debris monitoring for 543,729 CY of vegetative and C&D debris and 4,342 hazardous trees/limbs.
<b>Homestead, FL</b> (population: 70,477) Hurricane Irma (2017)	<b>Debris type: Vegetative, C&amp;D debris</b> Monitored the removal of 264,655 CY of vegetative and C&D debris.
<b>Milton, FL</b> (population: 9,995) Hurricane Sally (2016)	<b>Debris type: Vegetative and hazardous trees/limbs</b> Monitored the removal of 14,067 CY vegetative debris and 234 hazardous trees/limbs.
<b>Nassau County, FL</b> (population: 88,625) Hurricane Irma (2017) Hurricane Matthew (2016)	<b>Debris type: Vegetative, C&amp;D, and hazardous trees/limbs</b> <b>Irma:</b> monitored the removal of a total of 259,169 CY of vegetative and C&D debris, as well as 7,192 hazardous trees/limbs. <b>Matthew:</b> monitored the removal of 86,556 CY of vegetative and C&D debris and 2 hazardous trees/limbs.
<b>North Lauderdale, FL</b> (population: 44,391) Hurricane Irma (2017)	<b>Debris type: Vegetative and hazardous trees/limbs</b> Monitored 117,523CY of vegetative debris and 882 hazardous trees/limbs.

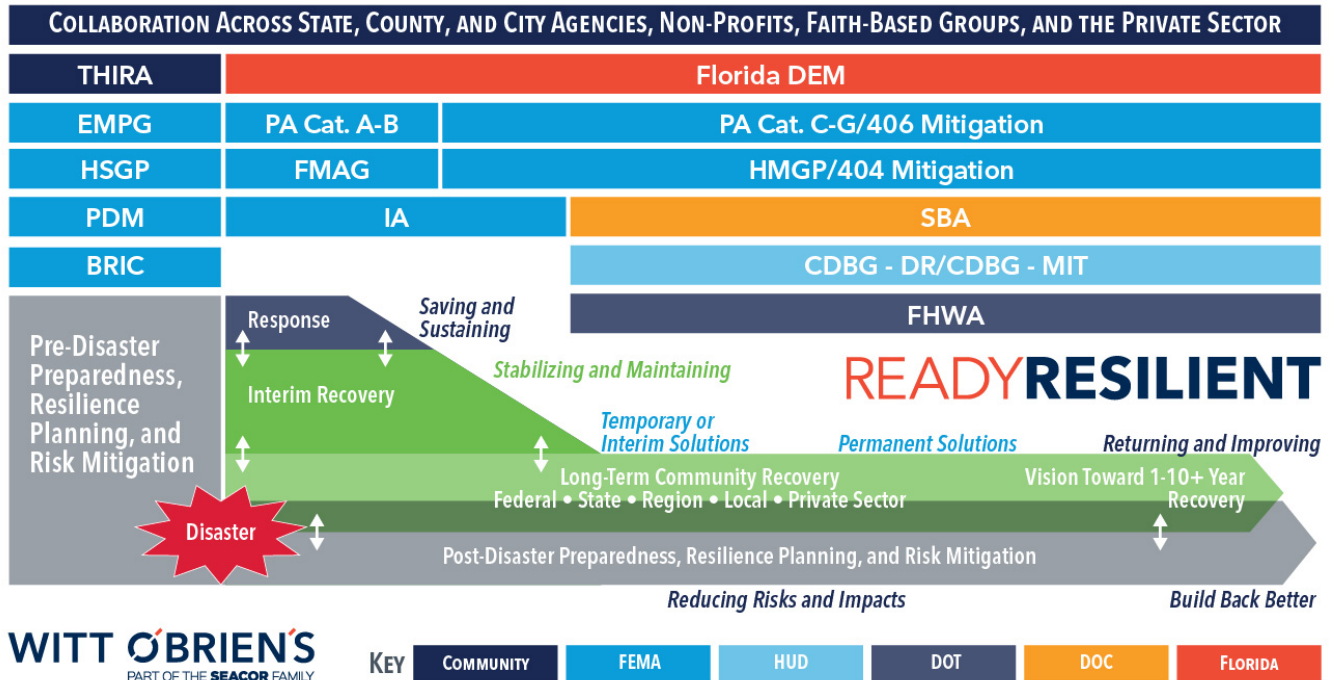
<p><b>Ocala, FL</b> (population: 60,429) Hurricane Irma (2017)</p>	<p>Debris type: Vegetative and hazardous trees/limbs <b>Monitored the removal of 205,905 CY of vegetative debris and 440 hazardous trees/limbs; included removal from private property and parks.</b></p>
<p><b>Plantation, FL</b> (population: 94,288) Hurricane Irma (2017)</p>	<p><b>Debris type: Vegetative, C&amp;D, and hazardous trees/limbs</b> Monitored the removal of 686,383 CY of vegetative and C&amp;D debris and 14,072 hazardous trees/limbs.</p>
<p><b>Washington County, FL</b> (population: 24,880) Hurricane Michael (2018)</p>	<p><b>Debris type: Vegetative, C&amp;D, mulch, hazardous trees/limbs</b> Monitored the removal of 1,478,553 CY of vegetative debris; 24,720 CY of C&amp;D debris; 453,835 CY of mulch; and 54,595 hazardous trees/limbs.</p>
<p><b>Georgia</b></p>	
<p><b>Savannah, GA</b> (population: 145,754) Hurricane Matthew (2016)</p>	<p><b>Debris type: Vegetative, C&amp;D, waterway, hazardous trees/limbs</b> Monitored the removal of 582,310 CY of vegetative, C&amp;D, and waterway debris, and 27,851 hazardous trees/limbs. Debris removal in historic districts required specialized operations.</p>
<p><b>Louisiana</b></p>	
<p><b>City of New Orleans, LA</b> (population: 383,551) Hurricane Ida (2021) Hurricane Zeta (2020) Tornado (2017)</p>	<p><b>Debris type: Vegetative, C&amp;D, hazardous trees/limbs, HHW, Solid Waste</b> <b>Ida:</b> Monitored the removal of 220,073 CY of vegetative debris, 74,431 CY of mulch, 61,981 CY of C&amp;D, 16,730 hazardous trees/limbs/limbs, 90 hazardous stumps, and 8,306,665 lbs. of solid waste (trash). <b>Zeta:</b> Monitored the removal of 72,282 CY of vegetative debris, 11,220 CY of C&amp;D, 19,758 CY of mulch and 4,550 hazardous trees/limbs. <b>Tornado:</b> Monitored removal of 57,172 CY of vegetative and C&amp;D debris; 594 pounds of HHW; and 209 hazardous trees/limbs.</p>
<p><b>Lafourche Parish, LA</b> (population: 96,880) Hurricane Ida (2021) Hurricane Zeta (2020) Hurricane Barry (2019)</p>	<p><b>Debris type: Vegetative, C&amp;D, hazardous trees/limbs, white goods</b> <b>Ida:</b> Monitored the removal of 454,740 CY of vegetative debris, 724,666 CY of C&amp;D, 274,731 CY of reduced C&amp;D haul-out, 552 CY of recyclable C&amp;D haul-out, 8,546 hazardous trees/limbs/limbs, and 1,915 pieces of white goods. <b>Zeta:</b> Monitored the removal of 67,468 CY vegetative and C&amp;D debris. Vegetative debris was burned in accordance with state regulations. <b>Barry:</b> Monitored the removal of 8,415 CY of vegetative debris from right-of-way (ROW) and state roads; we also monitored the burning of debris as final disposal.</p>
<p><b>City of Ruston, LA</b> (population: 21,976) Hurricane Laura (2020)</p>	<p><b>Debris type: Vegetative</b> Monitored the removal of 8,415 CY of vegetative debris from right-of-way (ROW) and state roads; we also monitored the burning of debris as final disposal.</p>

<p><b>City of Thibodaux, LA</b> (population: 14,173) Hurricane Ida (2021)</p>	<p><b>Debris type: Vegetative, C&amp;D, and hazardous trees/limbs</b> Monitored the removal of 86,723 CY of vegetative debris, 28,092 CY of mulch, 18,968 CY of C&amp;D, 7,839 CY of reduced C&amp;D haul-out, and 746 hazardous trees/limbs/limbs.</p>
<p><b>Livingston Parish, LA</b> (population: 140,789) LA Flooding (2016)</p>	<p><b>Debris type: Vegetative, C&amp;D, white goods, e-waste, hazardous waste, putrescible waste</b> Monitored the removal of 850,019 CY of vegetative and C&amp;D debris, 20,000 white goods, 338,000 lbs. of putrescible waste, 26,000 lbs. of e-waste, and 34,420 lbs. of hazardous waste.</p>
<p><b>North Carolina</b></p>	
<p><b>City of Wilmington, NC</b> (population: 101,358) Hurricane Isaias (2020) Hurricane Florence (2018)</p>	<p><b>Debris type: Vegetative, C&amp;D, hazardous trees/limbs</b> <b>Isaias:</b> Monitored the removal of 230,066 CY vegetative debris <b>Florence:</b> Monitored the removal of 896,462 CY of vegetative and C&amp;D debris and 9,859 hazardous trees/limbs.</p>
<p><b>New Hanover County, NC</b> (population: 239,508) Hurricane Isaias (2020) Hurricane Florence (2018) Hurricane Matthew (2016)</p>	<p><b>Debris type: Vegetative, C&amp;D, mulch, hazardous trees/limbs</b> <b>Isaias:</b> Monitored the removal of 173,787 CY of vegetative and C&amp;D debris and 743 hazardous trees/limbs, limbs, and stumps. <b>Florence:</b> Monitored the removal of 1,603,716 CY of vegetative, C&amp;D, and mulch debris and 7,690 hazardous trees/limbs. <b>Matthew:</b> Monitored removal of 96,461 CY of vegetative debris and 506 hazardous trees/limbs.</p>
<p><b>Wayne County, NC</b> (population: 123,131) Hurricane Florence (2018) Hurricane Matthew (2016)</p>	<p><b>Debris type: C&amp;D</b> <b>Florence:</b> Monitored the removal of 97,940 pounds of C&amp;D debris. <b>Matthew:</b> Monitored removal of 379 pounds of C&amp;D debris.</p>
<p><b>Texas</b></p>	
<p><b>Port Arthur, TX</b> (population: 54,766) Hurricane Harvey (2017)</p>	<p><b>Debris type: C&amp;D, e-waste, and white goods</b> Monitored the removal of 702,201 CY of C&amp;D debris, 47,886 pounds of e-waste, and 5,311 pieces of white goods.</p>
<p><b>US Virgin Islands</b></p>	
<p><b>U.S. Virgin Islands</b> (population 104,266) Hurricanes Irma and Maria (2018)</p>	<p><b>Debris type: Electrical power grid debris</b> Monitored and documented the collection, reduction, and off-island shipping of storm-damaged electrical debris: 2M linear feet (LF) of conductor wire, 150k LF of wooden power poles, 972 pole-mounted and 24 pad-mounted transformers, 3k streetlights and brackets, 5k guywire and 734 cross-arm and hardware, and 11 reclosers.</p>

## 2.2 EXPERIENCE COORDINATING WITH FEDERAL, STATE, AND LOCAL AGENCIES

Throughout the recovery process, we make the communities we serve more resilient, maximize all sources of funding, and seize every opportunity to rebuild facilities that are hardened to future threats. As shown in **Exhibit 4**, we understand and are experienced in managing within the interrelationship of agencies involved in the Federal programs that are important to state and local governments.

*Exhibit 4: Interrelationships of Agencies in the Disaster Recovery Lifecycle*



During project execution, we will directly engage not only with the Town, but also with FEMA, the Federal Highway Administration (FHWA), Florida Department of Emergency Management (FDEM) and Department of Environmental Protection (FDEP), and other applicable federal, state, or local emergency agencies and designated debris removal contractors to achieve the following objectives: (1) minimize confusion and miscommunication; (2) provide required and requested documentation; (3) explain project status; and (4) solve any problems or issues that may arise.

We have extensive experience collaborating and coordinating with our Federal, state, and local counterparts to share ideas, identify priorities, and solve problems. For example:

- In Port Arthur, Texas, our Debris Monitoring Project Manager assisted the city in coordinating with **Texas Department of Emergency Management (TDEM)** to address citizen complaints regarding the TDEM-selected debris management sites.
- Following Superstorm Sandy, Witt O'Brien's staff, led by current Director of Debris Operations Charles Bryant, worked with the **New Jersey Department of Environmental Protection and the Department of Transportation, FEMA, and the U.S. Army Corps of Engineers (USACE)** to develop a scope of work for side-scan sonar and bathymetric surveys to identify large volumes of debris that had been deposited in Barnegat Bay.

- In Lafourche Parish, as follow-up to a request that debris be picked up from state roads, our Project Manager advised the Parish of the need for a Memorandum of Understanding (MOU) with **the Louisiana Department of Transportation** and supported the Parish in obtaining the MOU.
- For Wilmington, North Carolina, the City wanted to clear debris from the schools that were administered by New Hanover County. Our Project Manager supported the City in coordinating with the **New Hanover County School District** in obtaining the MOU.
- For the **Florida School Board of Broward County (SBBC)**, the nation's largest, fully accredited public school district, Witt O'Brien's coordinated with **FEMA, the State of Florida, the Florida Division of Emergency Management (FDEM), and SBBC staff** to complete interim site inspections, process PWs and requests for reimbursements, close out 177 large PWs, and prepare a districtwide comprehensive debris management plan.
- Following Hurricanes Irma and Maria, Witt O'Brien's assisted the USVI Water and Power Authority (WAPA) in managing an unusual large-scale debris removal operation across several islands to address electrical power grid debris. To address the unique challenges of documenting the collection, stripping of hardware, reduction, and off-island shipping of large volumes of electrical debris, our Operations Manager coordinated with two divisions of the **Virgin Islands Territory Emergency Management Agency (VITEMA)**, two divisions of **WAPA**, two divisions of the **VI Department of Public Works**, the energy company, **Haugland Energy**, its subcontractors, and local **subcontractors** from three islands for both Haugland and Witt O'Brien's.

## 2.3 EXPERIENCE WITH FEDERAL FUNDING SOURCES AND REIMBURSEMENT

Witt O'Brien's comprehensive emergency management experience is combined with expertise conducting Federal cost reimbursement and FEMA grants management. Since 2001, Witt O'Brien's experts have helped manage and implement **over \$40 billion in grant funding reimbursements** across FEMA public assistance (PA) services, preparing and assisting with the implementation of **80,000+ project worksheets**. We have done this at the Recipient and Subrecipient levels, at the time of FEMA Project Worksheet formulation, and at the phase of a disaster where critical eligibility and FEMA policies are decided. We are currently working through this process for COVID-19 cost recovery for dozens of counties and cities, as well as educational institutions and healthcare facilities. Witt O'Brien's staff and leadership also have extensive work experience with FEMA's hazard mitigation programs, including the Hazard Mitigation Grant Program (HMGP), legacy Pre-Disaster Mitigation (PDM), Building Resilient Infrastructure and Communities (BRIC), and Flood Mitigation Assistance (FMA). Witt O'Brien's has provided expert support for Section 404 and 406 hazard mitigation funding following the most significant disasters since 2001.



With each project we undertake at Witt O'Brien's, our mission is to build community resilience through emergency preparedness, mitigation programs, and response and recovery support. A significant benefit that Witt O'Brien's brings to our clients is that our people know the Federal grant system and we have the processes and tools to maximize compliance and obtain both quality and efficiencies in accessing, monitoring, and maintaining federal funding. Our expertise stems from three distinct areas:

- Understanding the intricacies of the laws, regulations, policies, timelines, requirements, processes, and systems that govern eligibility and reporting for FEMA and other federal and state agencies.
- Applying that expertise to identify available options to facilitate decision-making and maximize potential funding.
- Executing multiple, concurrent grants management processes in an accurate and timely manner to realize that funding potential.

We have a strong team of disaster management specialists with superior working knowledge of eligibility guidelines for Federal, State, and local ordinances, statutes, laws, and regulations —as a matter of fact, some of our experts helped write them. Witt O'Brien's is adept at applying the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended, and related authorities including 44CFR, 2CFR, FEMA FP 104-009-2 PA Program and Policy Guide, Sandy Recovery and Improvement Act, and the Disaster Recovery Reform Act of 2018 (DRRA). **Exhibit 5** presents select examples of our federal grant program cost recovery successes.

***Exhibit 5: Select Examples of Witt O'Brien's Federal Cost Recovery Experience***

<b>Client</b>	<b>Funds/Grants Managed and Reimbursed</b>
State of Louisiana	\$14 billion in PA and \$2 billion in HMA Funding
State of Florida	\$4 billion in PA and HMA Funding
State of Iowa	\$1.2 billion in PA and HMA Funding
State of New Jersey	\$1 billion in FEMA Funding
The University of Texas Medical Branch	\$800 million in PA and HMA Funding
City of Galveston, Texas	\$300 million in PA and HMA Funding
Iowa and Indiana	\$1.5 billion in PA and HMA funds.
USVI Territory	\$8 billion in FEMA PA and HUD CDBG-DR Funding
City of Houston, Texas	\$200 million in PA and HMA Funding
Texas A&M System	\$10 million in PA Funding
Hillsborough County	\$19.4 million in PA funding
City of Coral Gables	\$13.9 million in PA funding
City of Orlando	\$11.7 million in PA funding
Indian River County	\$10.0 million in PA funding



In addition, we have successfully ramped up to support the needs of more than 100 state and local governments (including school districts, universities, healthcare systems and hospitals) across the country, providing advisory services, technical assistance, and pro bono webinars on cost recovery associated with the COVID-19 pandemic disaster. We are currently advising on more than \$10 billion of COVID-19 related funding.

## 2.4 EXPERIENCE WITH SPECIAL DISASTER RECOVERY SERVICES

Debris removal from improved public property and public rights-of-way (ROW) is eligible for FEMA reimbursement. Disaster debris typically includes vegetative (e.g., trees/limbs, limbs, shrubs) and construction and demolition (C&D) debris. However, some debris types or situations may require special handling and/or documentation. Examples of these circumstances include:

- **Hazardous trees/limbs, hanging limbs, and stumps** – Eligible vegetative debris may include tree limbs, branches, stumps, or trees/limbs that are still in place, but damaged to the extent they pose an immediate threat. FEMA has specific eligibility criteria and documentation requirements for funding these items.
- **Household hazardous waste (HHW) and putrescent debris (e.g., animal carcasses, food waste)** – Removal and disposal of hazardous materials requires separation from other debris and specialized procedures for handling and disposal.
- **Private property** – Private property debris removal (PPDR) requires obtaining a right of entry (ROE) and validation and documentation (e.g., that the removal is in the public interest) to be eligible for removal cost reimbursement from FEMA.
- **Waterways** – Removal and disposal of disaster-generated debris, wreckage, and sunken vessels from the coastal zone or inland zone, non-Federally maintained navigable waterways, and wetlands requires a determination of eligibility by FEMA that it is necessary to eliminate the immediate threat to life, public health and safety, or improved property.
- **Privately owned vehicles and vessels** – Removal of abandoned vehicles and vessels on public property that block access to a public area are eligible for removal provided that regulatory and documentation requirements are met.
- **Demolition/Hazardous Materials** – Demolition of buildings and structures may involve handling of hazardous waste or environmentally sensitive materials; in particular, **asbestos** requires specialized removal, handling, and disposal personnel and permits.
- **Environmental and historic preservation (EHP)** – Debris removal operations may occur on or near archeological sites and historic buildings or in sensitive areas such as wetlands, floodplains, and critical habitats, requiring an EHP review to ensure compliance with applicable regulations.

*Our Project Principal, Charles Bryant, is an authority on **PPDR and waterway debris removal**. He developed for GOSHEP the PPDR guidelines that were subsequently adopted by FEMA. For the State of New Jersey, he developed the operational methodology for waterway debris removal.*

As described in **Exhibit 6** below, Witt O'Brien's brings experience in extraordinary debris challenges and will provide the Town with expert consulting on addressing these situations.

*Exhibit 6: Projects Requiring Experience with Special or Hazardous Debris*

Event and Client	Project Description
<p><b>Hurricane Ida (2021)</b> <b>New Orleans, LA</b> <b>Lafourche Parish, LA</b> <b>SE LA Flood Protection Authority (SE-LA FPA)</b></p>	<p>Witt O'Brien's has been conducting debris monitoring across five different areas in Louisiana following Hurricane Ida. For the City of New Orleans, we monitored the removal of 356,485 CY of debris (vegetative, C&amp;D, mulch) and <b>16,810 hazardous trees/limbs/limbs/stumps</b>. Because the City also needed to use its hauling contractor for solid waste removal, we also monitored the removal of <b>8,306,665 pounds of solid waste</b>.</p> <p>In Lafourche Parish, we monitored the removal of 1,454,689 CY of debris (vegetative, C&amp;D, haul-out), 8,546 hazardous trees/limbs/limbs, and <b>1,915 pieces of white goods (e.g., refrigerators full of putrescible waste)</b>.</p> <p>For the SE-LA FPA, we monitored the removal of 41,638 CY of vegetative and C&amp;D debris and 517 hazardous trees/limbs/limbs. Our team also managed the removal of <b>82 creosote pilings/timber, 49 tires, and 3 boats</b> from levees; this debris was deposited by high water during the storm.</p>
<p><b>Hurricane Florence (2018)</b> <b>Morehead City, NC</b></p>	<p>In January 2020 (following a lengthy approval process from FEMA), Witt O'Brien's successfully managed a specialized debris removal operation in Morehead City, NC as a result of Hurricane Florence in 2018. We monitored the removal, reduction, and final disposal of 57 hazardous limbs, 22 hazardous trees/limbs, and 4 hazardous stumps from two <b>historical cemeteries</b>. Witt O'Brien's worked closely with an archaeological monitoring firm to ensure that the hauling contractor removed all hazards safely without disturbing/damaging the historical gravesites.</p>
<p><b>Hurricane Michael (2018)</b> <b>Washington County, FL</b></p>	<p>Following Hurricane Michael, Witt O'Brien's monitored the removal of 1,478,553 CY of vegetative debris, 24,720 CY of C&amp;D debris, 453,835 CY of mulch and <b>35,987 hazardous limbs, 10,274 hazardous trees/limbs and 109 hazardous stumps</b> in Washington County, FL.</p>
<p><b>Hurricanes Irma and Maria (2017)</b> <b>U.S. Virgin Islands (USVI)</b></p>	<p>Witt O'Brien's monitored comprehensive clean-up of storm-damaged <b>electrical debris</b> across the entire Territory. We ensured that transformers were safely transported off-island and monitored and documented collection, stripping of hardware, and reduction of 2 million linear feet (LF) of conductor wire; 150,000 LF of wooden power poles; 972 pole-mounted &amp; 24 pad-mounted transformers; 3,000 streetlights and brackets; 5,000 guywire and 734 cross-arm and hardware; 11 reclosers.</p> <p>After completion of the work above, we also mobilized 40 trained personnel to conduct a survey documenting hazardous trees/limbs, limbs, and stumps. Across the Islands we documented over <b>11,000 hazardous trees/limbs, limbs, and stumps</b>.</p>
<p><b>Hurricane Harvey (2017)</b> <b>Multiple clients, TX</b></p>	<p>Witt O'Brien's engaged in debris monitoring and management of multiple client operations in Texas, including Port Arthur. Total amounts were more than 750,000 CY of vegetative and C&amp;D debris; <b>65,000 lbs. of HHW and e-waste; and more than 5000 pieces of white goods</b>.</p>
<p><b>Hurricane Irma (2017)</b></p>	<p>Witt O'Brien's fully engaged in debris monitoring management in more than 30 client operations in Florida and Georgia because of Hurricane Irma that impacted the area in early September 2017. Total debris</p>

*Exhibit 6: Projects Requiring Experience with Special or Hazardous Debris*

Event and Client	Project Description
<p><b>Plantation, FL and other jurisdictions in FL and GA</b></p>	<p>amounts monitored included more than 6 million CY of vegetative/C&amp;D debris and more than <b>225,000 hazardous trees/limbs and limbs</b>. In Plantation alone, our team monitored the removal of 686,383 CY of vegetative and C&amp;D debris and 14,072 hazardous trees/limbs. In addition, the team oversaw approximately 300 hauler crew hours to complete the removal of <b>62 loads of additional vegetative debris from waterways (canals)</b>.</p>
<p><b>Hurricane Matthew (2016)</b> <b>Savannah, GA</b></p>	<p>Witt O'Brien's monitored the removal of nearly 450,000 CY of hazardous debris including 50,000 CY of <b>waterway debris</b>. Our staff also recorded, via photos and GPS coordinates, the removal of <b>1,232 hazardous trees/limbs, 26,230 hazardous limbs, and 338 hazardous stumps</b> and provided the City with expert data management and documentation services to support their FEMA cost reimbursement claims. Due to the <b>historic nature</b> of the City, we assisted with coordination of EHP monitoring and archeological evaluation of debris operations for fallen trees/limbs and limbs in many historic City parks and cemeteries, as well as golf courses and green spaces.</p> <p>We also worked with FEMA to approve a scope of work for a <b>waterway debris removal operation</b> simultaneously with our ROW debris removal operation. We managed the removal of more than 40,000 CY of debris from city-maintained canals, ditches, and retention ponds.</p>
<p><b>Severe Flood (2016)</b> <b>Livingston Parish, LA</b></p>	<p>Witt O'Brien's monitored debris removal for 810,000 CY of C&amp;D debris; <b>20,000 pieces of white goods; 338,000 lb. of putrescible waste; 26,000 lbs. of e-waste; 34,420 lbs. of hazardous waste resulting from water-damaged homes</b> after flooding in South-eastern Louisiana.</p> <p>In addition, we performed a ROE project under a 180-day extension to assist Parish residents in returning home. We collected and processed more than <b>2,000 ROE / Hold Harmless Agreements</b> for a Right of Entry program that expanded the eligible ROW due to the devastating nature of the flooding. We worked with the State of Louisiana and FEMA to develop a scope for an "Expanded Right of way" that granted us an additional 10 feet beyond the ROW to collect flood related debris.</p>
<p><b>Hurricane Isaac (2012)</b> <b>Multiple clients, LA</b></p>	<p>For seven local governments in Louisiana (including Livingston Parish and St. Bernard Parish), Witt O'Brien's monitored the removal of more than 250,000 CY of debris, which also <b>included hazardous trees/limbs, white goods, and e-waste</b>. In St. Bernard Parish, our crews monitored and managed <b>PPDR</b> programs involving <b>400 ROE/Hold Harmless</b> agreements with residents. For Livingston Parish, we obtained approval for a <b>waterway debris removal project where 96 miles of navigable rivers were cleared of 8,500 CY of vegetative debris and 9 vessels</b>.</p>
<p><b>Superstorm Sandy (2012)</b> <b>Multiple clients, NJ</b></p>	<p>Debris removal in several cities involved <b>e-waste, material recycling, roll-off container monitoring, sand removal, beach restoration, clearing of drainage systems and basins, and waterway debris removal</b> from Barnegat Bay, which including sophisticated tasks to establish eligibility for large volumes of debris deposited by the storm.</p>

*Exhibit 6: Projects Requiring Experience with Special or Hazardous Debris*

Event and Client	Project Description
<b>Winter Storm (2011)</b> <b>Multiple clients, MA</b>	In a multi-site (20 counties/towns) response effort in rural Western Massachusetts, Witt O'Brien's managed and monitored the removal of a total of 1.7 million CY of debris, handled nearly 42,000 load tickets, and oversaw the removal of more than 100,00 <b>hazardous limbs and trees/limbs</b> .
<b>Ice Storm (2009)</b> <b>Little Rock, AR</b>	Witt O'Brien's monitored the removal of more than <b>87,000 leaning trees/limbs and hazardous limbs</b> in Arkansas after ice storms in 2009.
<b>Multiple Hurricanes (2005)</b> <b>Florida Waterways</b>	During the active hurricane season of 2005, Witt O'Brien's staff monitored the removal of <b>500 derelict vessels</b> in Florida from several county waterways. Additionally, we monitored more than <b>40,000 derelict lobster pots</b> removed from coastal waters that posed a hazard to navigation.

In addition, we bring experience in the other areas identified in the RFP (data management, hauler invoice reconciliation, and FEMA appeals assistance), as follows:

- **Data Management.** To manage data related to debris removal and monitoring costs, we use our automated data management system (ADMS), **DebrisPro™**, a securely hosted, multi-device supported, web-enabled system that allows for the electronic tracking and collection of data in the field to ensure thorough documentation for all cost recovery activities. Witt O'Brien's has been using **DebrisPro™** since 2010 and we have successfully managed more than 100 debris projects throughout the country.
- **Hauler Invoice Reconciliation.** Throughout operations, the Witt O'Brien's team has successfully used our ADMS, **DebrisPro™** to inspect and audit contractor invoices and back-up documentation to ensure that the information reconciles with our own database information of debris quantities and project costs.
- **FEMA Appeals Assistance.** Our personnel are specially trained to ensure that all documentation is organized to justify project expenditures per the approved scope of work, and to do so in a format that meets FEMA and State requirements. Particularly during closeout and auditing, we collaborate closely with clients on funding reconciliation and finalizing documentation for inspection. If appeals to decisions are necessary, we will also assist in drafting the appeals using a team approach to leverage the broadest set of expertise possible. Witt O'Brien's has experience supporting appeals for disaster debris operations projects. Following Hurricane Wilma, we prepared two debris appeals for the City of Coral Springs in Florida, as part of our FEMA PA support (we were not the debris monitoring contractor). For the first project, more than \$3M of \$16M in reimbursement was rejected due to unsupported/duplicated charges, unreasonable time and materials costs, and ineligible work. We were able to assist the City in recovering nearly the entire amount. On a second project, \$235k of \$338k was rejected based on ineligibility of standing trees/limbs that were removed because of health and safety hazards. We were able to assist the City with recovering more than \$200k by preparing a detailed narrative and time line of events, preparing affidavits from staff that worked on the project overseeing the vendor, and providing research about the type of trees/limbs removed showing the complexity of the rootball structure.

### 3. SAFETY RECORD

On the following pages, we provide our safety records for the past five years (2017 – 2021), which demonstrate that we have not had any safety violations, assessments or citations issued by applicable governmental agencies.

All establishments covered by Part 1904 must complete this Summary page, even if no injuries or illnesses occurred during the year. Remember to review the Log to verify that the entries are complete.

Using the Log, count the individual entries you made for each category. Then write the totals below, making sure you've added the entries from every page of the log. If you had no cases write "0."

Employees former employees, and their representatives have the right to review the OSHA Form 300 in its entirety. They also have limited access to the OSHA Form 301 or its equivalent. See 29 CFR 1904.35, in OSHA's Recordkeeping rule, for further details on the access provisions for these forms.

**Number of Cases**

Total number of deaths	Total number of cases with days away from work	Total number of cases with job transfer or restriction	Total number of other recordable cases
0	0	0	0
(G)	(H)	(I)	(J)

**Number of Days**

Total number of days away from work	Total number of days of job transfer or restriction
0	0
(K)	(L)

**Injury and Illness Types**

Total number of ... (M)					
(1) Injury	0	(4) Poisoning	0		
(2) Skin Disorder	0	(5) Hearing Loss	0		
(3) Respiratory Condition	0	(6) All Other Illnesses	0		

**Post this Summary page from February 1 to April 30 of the year following the year covered by the form**

Public reporting burden for this collection of information is estimated to average 58 minutes per response, including time to review the instruction, search and gather the data needed, and complete and review the collection of information. Persons are not required to respond to the collection of information unless it displays a currently valid OMB control number. If you have any comments about these estimates or any aspects of this data collection, contact: US Department of Labor, OSHA Office of Statistics, Room N-3644, 200 Constitution Ave. NW, Washington, DC 20210. Do not send the completed forms to this office.

**Establishment Information**

Your establishment name Witt O'Brien's LLC  
 Street 1201 15th Street NW, Suite 600  
 City Washington State DC Zip 20005  
 Industry description (e.g., Manufacture of motor truck trailers)  
Professional Services - Emergency Preparedness & Response  
 Standard Industrial Classification (SIC), if known (e.g., SIC 3715)  
8 7 4 2  
 OR North American Industrial Classification (NAICS), if known (e.g., 336212)

**Employment Information**

Annual average number of employees 20  
 Total hours worked by all employees last year 39,278

Sign here

  
 Knowingly falsifying this document may result in a fine.

I certify that I have examined this document and that to the best of my knowledge the entries are true, accurate, and complete.

Greg Fenton COO  
 Company executive Title  
404-942-7750 Phone  
1/19/18 Date

# OSHA's Form 300A (Rev. 01/2004)

## Summary of Work-Related Injuries and Illnesses

All establishments covered by Part 1904 must complete this Summary page, even if no injuries or illnesses occurred during the year. Remember to review the Log to verify that the entries are complete. Using the Log, count the individual entries you made for each category. Then write the totals below, making sure you've added the entries from every page of the log. If you had no cases write "0."

Employees former employees, and their representatives have the right to review the OSHA Form 300 in its entirety. They also have limited access to the OSHA Form 307 or its equivalent. See 29 CFR 1904.35 in OSHA's Recordkeeping rule, for further details on the access provisions for these forms.

Number of Cases		
Total number of deaths	Total number of cases with days away from work	Total number of cases with job transfer or restriction
0	1	0
(G)	(H)	(I)

Number of Days	
Total number of days away from work	Total number of days of job transfer or restriction
2	0
(K)	(L)

Injury and Illness Types		
Total number of (M)	(1) Injury	1
(2) Skin Disorder	(4) Poisoning	0
(3) Respiratory	(5) Hearing Loss	0
Condition	(6) All Other Illnesses	0

Post this Summary page from February 1 to April 30 of the year following the year covered by the form

Public reporting burden for this collection of information is estimated to average 59 minutes per response, including time to review the instruction, search and gather the data needed, and complete and review the collection of information. Persons are not required to respond to the collection of information unless it displays a currently valid OMB control number. If you have any comments about these estimates or any aspects of this data collection, contact: US Department of Labor, OSHA-Office of Statistics, Room N-3364, 200 Constitution Ave. NW, Washington, DC 20210. Do not send the completed forms to this office.

### Establishment Information

Your establishment name Witt O'Brien's  
 Street 1201 15th Street NW, Suite 600  
 City Washington State DC ZIP 20005  
 Industry description (e.g., Manufacture of motor truck trailers)  
Professional Services - Emergency Preparedness & Response  
 Standard Industrial Classification (SIC), if known (e.g., SIC 3716)  
8 7 4 2  
 OR North American Industrial Classification (NAICS), if known (e.g., 336212)

### Employment Information

Annual average number of employees 289  
 Total hours worked by all employees last year 654,883

### Sign here

Knowingly falsifying this document may result in a fine.

I certify that I have examined this document and that to the best of my knowledge the entries are true, accurate, and complete.

Greg Paxon Company executive  
COO Title  
31 Jan 19 Date  
 404-942-7750 Phone

# Summary of Work-Related Injuries and Illnesses

All establishments covered by Part 1904 must complete this Summary page, even if no injuries or illnesses occurred during the year. Remember to review the Log to verify that the entries are complete.

Using the Log, count the individual entries you made for each category. Then write the totals below, making sure you've added the entries from every page of the log. If you had no cases write "0."

Employees former employees, and their representatives have the right to review the OSHA Form 300 in its entirety. They also have limited access to the OSHA Form 301 or its equivalent. See 29 CFR 1904.35, in OSHA's Recordkeeping rule, for further details on the access provisions for these forms.

### Number of Cases

Total number of deaths	Total number of cases with days away from work	Total number of cases with job transfer or restriction	Total number of other recordable cases
0	0	0	0
(G)	(H)	(I)	(J)

### Number of Days

Total number of days away from work	Total number of days of job transfer or restriction
0	0
(K)	(L)

### Injury and Illness Types

Total number of... (M)	(1) Injury	(2) Skin Disorder	(3) Respiratory Condition	(4) Poisoning	(5) Hearing Loss	(6) All Other Illnesses
0	0	0	0	0	0	0

Post this Summary page from February 1 to April 30 of the year following the year covered by the form

Public reporting burden for this collection of information is estimated to average 58 minutes per response, including time to review the instruction, search and gather the data needed, and complete and review the collection of information. Persons are not required to respond to the collection of information unless it displays a currently valid OMB control number. If you have any comments about these estimates or any aspects of this data collection, contact: US Department of Labor, OSHA Office of Statistics, Room N-3644, 200 Constitution Ave. NW, Washington, DC 20210. Do not send the completed forms to this office.

### Establishment information

Your establishment name Witt O'Brien's, LLC

Street 618 Town and Country Blvd, Suite 200.

City Houston State TX Zip 77024

Industry description (e.g., Manufacture of motor truck trailers) Management Consulting Services

Standard Industrial Classification (SIC), if known (e.g., SIC 3715) 8 7 4 2

OR North American Industrial Classification (NAICS), if known (e.g., 336212) \_\_\_\_\_

### Employment information

Annual average number of employees 280

Total hours worked by all employees last year 584278

Sign here

Knowingly falsifying this document may result in a fine.

I certify that I have examined this document and that to the best of my knowledge the entries are true, accurate, and complete.

Greg Fenton  
Company executive  
404-942-7750  
Phone

COO  
Title  
[Signature]  
Date  
01/06/2020





# Summary of Work-Related Injuries and Illnesses

All establishments covered by Part 1904 must complete this Summary page, even if no injuries or illnesses occurred during the year. Remember to review the Log to verify that the entries are complete and accurate.

Using the Log, count the individual entries you made for each category. Then write the totals below, making sure you've added the entries from every page of the log. If you had no cases write "0."

Employees former employees, and their representatives have the right to review the OSHA Form 300 in its entirety. They also have limited access to the OSHA Form 301 or its equivalent. See 29 CFR 1904.35, in OSHA's Recordkeeping rule, for further details on the access provisions for these forms.

**Number of Cases**

Total number of deaths	Total number of cases from work away from work	Total number of cases with job transfer or restriction	Total number of other recordable cases
0	0	0	0
(G)	(H)	(I)	(J)

**Number of Days**

Total number of days away from work	Total number of days of job transfer or restriction
0	0
(K)	(L)

**Injury and Illness Types**

Total number of... (M)	(1) Injury	(2) Skin Disorder	(3) Respiratory Condition	(4) Poisoning	(5) Hearing Loss	(6) All Other Illnesses
	0	0	0	0	0	0

**Post this Summary page from February 1 to April 30 of the year following the year covered by the form**

Public reporting burden for this collection of information is estimated to average 58 minutes per response, including time to review the instruction, search and gather the data needed, and complete and review the collection of information. Persons are not required to respond to the collection of information unless it displays a currently valid OMB control number. If you have any comments about these estimates or any aspects of this data collection, contact: US Department of Labor, OSHA Office of Statistics, Room N-3644, 200 Constitution Ave. NW, Washington, DC 20210. Do not send the completed forms to this office.

**Establishment information**

Your establishment name Witt O'Brien's LLC  
 Street 818 Town & Country Blvd Suite 200  
 City Houston State TX ZIP 77024  
 Industry description (e.g., Manufacture of motor truck trailers)  
Management Consulting Services  
 Standard Industrial Classification (SIC), if known (e.g., SIC 3715)  
8 7 4 2  
 OR North American Industrial Classification (NAICS), if known (e.g., 336212)  
 \_\_\_\_\_

**Employment information**

Annual average number of employees 280  
 Total hours worked by all employees last year 584,375

Sign here

Knowingly falsifying this document may result in a fine.

I certify that I have examined this document and that to the best of my knowledge the entries are true, accurate, and complete.

Greg Fenton \_\_\_\_\_ COO  
 \_\_\_\_\_ Company executive \_\_\_\_\_ Title

4040 942 7750 \_\_\_\_\_ Phone \_\_\_\_\_ Date 1/8/2021

# OSHA's Form 300A (Rev. 01/2004)

## Summary of Work-Related Injuries and Illnesses

Year 2021

**U.S. Department of Labor**  
Occupational Safety and Health Administration

From approved OMB no. 1218-0176

All establishments covered by Part 1904 must complete this Summary page, even if no injuries or illnesses occurred during the year. Remember to review the Log to verify that the entries are complete. Using the Log, count the individual entries you made for each category. Then write the totals below, making sure you've added the entries from every page of the log. If you had no cases write "0."

Employees former employees, and their representatives have the right to review the OSHA Form 300 in its entirety. They also have limited access to the OSHA Form 301 or its equivalent. See 29 CFR 1904.35; in OSHA's Recordkeeping rule, for further details on the access provisions for these forms.

### Number of Cases

Total number of deaths	Total number of cases with days away from work	Total number of cases with job transfer or restriction	Total number of other recordable cases
0	0	0	0
(G)	(H)	(I)	(J)

### Number of Days

Total number of days away from work	Total number of days of job transfer or restriction
0	0
(K)	(L)

### Injury and Illness Types

Total number of ...	(1) Injury	(2) Skin Disorder	(3) Respiratory Condition	(4) Poisoning	(5) Hearing Loss	(6) All Other Illnesses
(M)	0	0	0	0	0	0

### Post this Summary page from February 1 to April 30 of the year following the year covered by the form

Public reporting burden for this collection of information is estimated to average 58 minutes per response, including time to review the instruction, search and gather the data needed, and complete and review the collection of information. Persons are not required to respond to the collection of information unless it displays a currently valid OMB control number. If you have any comments about these estimates or any aspects of this data collection, contact: US Department of Labor, OSHA Office of Statistics, Room N-3644, 200 Constitution Ave, NW, Washington, DC 20210. Do not send the completed forms to this office.

<b>Establishment Information</b>	
Your establishment name	Witt O'Brien's LLC
Street	818 Town & Country Blvd Suite 200
City	Houston TX
State	TX
Zip	77024
Industry description (e.g., Manufacture of motor truck trailers) Management Consulting Services	
Standard Industrial Classification (SIC), if known (e.g., SIC 3715) 8 7 4 2	
OR North American Industrial Classification (NAICS), if known (e.g., 336212) _____	
<b>Employment Information</b>	
Annual average number of employees	590
Total hours worked by all employees last year	1,206,381
<b>Sign here</b>	
Knowingly falsifying this document may result in a fine.	
I certify that I have examined this document and that to the best of my knowledge the entries are true, accurate, and complete.	
Greg Fenton Company executive	Sr. Managing Director Title
404.942.7750 Phone	1/8/2022 Date

## 4. PROPOSER QUALIFICATIONS

### 4.1 SERVICE AND INCORPORATION

Witt O'Brien's has a long history with and an established presence in Florida. Witt's O'Brien's, LLC, was formed in 2009 in a merger between Witt Associates (formed in 2001) and O'Brien's Response Management (in 1983). Through these legacy organizations, our team has been supporting recovery operations for jurisdictions throughout Florida since the hurricanes of 2004 (Frances, Jeanne, Charley, and Ivan), assisting local governments in recouping debris removal and monitoring costs and providing debris management consultation and training. As part of that effort, our debris specialists also validated and monitored the removal of marine, canal, and waterborne debris, including almost 500 derelict vessels, in Monroe, Miami-Dade, and Broward Counties.

Over this time, we have built trusted relationships with regional stakeholders and other capable partners and providers that can, if needed, bring a wealth of additional disaster recovery capability to our Florida clients. Furthermore, Witt O'Brien's, LLC's parent company, SEACOR Holdings Inc., is headquartered in Fort Lauderdale, where we maintain a local office.

### 4.2 LICENSES

Witt O'Brien's is licensed to do business in the State of Florida, as demonstrated by our Certification of Status and SunBiz report (**Appendix A**). No other company-specific licenses, certifications, or permits are necessary or required by FEMA or FDEM for hurricane / storm preparation and recovery services in the State. Witt O'Brien's individual staff maintain current FEMA coursework certificates related to debris management and operations that are available.

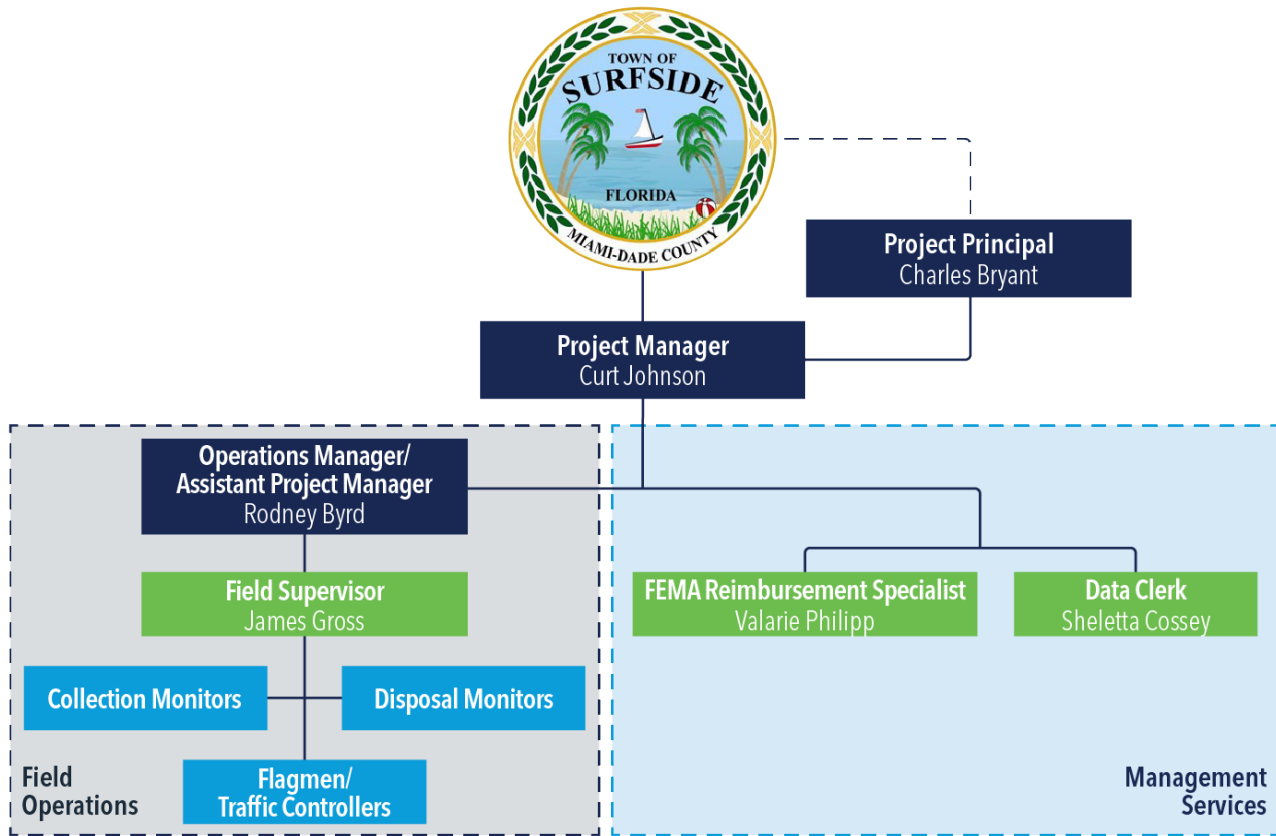
### 4.3 STAFF ORGANIZATION AND QUALIFICATIONS

Witt O'Brien's is pleased to provide a highly experienced team of debris specialists to the Town.

**Exhibit 7** presents our proposed organization chart. Our management team consists of the following:

- **Charles Bryant**, a nationally recognized debris management expert who leads Witt O'Brien's Debris Management Division, will serve as **Project Principal**. He will be responsible for oversight of the project management team, customer service, and contract compliance for the debris monitoring operations for the Town. Charles is widely recognized as an expert on private property debris removal (PPDR) and waterway debris.
- **Curt Johnson**, our **Project Manager (PM)**, who brings more than 15 years of professional experience, will serve as the Town's primary, day-to-day point of contact. He will be responsible for ensuring all work is being performed safely and in accordance with regulatory requirements, monitoring and tracking the overall costs associated with all aspects of the project, and working with the hauling contractor to make sure that debris removal efforts are accomplished in a timely and cost-effective manner, to reduce the financial burden to the Town.
- **Rodney Byrd** will serve as the team's **Emergency Operations Manager**. He will be responsible for managing and coordinating all field operations, including overseeing, and training all monitors and supervisory staff, assigning monitoring crews to work locations, coordinating schedules and assignments with the Debris Removal Contractors, and ensuring that all documentation is complete and correct.


*Exhibit 7: Witt O'Brien's Organization Structure*



*NOTE: As part of his Project Manager duties, Curt Johnson will also carry out the responsibilities of the Damage/Debris Assessment Specialist. Similarly, our Field Supervisor, James Gross, will also serve as the Truck Certifier and Staff Scheduler / Truck Dispatcher.*

This management team will be supported by a highly experienced team of debris monitoring and management professionals that bring the necessary credentials, skills, and qualifications to this engagement. **Exhibit 8** provides short bios, while full resumes presented in **Appendix B**.

*Exhibit 8: Qualifications of our Key Personnel*

CHARLES BRYANT	PROJECT PRINCIPAL
 <p><b>Charles</b> has 40 years of experience in emergency response and emergency management services, with 15 years focused specifically in debris management. He has led debris management operations in states, cities, counties, and municipalities, and served as a debris technical advisor providing technical assistance for development of FEMA project worksheets for Category A debris removal projects. Charles is one of only two preeminent instructors of debris management at FEMA's national training center, EMI. During Hurricanes Rita and Katrina, Charles served under contract as the Louisiana Deputy Director for Debris Operations, with the responsibility for overall coordination of debris operations for the state. In this capacity, he wrote the state's policy for PPDR, which was later adopted and used by FEMA. He also served 25 years as a first responder with the City of Sulphur, Louisiana, Fire Department, and was the Fire Chief and emergency manager for 18 of those years.</p>	

**Exhibit 8: Qualifications of our Key Personnel**

<b>Education, Training, Certifications, and Licenses:</b>	
<i>Louisiana State University, Eunice Associate Fire Science Degree Programs; Certified FEMA EMI Instructor: NIMS Advanced ICS Curricula Train the Trainer E449; E202 National Debris Management Planning; Trainer: EMI National Debris Management. FEMA Pilot Program Train the Trainer; FEMA Intro to Emergency Management; FEMA Liability Issues in Emergency Management; National Fire Academy Fire Service, Financial Management &amp; Planning</i>	
<b>CURT JOHNSON</b>	<b>PROJECT MANAGER</b>
 <p><b>Curt</b> has more than 15 years of professional experience, including nearly 10 years supporting and managing debris removal monitoring projects in response to major disasters. Curt has served as project manager or operations manager for debris removal monitoring projects following Hurricanes Ida, Isaias, Florence, Matthew, Irma, Maria, Hermine, Isaac, and Sandy, including: New Hanover County, NC (1.7 million CY); Livingston Parish, LA (850,000 CY); and Edgewater and Ponce Inlet, FL (275,000 CY). To date, he has overseen the removal, management, and reduction of over 9 million CY of various types of debris, including vegetative, C&amp;D, hazardous trees/limbs, and white goods. Curt is experienced in Private Property Debris Removal (PPDR) and the process of obtaining Rights of Entry (ROEs). He has also managed debris removal operations in sites requiring coordination and compliance with environmental and historical preservation requirements.</p>	
<b>Education, Training, Certifications, &amp; Licenses:</b>	
<i>FEMA: IS-100.c, IS-101.c, IS-102.c, IS-200.c, IS-230.d, IS-235.c, IS-632.a, IS-700.b, IS-800.c; Certified Hazard Analysis and Critical Control Points (HACCP) Manager</i>	
<b>RODNEY BYRD</b>	<b>OPERATIONS MANAGER / ASSISTANT PROJECT MANAGER</b>
 <p><b>Rodney</b> brings more than 20 years of senior management experience, including 5 years in management of disaster recovery and debris monitoring. He has an advanced working knowledge of FEMA PA eligibility guidelines and experience working with state and Federal agencies to ensure all documentation requirements are met for reimbursement. He has engaged in management of the successful removal of millions of CY of storm-related debris, including vegetative and C&amp;D debris, hazardous trees/limbs, household hazardous waste, white goods, and e-waste. He is experienced in debris removal not only from public ROW but also private property (which required obtaining ROEs), private roads, commercial property, and state roads. He has managed debris monitoring operations following Hurricanes Ida, Zeta, Laura, Harvey, Irma, Maria, Florence, and Barry for 10 different local governments. In 2021, Rodney was responsible for the successful execution of five debris monitoring contracts simultaneously following Hurricane Ida.</p>	
<b>Education, Training, Certifications, and Licenses:</b>	
<i>IS-632.a; IS-633; IS-100.c; IS-200; IS-200.b; IS-700.b; IS-800.c; IS-300; IS-400; OSHA 24-Hour HAZWOPER</i>	
<b>JAMES "JIMMY" GROSS</b>	<b>FIELD SUPERVISOR</b>
<b>Jimmy</b> has five years of experience in field operations of debris removal monitoring in response to major disasters. He has been a Project Manager, Operations Manager, Field Supervisor, DMS Supervisor, and Field Monitor for debris monitoring projects following Hurricanes Matthew, Irma, Maria, Florence, and Ida.	



To date, he has supported projects totaling nearly 2 million cubic yards (CY) of various types of debris. Following Hurricane Ida, in 2021, Jimmy served as the Project Manager and Operations Manager for debris monitoring operations in the Greater Lafourche Port Commission and City of Thibodaux (Louisiana), overseeing removal of nearly 200k CY of debris and 750 hazardous trees/limbs/limbs. Jimmy was also the Operations Manager for Witt O'Brien's debris removal operations in New Hanover County (NC) after Hurricane Florence, responsible for monitoring removal of 1.6 million CY of vegetative and C&D debris and nearly 8,000 hazardous trees/limbs/limbs.

**Education, Training, Certifications, & Licenses:**

*Wyotech Technical School; Daytona State College; FEMA IS-632.a, IS-633, IS-100, IS-120, IS-200, IS-240, IS-700, IS-800; Structural Welding Certified, Heavy Equipment Operator*

**VALARIE PHILIPP**

**FEMA REIMBURSEMENT SPECIALIST**



**Valarie** is a registered Professional Engineer in the States of Georgia and Florida with more than 20 years of experience in emergency management and related fields assisting state, county, and municipal governments with disaster preparedness, response, and recovery. Valarie is a FEMA debris and grants management subject matter expert. She oversees appeals resolution, procurement compliance, and FEMA disaster closeouts. Most recently, she has been responsible for the management and oversight of 15 FEMA Grants Management projects and 10 disaster debris monitoring projects resulting from

Hurricanes Irma and Michael that impacted Florida in 2017 and 2018. Prior to joining Wit O'Brien's, Valarie served as a FEMA Technical Assistance Contractor (TAC) where she conducted damage assessments, prepared cost estimates, developed Project Worksheets, managed building assessment teams, and served as the Deputy Public Assistance Coordinator (PAC) for debris operations for Hurricane Katrina in South Florida.

**Education, Training, Certifications, & Licenses:**

*University of Florida, MSCE, Structural Engineering; University of Florida, B.S., Civil Engineering; Registered Professional Engineer (PE). FEMA EMI Training: FEMA IS-008, FEMA IS-056, FEMA IS-100, FEMA IS-156, FEMA IS-200, FEMA IS-253, FEMA IS-279, FEMA IS-300, FEMA IS-318, FEMA IS-340, FEMA IS-386, FEMA IS-393, FEMA IS-400, FEMA IS-403, FEMA IS-547, FEMA IS-613, FEMA IS-631, FEMA IS-632, FEMA IS-700, FEMA IS-800, FEMA IS-801, FEMA IS-803. FEMA Classroom Training: Operations I, Cost Estimating Format, G-202 Debris Management*

**SHELETTA COSSEY**

**DATA CLERK**



**Sheletta** has 10 years of professional experience, including 5 years of experience with debris monitoring, data management, and data administration. Sheletta began her response/recovery services career as a field monitor after Hurricane Matthew; she has now served as a Data Manager for multiple large-scale, concurrent debris monitoring projects, which have required her to oversee as many as 3,000 load tickets and 20,000 CY daily. Sheletta is trained as a debris specialist and is knowledgeable in data and financial reconciliation. She manages the electronic ticketing process from its inception through project closeout. Sheletta is also experienced at providing statistical data and operational coordination, preparation, and organization.

**Education, Training, Certifications, and Licenses:**

*Allied American University, B.S., Business Administration. Training: FEMA IS-1000, IS-1101, IS-1002, IS-100 IS-200, IS-230, IS-235, IS-318, IS-632.a, IS-633, IS-650, IS-700, IS-800, 24-Hour HAZWOPER*

#### 4.4 PARTICIPATION OF SMALL, MINORITY, AND WOMEN-OWNED BUSINESSES

Witt O'Brien's routinely makes every effort to identify and utilize qualified disadvantaged, minority, women-owned and/or small business suppliers of goods and services from around the area if activated to provide the requested services. In particular, Witt O'Brien's has standing relationships with several disadvantaged / minority / women-owned firms across the nation for staffing augmentation purposes.

During the 2020 hurricane season, Witt O'Brien's was activated to provide debris monitoring for our long-standing client, the City of New Orleans. Through our arrangement with our DBE contractor, **we exceeded our goal of 35% DBE utilization.**

If needed to meet staffing needs for this effort, we will engage with Alpha 1 Staffing, LLC, a Florida-based, M/WBE certified small business, to bring on the workforce from within Surfside and surrounding area during active debris operations. We have partnered with Alpha 1 on several large monitoring efforts since 2018.

## 5. INSURANCE CERTIFICATES



### CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
09/30/2021

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> Marsh USA Inc. 2929 Allen Parkway, Suite 2500 Houston, TX 77019  CN102369057-STND-STND-21-22		<b>CONTACT</b> NAME: PHONE (A/C, No, Ext): FAX (A/C, No): E-MAIL: ADDRESS:															
<b>INSURED</b> Witt O'Brien's LLC O'Brien's Response Management, LLC 1201 15th Street NW, Suite 600 Washington, DC 20005		<table border="1"> <thead> <tr> <th>INSURER(S) AFFORDING COVERAGE</th> <th>NAIC #</th> </tr> </thead> <tbody> <tr> <td>INSURER A : Starr Indemnity &amp; Liability Company</td> <td>38318</td> </tr> <tr> <td>INSURER B : Liberty Mutual Insurance Company</td> <td>23043</td> </tr> <tr> <td>INSURER C : New York Marine &amp; General Ins.</td> <td>16608</td> </tr> <tr> <td>INSURER D : Stratford Ins Company</td> <td>40436</td> </tr> <tr> <td>INSURER E :</td> <td></td> </tr> <tr> <td>INSURER F :</td> <td></td> </tr> </tbody> </table>		INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A : Starr Indemnity & Liability Company	38318	INSURER B : Liberty Mutual Insurance Company	23043	INSURER C : New York Marine & General Ins.	16608	INSURER D : Stratford Ins Company	40436	INSURER E :		INSURER F :	
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INSURER F :																	

**COVERAGES**                      **CERTIFICATE NUMBER:** HOU-003672905-14                      **REVISION NUMBER:** 11

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> <b>COMMERCIAL GENERAL LIABILITY</b> <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:			MASILHS00105721	06/01/2021	06/01/2022	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMPI/OP AGG \$ 2,000,000 \$
A	<input checked="" type="checkbox"/> <b>AUTOMOBILE LIABILITY</b> <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY <input type="checkbox"/> AUTOS ONLY			1000198884211 (FL, TX, LA, CA)	10/01/2021	10/01/2022	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
B	<input checked="" type="checkbox"/> <b>UMBRELLA LIAB</b> <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE			3HABM5BH004 (50% Participation)	06/01/2021	06/01/2022	EACH OCCURRENCE \$ 5,000,000
C	<input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$ 25,000			ML2021MEE00360 (25% Participation)	06/01/2021	06/01/2022	AGGREGATE \$ 5,000,000
D	<input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$ 25,000			VMX8001015 (25% Participation)	06/01/2021	06/01/2022	\$
A	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A	1000003889	10/01/2021	10/01/2022	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000

**DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES** (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)  
 Subject always to policy terms, conditions and exclusions. Certificate Holder is named as Additional Insured with respects to the General Liability, Auto Liability and Excess Liability Policies but only to the extent of risks and liabilities assumed by the Insured in a signed written contract. Subject always to policy terms, conditions and exclusions. General Liability will be Primary and Non-Contributing when required by written contract. Waiver of subrogation is in favor of the certificate holder respects General Liability, Auto Liability and Workers' Compensation policies when required by written contract subject to the policies terms and conditions and as permitted by law. Workers Compensation policy evidenced hereon includes Maritime Employers' Liability.

<b>CERTIFICATE HOLDER</b> Witt O'Brien's LLC 1501 M Street NW Washington, DC 20005	<b>CANCELLATION</b> SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.  AUTHORIZED REPRESENTATIVE  <i>Marsh USA Inc.</i>
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ACORD 25 (2016/03)

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AGENCY CUSTOMER ID: CN102369057

LOC #: Houston



**ADDITIONAL REMARKS SCHEDULE**

Page 2 of 2

AGENCY Marsh USA Inc.		NAMED INSURED Witt O'Brien's LLC O'Brien's Response Management, LLC 1201 15th Street NW, Suite 600 Washington, DC 20005	
POLICY NUMBER		EFFECTIVE DATE:	
CARRIER	NAIC CODE		

**ADDITIONAL REMARKS**

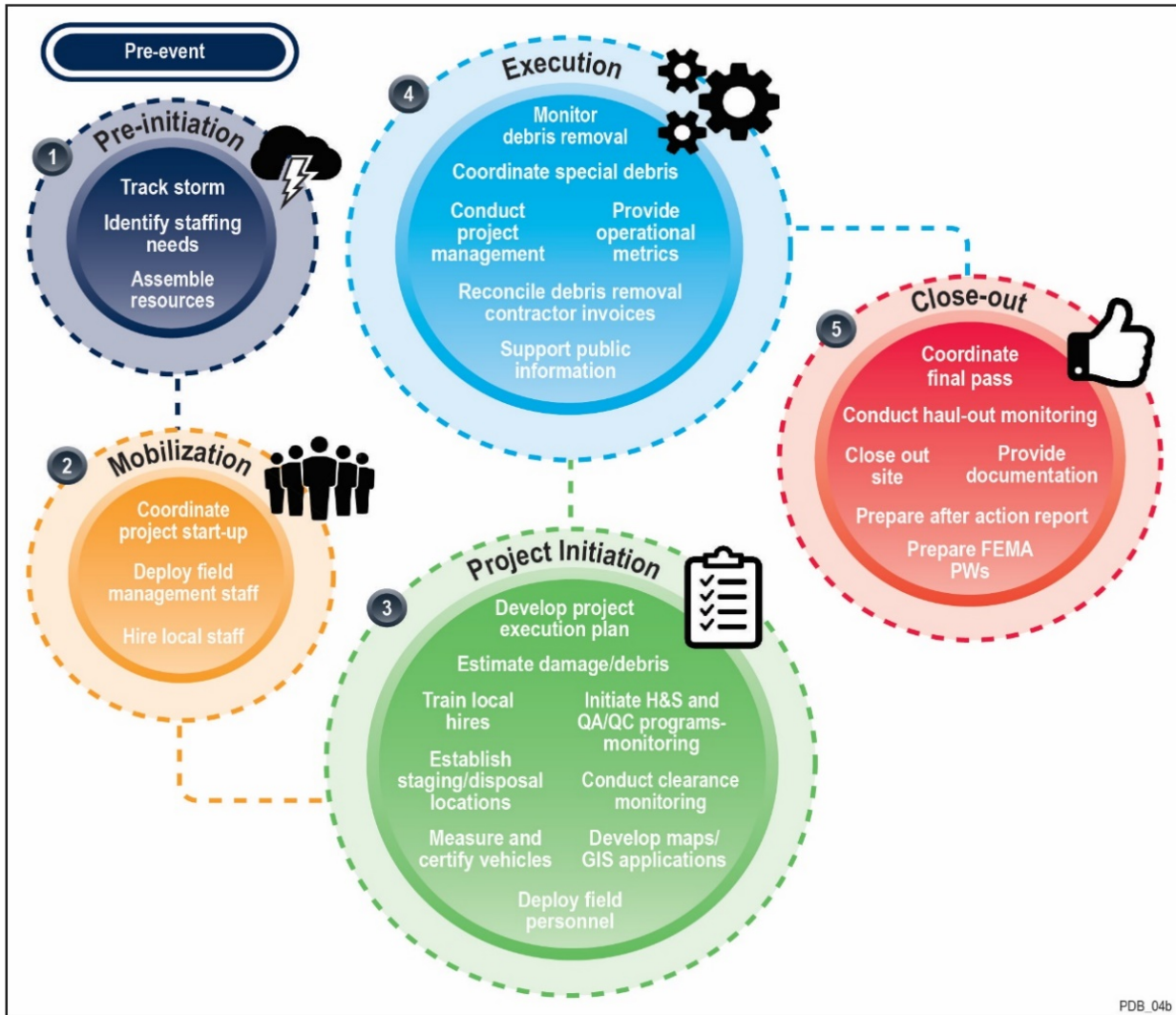
THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,  
FORM NUMBER: 25 FORM TITLE: Certificate of Liability Insurance

Cyber Liability:  
Carrier: Lloyds Syndicate 2623/623  
Policy Number: W25A4D210301  
Effective Date: 07/01/20201 - Expiration Date: 07/01/2022  
Limit: \$2,000,000

## 6. ADDITIONAL INFORMATION: TECHNICAL APPROACH

In this section, we present our overall, phased approach to debris monitoring projects to demonstrate our understanding of and our capabilities and experience in executing all tasks in the RFP Scope of Services. Our approach, as presented in **Exhibit 9**, consists of a series of sequential yet interdependent phases: (1) Pre-initiation, (2) Mobilization, (3) Initiation, (4) Execution, and (5) Close-out.

*Exhibit 9: Witt O'Brien's Phased Approach to Debris Monitoring Management*



The sections below describe our approach to debris monitoring services from contract award to close-out of a specific event.

A cornerstone of our approach is the use of our proprietary Automated Debris Management System (ADMS), **DebrisPro™** a securely hosted, multi-device supported, web-enabled system that allows for the electronic tracking and collection of data in the field to ensure thorough documentation for all cost recovery activities. **DebrisPro™** was developed in line with the US Army Corps of Engineers (USACE) technical specifications and FEMA documentation requirements, and it meets or exceeds all the

detailed specifications found in the USACE electronic debris management system requirements. It integrates the best of the technology, tools, server infrastructure, hand-held devices, and a web portal to simplify the basic tasks of managing debris monitoring and removal, contracts management, and office operations.

**DebrisPro™** effectively captures, tracks, and documents disaster debris data from field operations and then synchronizes the information to the central server. This then allows our leadership to view reports, charts, and summaries relevant to their level of authority through a web portal. Witt O'Brien's has been using **DebrisPro™** since 2010 to manage more than 100 debris projects throughout the country.

### Features of DebrisPro™



- ✓ Automated ticket collection, scanning, tracking, invoicing, and reporting
- ✓ Cross-checking original ticket information against contractor invoice data
- ✓ Comparison strategies like percentage monitoring cost and graphical representation of data
- ✓ Capture and display of real time information from the site of origination
- ✓ Financial tools to identify missing contracts or rate lists
- ✓ Electronic ticket generation at each location
- ✓ Categorized and organized debris documentation with secure storage
- ✓ Tracking of debris operations using GIS and other mapping technologies
- ✓ On-site ticket scanning via 2D bar code technology via hand-held devices
- ✓ Simplified data entry flows to guide operation of technology for debris collection activities
- ✓ Generation of daily rosters to identify monitoring costs
- ✓ Audit and reconciliation of hauler invoices

The sections below describe our full life cycle approach to debris monitoring services from contract award to close-out of a specific event. As such, it provides details on our complete set of services to demonstrate our experience and capabilities.

## 6.1 PRE-INITIATION



The pre-initiation activities fall into two types: (1) non-event specific activities, which include contract execution following award and any related ongoing planning, training, and administrative processes; and (2) event-driven activities, including tracking an anticipated disaster (e.g., pending hurricane) and beginning preparations or responding to an unpredicted event.

### Non-Event Specific Activities

Pre-event debris management planning services and activities are crucial in solidifying relationships with client staff who are involved in event-driven emergency response functions, including debris monitoring. It is also imperative to understand the client's expectations. For example, our Team's Project Manager typically holds a yearly meeting with the client and the hauler prior to hurricane season to discuss questions the client may have in the event of an activation. The team will then coordinate with client staff year-round to ensure open and effective lines of communication and to identify desired services. Other support might include the following activities:

- Meet with clients to review/revise debris management plan and ensure compliance.
- Prepare for activation progress tracking by obtaining data such as lists of city streets, GIS zone shape files, and hauling contractor scope of work and line-item rates.
- Identify staging or disposal locations (e.g., Debris Management Sites or DMS locations) and ensure that proper documentation is in place.
- Train client staff on the monitoring process, with a focus on eligibility criteria and documentation requirements to help them understand how they receive funding.

### Event-Driven Activities

As part of pre-initiation, our Project Manager and his team continually track potential weather events that may impact our clients. If it appears that a client area will be impacted by an approaching storm, our Project Manager will coordinate with the debris hauling contractor to develop an estimate of debris quantities and the resulting staffing needs for both the hauler and the monitoring firm. He will also initiate the processes for assembling the field monitoring workforce, as discussed in more detail below in “Coordinate Project Start-up.”

Our Project Manager will then convene the management team (e.g., Operations Manager, Field Supervisors, and Data Clerk) and begin to move resources and supplies into place. We maintain and manage scalable Rapid Response Packages that are pre-loaded and staged within proximity of the client and include the following for an expedited deployment and self-sufficiency: our state-of-the-art ADMS, **DebrisPro™**; tablets, laptops, and desktop computers; generators; office supplies; cell phones and mobile Wi-Fi hotspots; pre-printed forms and documents; Bluetooth printers; Personal Protective Equipment (PPE) and first-aid kits; COVID-19 specific supplies; field supplies; and pre-identified vendor lists.



## 6.2 MOBILIZATION



We understand that during a disaster, our role is to augment and strengthen your capacity to respond. Therefore, our goal is the rapid mobilization and integration of our debris-focused leadership and field personnel with all participants of the larger response and recovery team.

### Deploy Field Management Staff

Following a Notice to Proceed, the management staff will be deployed along with other available trained field personnel and the Rapid Resource Package. If feasible, this team can be deployed in

advance of a predicted event and will shelter-in-place along with an initial portion of the required resources. Within 24 hours of activation, they will meet with client staff to have work commence. For an unpredicted event, our team will report to the specified location within 6 hours of notification.

### Coordinate Project Start-up

Upon mobilization, our Management Team will conduct a kick-off meeting with Town officials and the hauling contractor to assess current debris activities and identify needs and priorities. Specifically, they will determine operational priorities and objectives, discuss the project scope and timeline expectations, and identify documentation or information-sharing procedures. This will form the basis for the Project Execution Plan. Once staffing needs are validated, our team will begin to assemble the full workforce using the following:

- **Network of Vetted Debris Staff.** Currently, Witt O'Brien's has more than 100 debris supervisory staff and a network of more than 700 debris monitors that have completed our internal debris training program and are eligible and available for re-hire. During the storm tracking phases, our management team will begin communications with both the supervisory staff and the monitors in our network to assess their availability.
- **Local Hires.** We are committed to hiring additional local personnel on our projects and will conduct hiring campaigns to identify, pre-screen, and conduct all pre-employment paperwork rapid hiring and deployment of monitoring personnel. We will activate Witt O'Brien's' standard procedures for broadcasting job announcements (via radio, internet, newspapers, unemployment offices, college job boards, local veteran hiring initiatives, and churches). Depending on the size of the project, we will establish Human Resource (HR) hiring centers in the affected area that can be quickly mobilized, transported, and set up to allow for immediate vetting and hiring. In addition to our HR department, we work with multiple staffing vendors across the country who provide recruiting services and employee onboarding.
- **Staffing Agencies.** Witt O'Brien's has agreements with multiple staffing agencies, including small, disadvantaged businesses, who can assist us extending employment opportunities to the community.

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*During Hurricane Irma, we activated and deployed more than 1,500 personnel by recruiting and hiring locally, obtaining personnel from staffing agencies, and assigning personnel from other parts of the company*

Witt O'Brien's regularly uses E-Verify to screen potential employees and we conduct background checks, drug tests, and motor vehicle safety tests. We also impose a strict "zero tolerance" policy for drug usage, safety violations, inappropriate language, or disrespectful behavior that may reflect negatively on our client or our firm. Any field staff can be dismissed from the project at any time for violating these policies.

## 6.3 PROJECT INITIATION



This phase will include analyzing disaster impacts, assessing the current situation, and confirming the proposed personnel, staffing requirements, scheduling, and other contract-related items. It involves developing the Project Execution Plan, the Health and Safety Plan, and the Quality Control Plan. As part of project initiation, we will implement our staff training program and set up our GIS systems for tracking program progress.

### Develop Project Execution Plan

Following our initial meeting with Town officials, the Project Manager will develop a comprehensive project execution plan (Incident Action Plan) to confirm the details of our approach such as personnel assignments, communication and information sharing procedures, safety procedures, documentation procedures, and a schedule for deliverables. This plan is a far more detailed and tailored adaptation of our technical approach provided in this proposal based on the situation of an actual disaster. It typically includes an overall approach to address current challenges, new productivity requirements, and the continued need to maximize and retain debris-related funding.



### Estimate Damage/Debris

The Witt O'Brien's Project Manager will coordinate with the Town and its debris removal contractor to tour the affected area, document damages, estimate debris quantities, estimate removal costs, and identify hazardous and dangerous debris for immediate removal. To determine estimated debris quantities, Witt O'Brien's uses the USACE Debris Estimating Model. USACE developed this model based on debris generated by Hurricanes Frederic, Hugo, and Andrew. The model considers the number of households in an urban / suburban area with the storm category, vegetative characteristics, commercial density, and precipitation. It is accurate within +/- 30% for hurricane events.

Witt O'Brien's also uses FEMA's Hazus, the nationally applicable software program that estimates potential building and infrastructure losses from hurricanes, riverine and coastal floods, and hurricane winds. Hazus uses geographic information system software (ArcGIS) to map and display hazard data, results of damage and economic loss analyses, and potential effects on area populations. Hazus analyses also can be run in real time to support response and recovery actions following a disaster.

### Establish Staging / Disposal Locations

DMS locations are approved areas where debris contractors can haul eligible debris so it can be further separated or processed before being hauled to a final disposal facility. At the DMS, monitoring towers are established so that monitors can quantify debris by load. In many cases, the location of the DMS is determined during disaster preparation and discussed as part of the ongoing planning activities.



*Aerial View of DMS Managed by Witt O'Brien's*

As needed, Witt O'Brien's can assist with pre-event selection of DMS locations suitable to handle the quantities and types of debris forecasted and can advise and assist the Town with the acquisition of all necessary environmental and other permits. An important component of reviewing sites and consulting on site selection criteria is ensuring that sites can be properly secured to limit access. As part of our process for selecting

potential sites, we take photographs, inspect potential properties, and produce a summary report with recommendations. Site security measures such as fencing, cameras, and locked access gates can also be implemented after the site selection process.

If the DMS locations need to be established during an event, we will assist with inspecting locations, documenting conditions, developing a safety report, securing regulatory permits, and coordinating set-up with contractors. We are also experienced in establishing ingress and egress routes (and find this to be a helpful step in increasing site efficiency), and we have assisted in the management of reduction schedules to reduce the risk of vegetation catching fire or debris piles growing too high.

### **Conduct Clearance Monitoring**

Our team will work with the Town to prioritize roads, facilities, and areas for initial debris clearance. The team will document labor and materials and force account expenses. Any debris monitoring activities related to the Federal Aid System roads will be tracked and costs will be maintained separately (for the Federal Highway Administration Emergency Relief (FHWA-ER) program).

### **Initiate Health and Safety Program**

During every debris monitoring project, we take great care to ensure the well-being of residents and all debris removal workers and monitors. Prior to any field deployment of staff, Witt O'Brien's will initiate a Health and Safety Awareness and Compliance program to ensure that our monitoring personnel are equipped with PPE and are operating safely. This program now includes FEMA and OSHA guidance and documentation on working during the COVID-19 pandemic. Additional measures for social distancing have been implemented.

We follow a strict safety process, perform a project safety analysis, and follow guidelines for safety training. Our Operations Manager will act as a safety officer for our employees and ensure our safety program is being followed at all work sites including pick-up locations, temporary staging sites, and final disposal sites. Our safety requirements include the following:

- Participate in a daily safety meeting.
- Wear the appropriate safety equipment.
- Remain at a safe distance from loading, hauling, and cutting equipment.
- Inspect all vehicles before they leave the DMS.
- Verify that debris is properly and safely loaded.

Prior to being assigned to a work site, all field personnel must complete our safety and heat stress awareness training which is provided via our mobile application and follows up with questions to ensure program retention. At the onset of an activation, we complete our ICS-215 Site Safety Analysis form, which outlines specific hazards of the particular project, how to avoid those hazards, what to do in the event that any personnel comes in contact with a hazard, a communications plan, and the location of nearby hospitals. Typical hazards could include falling debris, chemical spills, flooding / high waters, and wild or feral animals native to the area. Each morning, an ICS-208 Site Safety Message is produced by our safety team. This message reiterates talking points from our safety program and addresses any new hazards that might have been encountered and accidents or near misses that were documented recently.

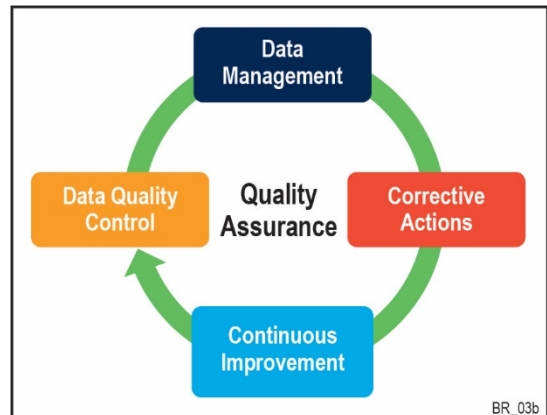
At loading sites, all loading equipment is monitored to ensure no damages, accidents, or near misses take place without being properly documented and necessary agencies contacted in the event of an accident. Reduction and disposal sites are also monitored for accidents and near misses to ensure proper reporting and agency contact. Emphasis at reduction sites is put on fire safety and identification

of smoldering wood chips. At the temporary storage and final disposal locations, only approved, certified vehicles will be allowed to enter to that only ensure eligible, documented debris is being delivered.

Supervisors will run a **stop work procedure** and halt operations promptly if they see unsafe conditions, or in the case of a safety incident. Following the shutdown, they will contact the Project Manager and maintain the shutdown until the issue is resolved.

### Initiate Quality Assurance Program

As a standard component of our project management, we will implement a quality assurance/quality control (QA/QC) program to ensure contract compliance and maintain performance standards and goals. Our Project Manager has the processes and tools to ensure data integrity and data management through all data collection, coordination, and documentation activities, from initiation to close-out. Our Project Manager is adept at managing a multi-faceted team that is virtual, on site, and in the field. In the fast-paced debris monitoring response work, we share information in a collaborative environment using the Microsoft 365 platform for



document sharing, information and document storage, shared schedules, and video conferencing. All Witt O'Brien's employees have Office 365 for Business® on their company-issued laptops to facilitate rapid communication and information sharing. SharePoint and Microsoft Teams facilitate document sharing, the ability to collaborate on documents, and the flexibility to video conference simply through an Internet connection.

Our QA/QC Plan will provide the Town, the Project Manager, and the Project Principal with the controls they need to manage performance, assess, and mitigate risk, and adjust to changing conditions, as required. We will develop and routinely report on schedule baselines, overall resource allocations, activity levels, and staff assignments. Key features of our program include:

- **Real-time Data Quality Control:** Our plan builds in quality control in every step of the process. We start with our training program, which emphasizes the importance of data accuracy. The accurate completion of load tickets is perhaps the most important element of a quality control program for debris monitoring. At the field locations, supervisors spot-check the monitors' load tickets for accuracy and completeness and debrief them at the end of each day regarding performance and any issues identified. At the DMS, tower monitors review tickets for accuracy upon arrival. In addition, data entry staff perform ongoing reviews to identify load ticket errors or omissions and report them to field supervisors to allow for immediate corrective action.
- **Data Management:** Our quality processes are focused on data integrity – accessing the right data, coding it properly, and ensuring that it is reported in a fully compliant format for the federal funding agency. Our Project Manager and the management team will use both our GIS programs and **DebrisPro™** for accurate and comprehensive collection and tracking of data in the field for all cost-recovery activities.
- **Corrective Actions:** If Witt O'Brien's monitoring personnel detect negligence or non-compliance with FEMA regulations, Town staff will be notified immediately. Examples may include artificial



loading, mixing loads with ineligible or hazardous materials, using improper equipment, or safety violations. The debris removal contractor staff and supervisors will be informed of the non-compliance and instructed on how to correct the error.

- **Continuous improvement:** At the core of our quality assurance approach is a proven system for ensuring that our staff are performing at optimal levels and meeting our high standards. To ensure operational efficiency and reduce overall costs, our management team will analyze data progress against project goals to determine causes of delay or determine whether certain activities can be compressed to save time and budget. Based on the daily information our monitors receive regarding the hauls performed by debris removal contractor, we are able to synthesize the data and forecast the level of effort to achieve total debris removal within the required FEMA timeframe.

### Train Staff

Once additional personnel are hired, we work with them to ensure content knowledge and understanding before assigning them to their respective functions. Our training program is based on an on-line interactive, cloud-based training platform, and comprises multiple modules. The modules that are provided to all staff, regardless of position, include:

- Introduction to Debris Monitoring
- Witt O'Brien's Employee Expectations
- Daily Procedures
- Heat Stress
- COVID-19

We then provide additional modules that are specific to the field employee function, including:

- Load Site Monitor Training
- Hazardous Tree Monitor Training
- Debris Management Site Monitor Training

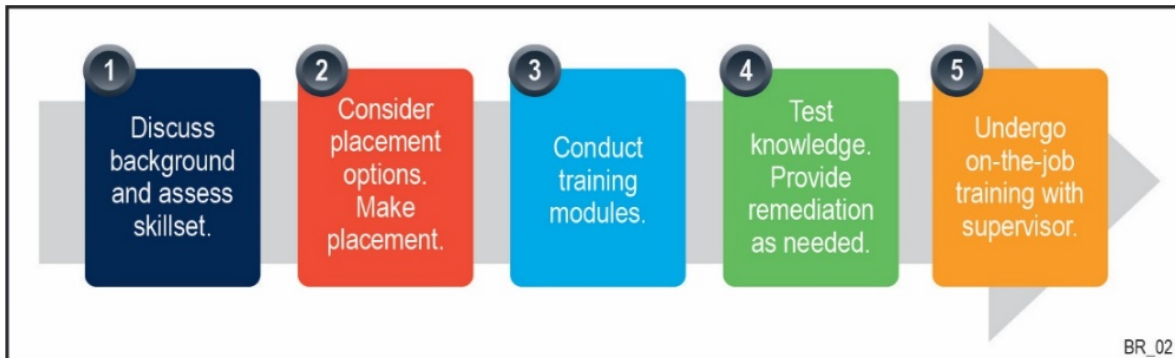


These courses are designed to emphasize safety considerations, FEMA eligibility guidelines, job duties and responsibilities, load ticket management, and standard procedures for debris monitoring. Training will also instill the paramount importance that tickets are to be completed accurately and legibly to ensure maximum FEMA reimbursement of funds. New monitors are also trained in the use of handheld automated ticketing units (tablets), which includes the app linking to **DebrisPro™**, and are supplied with reference materials and maps of their work zones.

We also have modules for management and supervisory functions, as follows: (1) Admin Assistant Training; (2) Field Supervisor Training (including Truck Certification); (3) Debris Operations Manager Training; and (4) Project Management Training.

**Our training program is designed to build upon the learning process and to certify each level of competency as each employee progresses in core capabilities and understanding.** Therefore, each module ends with an assessment of knowledge comprehension and retention that must be passed before moving on to the next training program. If an assessment is failed, remediation is provided before the next assessment. Training can be completed at any time, allowing monitors to fulfill multiple roles when needed.

*Witt O'Brien's Training Methods Build Competencies by Level*



Once trained, field staff are then closely supervised on the job, debriefed at the beginning and end of each day, and held to our high standards of performance and conduct.

**Assign Field Personnel**

In accordance with the Project Execution Plan, the Project Manager and Operations Manager will assign and dispatch the team to their appropriate locations at debris collection locations and the DMS. We follow the NIMS ICS guidance, which advises that people in leadership positions maintain a “manageable span of control” regarding the number of direct reports. This typically includes:

- **Field Supervisors.** The Operations Manager will dispatch experienced Field Supervisors to oversee monitoring activities and implement the QA/QC program at debris sites at a ratio of 1:10 supervisors to monitors or as needed for exceptionally large and unique operations to ensure adequate management of operation (per FEMA’s Debris Monitoring Guide, March 2021).
- **Load Site Monitors.** The Operations Manager and Field Supervisors will pair monitors with hauling crews and dispatch them to debris collection locations. As requested, the Operations Manager will assign roving monitors to observe debris removal contractor operations and locate, document, and map special debris (e.g., hazardous trees/limbs, white goods), and report on ineligible debris and contractor-caused damages.
- **Debris Site Monitors.** The Operations Manager will staff each DMS with an experienced debris monitor for assessing load volumes, inspecting debris, and ensuring debris types are kept separate (for proper quantification throughout all phases of the project).

All personnel will be equipped with vehicle transportation and state-of-the-art technology (e.g., rugged tablets) to ensure appropriate and efficient data collection, transfer, and documentation.

**Measure and Certify Hauling Vehicles**

Witt O'Brien's follows the most recent FEMA standards and recommendations for calculating the capacity of debris removal trucks and will initiate the truck measurement and certification process in coordination with the debris removal contractor to accurately measure the volumetric capacity of each truck upon its arrival at the disaster scene. During the truck certification process, our dedicated truck certification team will record information for each truck or piece of equipment used to transport and remove debris. This information is recorded electronically using an app (which feeds into **DebrisPro™**), and includes the make and model, license plate number, debris removal contractor equipment number, and its maximum volume in cubic yards. The measured



volume of the load bed will be displayed on a placard attached to the driver's side of the equipment or vehicle. Our team will provide the Town with both hard and electronic copies of the completed forms.

Witt O'Brien's will work with the debris removal contractor to ensure that if the debris removal contractor adds vehicles to its fleet, or if measurement calculations should change, these adjustments are reflected in all documentation. In addition, Witt O'Brien's roving monitors and field supervisors will conduct random inspections and spot checks of debris removal equipment to ensure there has not been tampering of truck placards. Roving and field monitors will be trained to deter and detect any fraudulent alteration of truck volumetric capacities.

### Develop Maps and GIS Applications

As a Silver Tier member of the ESRI Partner Network, Witt O'Brien's has priority access to and support from the ArcGIS software makers. As a result, we have additional mapping resources that allow us to resolve technical issues quickly and tailor location-based analytics.

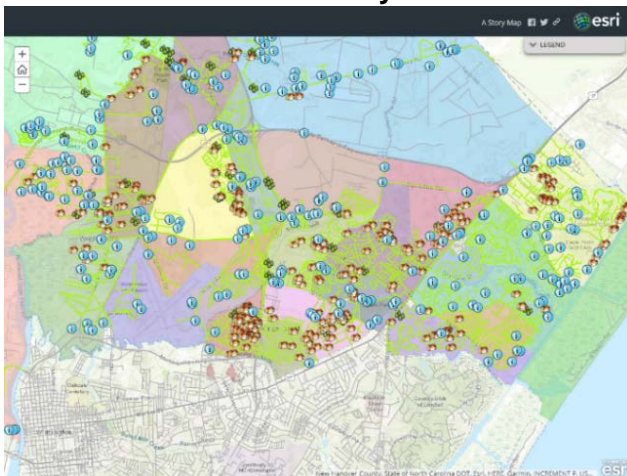


Witt O'Brien's uses a GIS collector app that is loaded on the tablets in the field and on the management computers. The app can be used to designate "hot spots" for immediate collection and identify inaccessible roads. The team also uses the app to generate an automatic link of GPS and GIS data to each debris load, hazardous tree (e.g., stump, hanging limb, or leaner), white goods (e.g., appliance), or other type of debris. They designate each type of debris (whether eligible or ineligible) with a specific icon or pin (along with photos of ineligible debris). This provides a visual of the amounts of different debris types that need to be picked up.

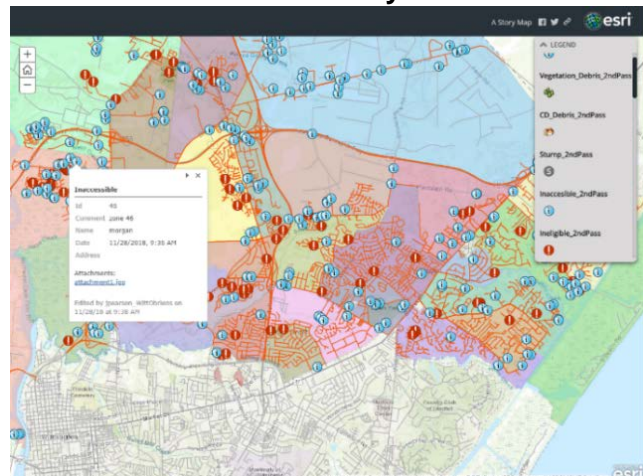
With each update of the data, the team can demonstrate progress towards clearing entire zones. It is typical to have at least three passes (1<sup>st</sup>, 2<sup>nd</sup>, and final). Our team can confirm through mapping and validation that each pass has been completed and progress has been made. For example, **Exhibit 10** shows screenshots from the app demonstrating a reduction in the number of pins between the 1<sup>st</sup> and 2<sup>nd</sup> passes in the same area.

**Exhibit 10: Screenshots of ArcGIS Collector App**

**New Hanover County – 1<sup>st</sup> Pass**



**New Hanover County – 2<sup>nd</sup> Pass**

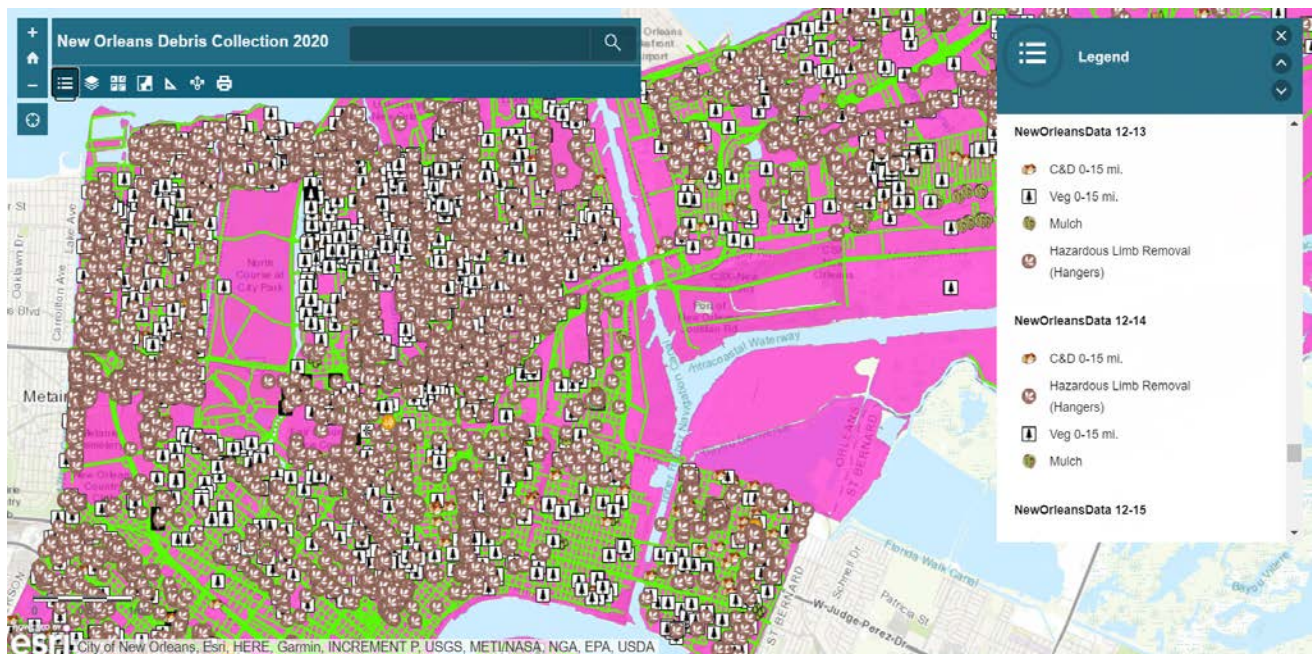


We understand from our experience in debris monitoring that our clients are often under pressure from the public, elected officials, and the media to provide information on recovery activities and the progress being made. Using the load ticket data in **DebrisPro™**, our team creates ArcGIS maps of

progress in collection, numbers of passes, zones being worked in, and zones scheduled for future work. We also can provide data on turnaround times that can be analyzed to assess hauler efficiency and operational issues that may require resource rebalancing or other management actions.

**Exhibit 11** presents a screenshot of debris removal in New Orleans (following Hurricane Zeta) over a period of 8 weeks. Using the ArcGIS platform, our Team was able to provide the City with updates (every 3 hours) of the different types of debris removed. The pink zones (and green street lines) indicate areas where all work had been completed. The City used this information to inform the public on hauler progress.

*Exhibit 11: ArcGIS Map of Debris Project*



We can provide the Town with access to such maps so that they can track progress, provide updates, and answer specific questions about where debris removal activities have already occurred or are scheduled to occur. Examples of map options we have provided in the past include making priority collection areas more identifiable, marking ineligible debris piles, tracking specific jurisdictional areas or zones for removal progress, and receiving resident feedback. ArcGIS can also provide mapping data in spreadsheet form, which allows you to easily incorporate information into your business operations (e.g., through briefings, reports, audits, appeals, etc.).

## 6.4 EXECUTION

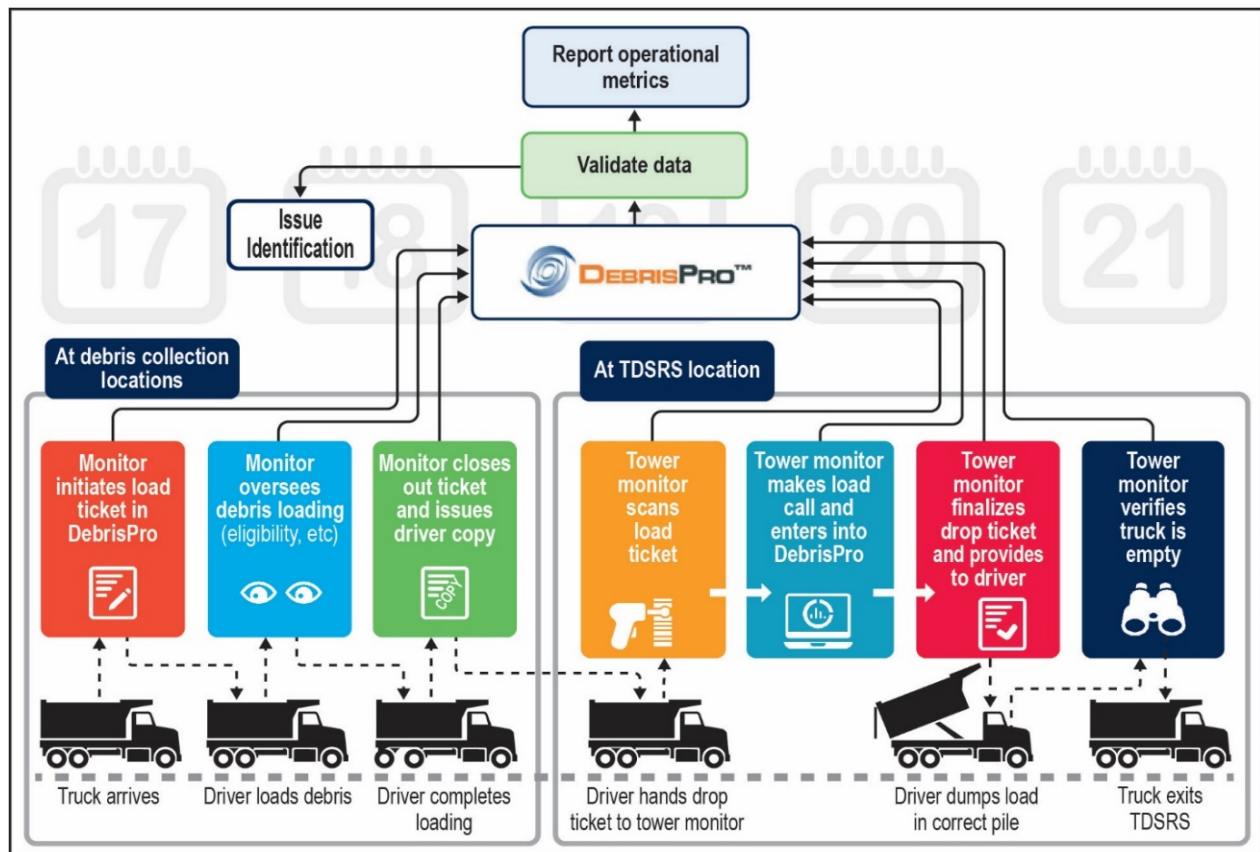


During the execution phase, Witt O'Brien's will be responsible for monitoring the debris removal contractor at debris removal locations and the DMS to ensure that debris removal operations are efficient, safe, and properly documented to ensure a full federal reimbursement to the client. This phase involves scheduling work to ensure that the correct number of monitors are assigned, conducting monitoring, providing daily reports and metrics on operations, reconciling debris contractor invoices, and providing overall project management.

## Monitor Debris Removal

The Witt O'Brien's teams of monitors are a critical part of ensuring compliance during debris collection and removal. **Exhibit 12** illustrates our process for using **DebrisPro™** to monitor debris removal from initial removal locations through disposal.

*Exhibit 12: Witt O'Brien's Debris Monitoring Process Using DebrisPro™*



PDB\_06

We will first dispatch field supervisors and load site monitors to debris collection locations to monitor debris removal in the field. We also deploy trained roving monitors to assist in the identification and documentation of ineligible debris, consult with FEMA debris specialists about eligibility issues, assist with mapping of debris clearance progress, and inspect debris zones for “hot spots” and zone closure status. Key steps in the process are as follows:

- **Ticket initiation** – When a truck first arrives at the debris collection location, a Witt O'Brien's team monitor will initiate a load ticket in **DebrisPro™**.
- **Monitoring** – As the driver collects and loads debris, the monitor will oversee the process and capture key data via load ticket, photographs, GPS coordinates, or other data or sources of information. Information collected includes debris eligibility and debris amounts via distribution of load tickets. Monitors also look for any damage caused by the debris removal contractor during debris removal. In addition, they identify any operational issues that could cause a reduction in performance or an increase in recovery cost; these include debris removal contractor skipping piles (i.e., “cherry picking”), delay of start times, excessive or unscheduled breaks, and stoppage time.

- **Ticket Close-out** -- When the driver has completed loading, the monitor will close-out the load ticket in **DebrisPro™** and provide the driver with a printed copy of a load ticket that validates where debris originated. This process, and the use of this technology, provides a robust QA/QC check for all documentation. Data will be stored on multiple redundant servers to ensure data security and information will be provided to the Town in electronic format.

At the Town's designated DMS locations, we will assign a DMS supervisor (over multiple sites) and a minimum of two debris site/tower monitors at each site. Once the driver arrives at the DMS, the following steps take place:

- **Ensure Load Ticket Accuracy** – When a driver arrives at the DMS, the tower monitor will review load tickets for accuracy at inspection towers. Trucks without an approved load ticket will not be granted access to the site. If the driver is a Town debris removal contractor, arrival without a load ticket will initiate a stop work order and supervisors will investigate to determine where the debris came from and how it ended up in a trailer without a ticket. If the source and eligibility cannot be established, the driver will be required to dump the debris in a separate pile away from eligible debris, and the pile will be fenced off, documented, and photographed. The debris removal contractor will then be required to reduce the debris and haul it at no charge to the Town.
- **Debris Volume Estimation (“load calls”)** – At the DMS, the tower monitor will estimate the load from each vehicle inbound and (when ingress/ egress permits the truck to pass by the same tower) and will complete the drop information on the load ticket while the truck is emptying. Once the information is verified and recorded, the tower monitor will enter the information in **DebrisPro™** and the load tickets become drop tickets that are provided to the driver.
- **Emptying Loads** – If multiple debris types are permitted for the site, then separate areas will be established for different debris classifications. The debris removal contractor will be instructed on where to empty based on that debris classification (e.g., vegetative, C&D, white goods).
- **Hauler Compliance** – When the truck returns, the monitor will inspect the bed of the truck to make sure it is empty before the driver is provided a copy of the drop ticket and permitted to leave. If the truck bed is not empty, the monitor will instruct the driver to finish clearing the truck bed before providing the ticket.



### Coordinate Special Debris

Some debris types and categories (such as hazardous trees/limbs, limbs, and stumps; white goods and e-waste; household hazardous waste; putrescible debris; and vessels) might require special handling or detailed documentation to ensure reimbursement from FEMA. Furthermore, removing debris from waterways, private property, and sites with environmental or historic preservation concerns could require additional reviews, documentation, and approvals. Witt O'Brien's has leading experience with all debris types and will provide expert consulting services to the Town regarding extraordinary debris challenges.

**DebrisPro™** is designed to automate and streamline the tracking and documentation of all debris removal work and costs. Our teams can set up **DebrisPro™** to track every debris category relevant to a project (e.g., ROW; PPDR; private roads, parks, and golf courses; state and local roads; and Federal

Aid Roadways for FHWA reimbursement) and debris types (e.g., hazardous trees/limbs, limbs, and stumps; waterway debris; white goods; e-waste; hazardous household waste; and putrescible waste).

- **Hazardous Trees, Limbs, and Stumps.** For hazardous trees / limbs (i.e., leaners), hanging limbs, and stumps, our team will follow established FEMA guidance that requires supporting photo documentation for each ticket issued for these removal services. Our ADMS technology and software **DebrisPro™** enables our field staff to take photographs in the field and upload them in a compressed format for secure storage and retrieval. Our field teams will use **DebrisPro™** to ensure that the tickets are electronically stored with the associated photographs, which is critical for FEMA reimbursement and QA/QC. All hazardous trees/limbs will be handled in accordance with guidance from the PAPPG 4.0. We will ensure documentation is recorded for the immediate threat of the location (GPS coordinates) with photographed evidence establishing that the tree is on public property; the size and extent of damage; the quantity removed; the quantity, location, and source of material to fill root-ball holes; and the equipment used to perform the work.



- **Household Hazardous Waste.** If conducted as part of the overall debris removal operations, the removal of household hazardous waste may be funded by FEMA as Category A. Activities for the removal and disposal of household hazardous waste (specifically) includes:

- ✓ Separation of household hazardous waste from other debris
- ✓ Specialized procedures for handling and disposing of the hazardous materials
- ✓ Control or stabilization of the hazardous material
- ✓ Pumping water contaminated with the hazardous material



*Examples of Common Household Hazardous Waste (HHW)*

Witt O'Brien's will ensure that this process is properly documented to maximize the Town's reimbursement. It is also important to ensure that hazardous waste is not mixed with other types of debris. Our monitors are trained to recognize and identify all debris types to avoid debris mixing. Typically, no debris is comingled, especially household hazardous waste. A key part of a monitor's job is to ensure that the debris type they are assigned to monitor is the only debris being loaded by the debris removal contractor.

- **White goods.** When monitoring the removal and disposal of white goods, we will document that white goods have been collected separately, and processed to remove putrescible debris, all oils, all solvents, and all refrigerants. If debris is recyclable or has salvage value, we will document the separation and salvage activities that have been implemented.
- **Private Property Debris Removal (PPDR).** Debris on private property is the responsibility of the property owner and generally not eligible for reimbursement through the FEMA PA program. However, if the debris is so widespread that it threatens public health and safety or the economic recovery of the community, the costs associated with removing this debris may be eligible under

the PA program. Witt O'Brien's has extensive experience in implementing, managing, and monitoring PPDR programs, and can assist in identifying private properties which might be eligible for debris removal, work with FEMA to ensure that local ordinances and proper procedures are followed, and secure Right of Entry (ROE) agreements from residents.

- **Private Property Demolitions.** Under circumstances of severe and catastrophic damage, it could be necessary to initiate a Private Property Demolition Program. Witt O'Brien's has the extensive knowledge and background in development, coordination, and management of the demolition program. As needed, we will identify, document, and review the impacted structures and follow the procedures necessary for compliance with State Historic Preservation Office review, archaeological low-impact stipulations, and FEMA EHP review. If asbestos is involved, we will follow the Louisiana DEQ regulations for managing asbestos inspections and removal and any National Emissions Standards for Hazardous Air Pollutants (NESHAP) and other state and federal regulations that could impact the eligibility of private property demolitions that will be funded by FEMA under Category B Emergency Protective Measures.
- **Commercial Property.** Removal of debris from commercial properties, such as industrial parks, golf courses, cemeteries, apartments, condominiums, and trailer parks is generally ineligible because commercial enterprises are expected to retain insurance that covers debris removal. In very limited, extraordinary circumstances, FEMA may provide an exception. If appropriate, our team will work with the client to ensure that prior FEMA approval is obtained and will provide the necessary documentation for reimbursement.
- **Waterways.** Witt O'Brien's will monitor the removal of all eligible storm debris from drainage canals and ditches upon direction from the Town. Debris removal from waterways is eligible as long as it is necessary to eliminate "an immediate threat to life, public health and safety, or improved property" (FEMA PAPPG, V4.0). There are also specific restrictions guiding the removal and disposal of debris that obstructs the passage of vessels, although debris removal from federally maintained navigable waterways is ineligible and must be managed by the U.S. Coast Guard or USACE. In non-navigable waterways, Witt O'Brien's will oversee the removal of debris deposited by an incident that obstructs a natural waterway only if the debris poses an immediate threat or could cause additional damage and flooding.
- **Historic or environmental concerns.** In order for debris to be eligible for reimbursement, FEMA has to ensure compliance with applicable laws and regulations, including those addressing historic properties, floodplains, wetlands, and critical habitats. Should it be necessary to conduct debris removal near such areas, Witt O'Brien's will ensure coordination with the appropriate regulatory agencies to ensure compliance, reviews, and permits for debris-related operations, if needed.
- **Storm-Deposited Soils.** Extracting water and clearing soil, mud, silt, or other accumulated debris from eligible facilities is eligible as Emergency Work as long as the extraction is necessary to address an immediate threat. In addition to monitoring the extraction of storm-deposited soils, we will also provide the proper documentation to ensure federal reimbursement for the removal. Evidence for eligibility will include GPS coordinates, photographs, the quantity of soil removed, and the equipment used to perform the work.





## Conduct Project Management

In our experience, debris removal operations proceed most smoothly when there are open and transparent communications among the debris removal contractor, the monitoring firm, and the client. This section highlights the management team responsibilities to ensure effective, efficient, and compliant operations.

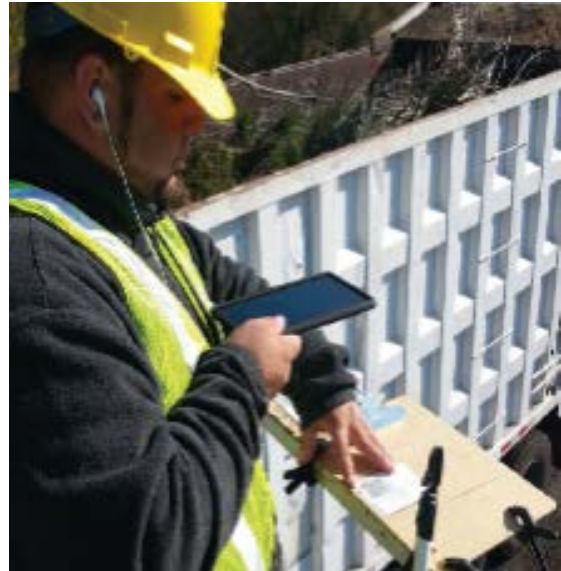
- **Daily Briefings.** During active debris removal operations, the Witt O'Brien's Project Manager will conduct and/or attend daily meetings with the Town, appointed officials, the debris removal contractor management, and operational staff. These meetings will be used to coordinate scheduling, confirm progress, resolve any ongoing issues, discuss any potential risks or issues that may affect work, and make any required adjustments to improve the effectiveness of debris removal and disposal operations.
- **Work Scheduling and Daily Close-out.** The Operations Manager will conduct daily planning meetings with the hauler and generate staffing reports and daily schedules for haulers, supervisors, and field monitors. At the close of each day, Witt O'Brien's field monitors and supervisors will ensure that all sites are closed and secured and then begin analysis of the day's data in order to provide a daily status report (see Section on Operational Reporting).
- **Resource Management.** Throughout operations, our Project Manager continually monitors operational resources required and makes adjustments to staffing as needed to minimize cost. As discussed earlier, during project initiation and ramp up, our management team will assign field staff (monitors and supervisors) in the appropriate span of control based on hauling resources. As those resources change over time (e.g., ramp up or down), we will adjust our team size as needed. Our objective is to maintain the minimum span of control that is needed to effectively monitor removal operations without incurring unnecessary costs that could jeopardize reimbursement.
- **Quality Assurance.** Witt O'Brien's understands that the accurate completion of load tickets is perhaps the most important element for any debris monitoring program – particularly when it comes to the ease of applying for and receiving full reimbursement from FEMA and other state and federal disaster recovery programs. Our monitors use **DebrisPro™** to collect debris load data in the field using smartphone or tablet devices. As part of their training, field monitors and supervisors are clearly informed that by signing load tickets, they are certifying that (1) the information on the ticket is accurate and complete; and (2) the information will be used by the client to apply for reimbursement from the state, FEMA, or other agencies. To carry out QA/QC in the field, supervisors will spot-check the monitors' load tickets and debrief them at the end of each day. At the DMS, tower monitors will review tickets for accuracy upon arrival. In addition, data entry staff will perform ongoing reviews to identify load ticket errors or omissions in order to report them to field supervisors in real time to allow for corrective action.



- **Digitization of Source Documentation.** Our team will use *DebrisPro*<sup>™</sup> to digitally capture and record all source documentation requirements, including load tickets, truck certification forms, tower monitor logs, hauling invoices, monitor activity, incident reports, load ticket summary forms, and any other form of documentation. To ensure data security, data is stored on multiple redundant servers. Authorized personnel may access their data by signing into a secure web portal.
- **Corrective Actions.** Should a health and safety violation and/or any actions inconsistent with the terms of this agreement be identified by Town staff during an active response, our Project Manager will implement the necessary corrective actions immediately and notify the Town within 24 hours of corrections taken. Except for severe violations, we will implement a tiered approach. The debris removal contractor staff present, along with their supervisors, will be informed of the non-compliance and instructed on how to correct the error. We make every effort to resume operations as soon as it is possible to do so without compromising the quality of the work. Such issues may include:

- ✓ Artificial loading, where debris is wetted, mixed with other materials, or not compacted
- ✓ Incorrect debris, where ineligible materials or hazardous materials are mixed with loads
- ✓ Operational issues, including use of improper equipment, skipping piles (“cherry picking”), or failure to meet completion schedules
- ✓ Non-compliance with health and safety standards, local ordinances, and other local, state, and federal regulations
- ✓ As necessary, issues may be escalated to more formal reviews with documentation of performance, retraining, and, if necessary, staff replacement.

- **Issue Stop Work Orders for Unsatisfactory Work.** Field monitors are empowered to initiate a Stop Work Order in the event that a monitor or supervisor sees a safety issue at a debris site, or the monitor learns that the debris removal contractor is not performing its work in line with the regulations or procedures set forth by the Town. Upon the announcement of a Stop Work Order, staff will halt operations and contact their immediate supervisor for instructions. The shutdown remains in place until the issue is resolved and work can be resumed safely and in accordance with requirements. All Stop Work Orders will be documented and reported promptly to the field supervisor on site, the project manager, and the Town.
- **Continuous Improvement.** Witt O'Brien's is committed to customer service and project success. At the core of our project management approach is a proven system for ensuring that our staff are performing at optimal levels and meeting our high standards. To provide the Town with recommendations to improve efficiency, we will regularly analyze collection quantity data against



*We maintain on standby more than 1400 GPS integrated smart devices that are enabled for paperless operations.*

project goals to determine where additional removal equipment might be required to meet deadlines or how additional debris management site locations might improve output. When removal operation forecasting shows that completion will take longer than established deadlines, we will evaluate the available equipment and personnel onsite to determine how to best increase the daily collection rate and turnaround times. Efficiency procedures often include increasing equipment numbers, adding additional debris site locations, and establishing new removal route schedules around traffic patterns.

**Report Operational Metrics**

The Witt O'Brien's team will provide operational reports to ensure the Town has a full understanding of the debris removal operation. These updates include daily situation reports, progress reports, reconciliation reports, incident damage reports, and any other information as requested by the Town. Witt O'Brien's will use **DebrisPro™** to generate all reports in the format required by the Town, e.g., the contract number, daily and cumulative hours for each piece of equipment, daily and cumulative hours for personnel by position, and volumes of debris handled.

**Daily Reports.** At the close of each day of operations, Witt O'Brien's field monitors and supervisors will ensure that all sites are closed and secured. When sites have been closed, our team will begin analysis of the day's data in order to provide a daily Situational Status Report (SITREP) to the Town. **Exhibit 13** presents a sample SITREP.

*Exhibit 13: Sample Daily Situational Report*

<b>WITT O'BRIEN'S</b> PART OF THE SEACOR FAMILY		<b>SITUATION REPORT</b>		Date	1/21/2020
				Day of Operation	7
				Operational Period	0600-1900 hours
<b>DEBRIS MONITOR PROJECT DR-4393 North Carolina</b>					
<b>Project Manager</b>		<b>DEBRIS OPERATIONS SUMMARY:</b>		<b>TOTAL/OPS PERIOD</b>	<b>TOTAL TO DATE</b>
		Hazardous Stumps less than 24"	0	0	0
<b>Operations/Data Manager</b>		Hazardous Stumps 24" to 36"	0	1	1
<b>AOR SUMMARY</b>		Hazardous Stumps 36" to 48"	0	0	0
<ul style="list-style-type: none"> <li>1 bucket truck ran today</li> <li>1 mini excavator ran today</li> <li>1 stump haul truck ran today</li> <li>1 haul trucks ran today</li> <li>1 haul trailer ran today</li> </ul>		Hazardous Stumps greater than 48"	0	0	0
<ul style="list-style-type: none"> <li>We certified a haul trailer today (the contractor intends to use this rather than bring in a knuckle boom).</li> <li>The contractor worked in Bayview West today removing 2 hazardous trees.</li> <li><b>*ALL HAZARDS HAVE NOW BEEN REMOVED FROM BAYVIEW WEST*</b></li> <li>They took 1 load of logs/trunks to the N. 25th site today. They also took 3 loads of veg to the Miller DMS - 1 from Bayview West &amp; 2 from the N. 25th site.</li> <li>They intend to remove the final hazardous tree from Bayview East tomorrow, which will only leave the stumps to be ground - 4 residual and 1 hazardous in Bayview East &amp; 1 hazardous in Greenwood.</li> <li>The contractor advised that the stump grinder will be here tomorrow Wednesday.</li> <li><b>***The contractor is anticipating completing all work associated with the approved hazards list NLT Friday, and as early as Thursday.***</b></li> </ul>		Hazardous Trees (leaners) 6" to 12"	0	0	0
		Hazardous Trees (leaners) 12" to 24"	2	4	4
		Hazardous Trees (leaners) 24" to 36"	0	7	7
		Hazardous Trees (leaners) 36" to 48"	0	0	0
		Hazardous Trees (leaners) greater than 48"	0	0	0
		Hazardous Limbs (leaners)	0	5	5
		Veg (CY)	31	79	79
<b>PERSONNEL</b>					
	Project Manager	1	DMS Monitors	0	
	Operations Manager	1	Billing/ Invoice Analyst	0	
	Data Manager	1	Data Entry Clerks	0	
	Field Supervisors	0	Project Coordinator	0	
	DMS Supervisors	0	Field Coordinator	0	
	Field Monitors	3	GIS Analyst	0	
<b>SAFETY</b>					
<ul style="list-style-type: none"> <li>Safety review and heat stress awareness briefing during morning safety meeting.</li> <li>Morning Safety Brief</li> <li>Nothing further to report</li> </ul>					

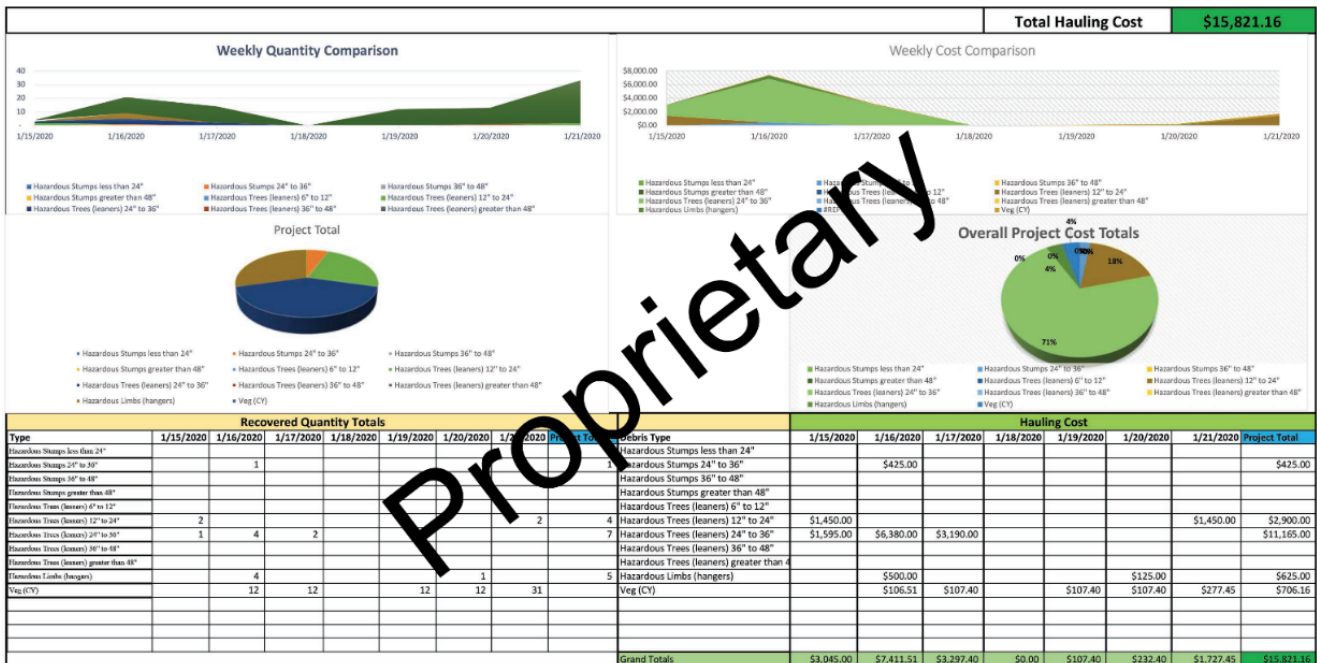
Witt O'Brien's Daily Sitrep is a running, cumulative report calculating the Total for Operating Period (daily) and Total to Date. Data in these SITREPs will be in the format required by the Town and typically include:

- ✓ GIS maps of locations where debris was collected during the day
- ✓ Daily and cumulative totals of debris quantities and types collected and disposed at each site
- ✓ Hours that equipment was used, including downtime for each piece of equipment
- ✓ Operation times of all debris loading trucks and debris management sites
- ✓ Number of trucks operating daily
- ✓ Number of debris monitoring personnel crews
- ✓ Number of grinders, chippers, and mulching machines in operation
- ✓ Progress by area or zone and estimates of remaining debris
- ✓ CY of reduced debris hauled to final disposal sites
- ✓ Reviews of the work performed by the debris removal contractor

Upon request, the Daily SITREP can be modified to accommodate the Town's reporting requirements.

- **Reporting on Progress Metrics.** Our team will use *DebrisPro*™ to track and report on project costs, ensuring that costs are correctly coded, and that force account labor and/or debris contractors work is within the assigned scope of work. As other data points are requested, Witt O'Brien's will develop tailored reports to meet each client's specific data needs. All reports generated from the system can be exported in .xlsx format to simplify data management. Typically, we also provide graphic representations of data, such as the daily quantity of debris collected, the cumulative total of debris collected to date, a count of resources on the project, and hours of operation. This helps our clients more easily see how operations are progressing. **Exhibit 14** provides a sample report on hauling costs.

**Exhibit 14: Sample Weekly Report on Hauling Costs**



- Damage Reports.** Witt O'Brien's will also submit damage reports daily, when necessary. Damage is inevitable during debris removal and, from time to time, hauling contractors will damage roads, sidewalks, utilities, drainage structures, or even private property. Monitors will document each incident with photographs, notify Field Supervisors for verification, and develop and log damage/incident reports. Field Supervisors will notify the Operations Manager, who will notify the Project Manager. The Project Manager will provide a report of each damaged facility to the Town and the debris removal contractor. Field Supervisors will follow up to verify that the debris removal contractor took remedial action in an appropriate timeframe. If electric, water, phone, or cable TV utilities are damaged, Witt O'Brien's will contact the proper utility authority and report the damages immediately to the Town. If the damages result in immediate or grave safety concerns, Witt O'Brien's will also alert the Police, Fire or Public Works departments, as the situation warrants.

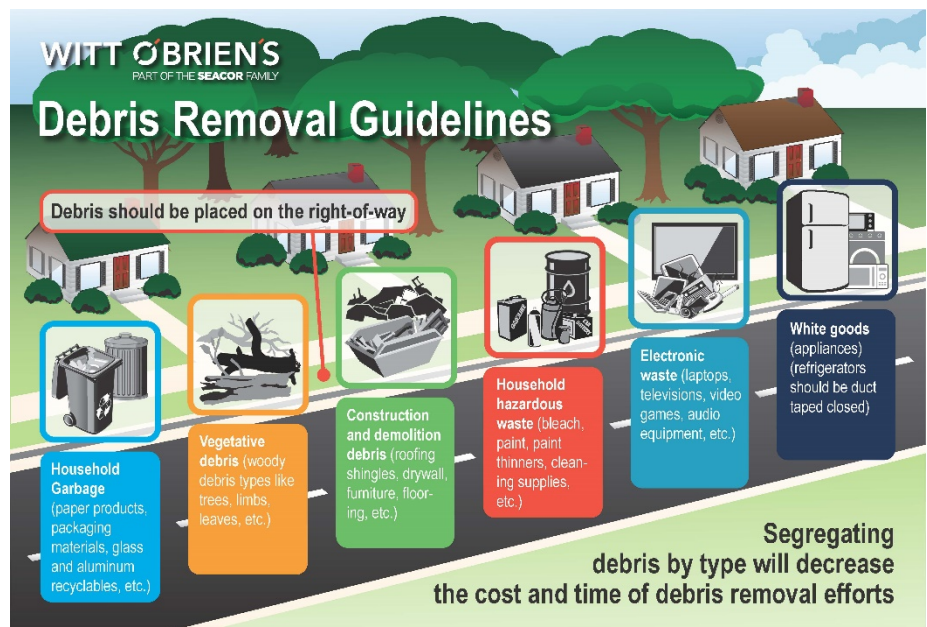
**Damage Report Data:**

- ✓ Date/Time
- ✓ Address/Location of incident
- ✓ Resident/Business info (if needed)
- ✓ Monitors' info (name/phone/badge)
- ✓ Driver/crew/truck info
- ✓ Type of damage/Complete details of incident
- ✓ Pictures
- ✓ Supervisor Signature
- ✓ Follow-up/Action Taken

**Support Public Information**

We understand the vital importance of keeping the public informed throughout the duration of a major debris removal project. The Town could get requests for information regarding progress of debris removal and planned schedules for specific locations, or complaints regarding damages to property or other concerns. Therefore, as requested, we will coordinate with the Town to implement a public information plan for businesses and residents.

As discussed previously, we can provide the Town with access to GIS maps so that they can track progress, provide updates, and answer specific questions about where debris removal activities have already occurred or are scheduled to occur. We can also develop timely and informative public announcements, brochures or pamphlets, online campaigns, or in-person town halls and meetings about project progress, safety considerations, hazardous waste handling, collection schedules, and methods of sorting and separating debris to increase collection and disposal efficiencies. We can assist the Town's efforts to efficiently disperse information to any target audience, such as the community and public, local businesses, the media, elected officials, police and fire personnel, field staff, contractors, and federal authorities. We will make staff available to the Town to



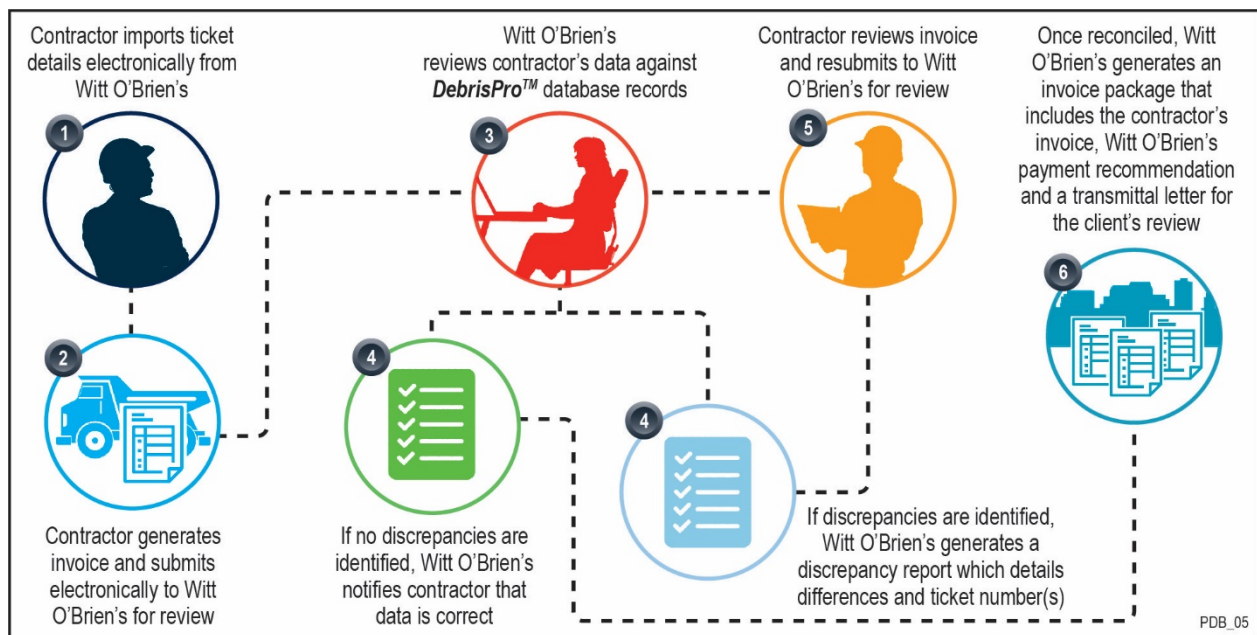
distribute and disperse public information on the debris project and can deploy our field monitoring staff to disseminate informative flyers to residents.

In addition to our support for creating and managing public information campaigns, we also frequently provide our debris clients with access to a 24-hour emergency call center. If requested, we will assign a dedicated number for the Town residents that they can call for information and up-to-the-minute updates, or to report debris in their neighborhood or on their property. This also helps us to be more responsive to the community and ensure we are efficiently collecting debris from the most high-priority areas.

### Reconcile Contractor Invoices

Throughout the execution phase, the Witt O'Brien's team will use **DebrisPro™** to inspect and audit contractor invoices and back-up documentation to ensure that the information reconciles with our own database information of debris quantities and project costs. The process is illustrated in **Exhibit 15**. On a regular schedule agreed by the Town, Witt O'Brien's will reconcile all debris removal contractor invoices within a timely manner (producing a reconciliation report within 2 days of receiving the invoice). Contractors will obtain ticket details electronically from **DebrisPro™** to generate their invoices. We then review the invoices to ensure that all costs conform to the removal contract's scope of work, unit prices, performance parameters, and timelines.

**Exhibit 15: Witt O'Brien's Contractor Invoice Reconciliation Process**



Throughout the course of the project, our team will develop relationships with the hauling contractor(s) and coordinate daily with them. As a result, if there are discrepancies, our team will initially work with the contractor to address any differences and try to resolve any disputes or problems. We will also notify the Town immediately in the form of an Invoice Discrepancy Report. If there are no discrepancies in the invoice, a payment approval letter will be issued. Each letter outlines the outstanding fees, provides a target payment date, explains all adjustments and corrections, and includes a complete summary of our records to support the invoiced amounts.

## 6.5 CLOSE-OUT



### Coordinate Final Pass

During the final days or weeks of debris collection, the Operations Manager will ensure complete debris removal by the debris removal contractor. At that time, we will publish last pass schedules and deploy monitors to confirm clearance of all roadways or document any remnants. From this data, our GIS Specialist will create a web-based map using ArcGIS depicting locations of the remaining debris, along with locations of ineligible debris. Once all eligible debris has been removed, you will receive written confirmation of debris removal completion.

### Conduct Haul-out Monitoring and Final Disposition

Whenever the debris removal contractor is using a DMS for debris staging and reduction, the Witt O'Brien's team will monitor and document the haul out of processed debris from the site. Debris will be disposed of at a landfill or other appropriate site, where we will have monitors to verify the drop and ensure the truck is empty. The monitors will collect scale tickets from the landfills to reconcile the pass-through disposal invoices and to provide as documentation for FEMA reimbursement. Our team will coordinate with federal, state, and local environmental agencies to ensure the integrity and regulatory compliance of all final disposal activity. We will confirm final disposition of debris and the associated records.

### Site Closeout

Following haul-out, our team will document and confirm removal of all debris, equipment, and materials from the DMS. At the start of the project, we would have conducted a preliminary damage assessment to accurately verify damages and site conditions. We will conduct a final site inspection to confirm that the site has been restored to the Town or landowner's requirements and in accordance with environmental regulations.

### Provide Final Documentation and Data Maintenance

At the close of the project, we will provide the Town with both electronic and hard copy of all required documentation to submit for reimbursement from FEMA. If the Town requests earlier in the project, we will compile the required documentation for the period seeking reimbursement. At the close of debris monitoring operations, we will provide a detailed description of all debris management activities. This report will be delivered electronically and will contain:

- All types and quantities of debris removed including ROW debris, tree work performed, PPDR/ROE work performed, debris reduction operations, and final haul-out quantities
- Final disposal locations
- Amounts of debris managed by the hauling contractor
- Total cost of the project invoiced to the Town

Additional data that can be provided includes GIS maps indicating debris removal densities. This data can be used to support the development of PWs, final closeout, and, if needed, audit and appeal procedures.

Our electronic ADMS, *DebrisPro™*, was developed in line with USACE technical specifications and FEMA documentation requirements, and it meets or exceeds all the detailed specifications found in the USACE electronic debris management system requirements. All project documents including reports, records debris reporting tickets and contract correspondence will be maintained for a period of not less

than five years. Witt O'Brien's acknowledges that we will be subject to audit by federal, state, and local agencies, at which time we will allow the Town and FEMA to audit all project records. Within 30 days of project completion, our Project Manager will prepare an After-Action Report detailing project specifics, highlights, data, lessons learned, and recommendations for next event.

### **Develop Reports for Reimbursement**

Properly prepared reports are required for reimbursement by FEMA or any other applicable agency for disaster recovery and debris removal. Well-developed PWs also ensure that the Town will receive the necessary funding for successful recovery and that they keep all the assistance for which they are eligible. Upon request, we can provide the Town with qualified personnel adept at analyzing projects, preparing the scope of work and damage descriptions of projects (including cost estimating), analyzing Project Worksheets and accompanying documentation, and preparing PW documentation for submittal to FEMA through their Grants Portal.

Witt O'Brien's meets or exceeds federal and state agency requirements when documenting project costs to ensure all FEMA, FHWA, NRCS, and other disaster recovery claims are properly documented and invulnerable to scrutiny during project preparation, final inspection, and closeout process. We prepare Category A (debris removal and monitoring), Category B (debris clearance) FEMA PWs, FHWA Detailed Damage Inspection Reports, and other applicable reports. Our disaster recovery experts ensure compliance with rules, guidelines and standards, and address and resolve difficulties before they can hinder the recovery process. Our PW packages are professionally documented to capture the maximum available funding.

### **Appeals Preparation and Assistance**

FEMA program eligibility determinations can be subjective. In the event that PA funding is denied, FEMA rules and regulations allow for appeals. FEMA, however, only considers written appeals accompanied by detailed information for reconsideration. Our Team will assist the Town through the appeals process by assembling documentation and handling the process within the deadlines established by FEMA. We will assist in drafting the appeals using a team approach to leverage the broadest set of expertise possible. Our team will gather all the relevant information for the appeal and craft arguments that can enhance the likelihood of achieving positive results.

The process involves retaining year-round documents such as purchasing policies, pay policies, bargaining agreements, and insurance policies in place at the time of the disaster and storing them in the Event Profile section of the Portal. Additional documents that must be maintained include Force Account and Contract Work summaries for work that is complete and detailed scope and estimates for work yet to be completed. The remainder of supporting documents include details on all in-house or contract activities with a heavy emphasis on the procurement of goods and services.



## APPENDIX A: CERTIFICATION OF STATUS AND SUNBIZ REPORT

**2021 FOREIGN LIMITED LIABILITY COMPANY ANNUAL REPORT**

DOCUMENT# M10000003124

**Entity Name:** WITT O'BRIEN'S LLC

**Current Principal Place of Business:**

1201 15TH STREET NW, SUITE 600  
WASHINGTON, DC 20005

**Current Mailing Address:**

P.O. BOX 13038  
FORT LAUDERDALE, FL 33316 US

**FEI Number:** 27-2783923

**Certificate of Status Desired:** No

**Name and Address of Current Registered Agent:**

NRAI SERVICES, INC  
1200 S PINE ISLAND RD  
PLANTATION, FL 33324 US

*The above named entity submits this statement for the purpose of changing its registered office or registered agent, or both, in the State of Florida.*

**SIGNATURE:**

Electronic Signature of Registered Agent

Date

**Authorized Person(s) Detail :**

Title MANAGER/EXECUTIVE VICE  
PRESIDENT/CHIEF LEGAL  
OFFICER/SECRETARY

Name LONG, WILLIAM C

Address 2200 ELLER DRIVE

City-State-Zip: FORT LAUDERDALE FL 33316

Title CEO

Name WHIPPLE, TIM

Address 1201 15TH STREET NW, SUITE 600

City-State-Zip: WASHINGTON DC 20005

Title MANAGER/SENIOR VICE  
PRESIDENT/CHIEF FINANCIAL  
OFFICER

Name WEINS, BRUCE

Address 2200 ELLER DRIVE

City-State-Zip: FORT LAUDERDALE FL 33316

Title SENIOR MANAGING DIRECTOR

Name HOYES, JONATHAN

Address CITYCENTRE TWO  
818 TOWN & COUNTRY BOULEVARD  
SUITE 200

City-State-Zip: HOUSTON TX 77024

Title MANAGER

Name FABRIKANT, ERIC

Address 2200 ELLER DRIVE

City-State-Zip: FORT LAUDERDALE FL 33316

Title VICE PRESIDENT & TREASURER

Name MANEKIN, LISA

Address 2200 ELLER DRIVE

City-State-Zip: FORT LAUDERDALE FL 33316

Title SENIOR MANAGING DIRECTOR

Name FENTON, GREGORY

Address CITYCENTRE TWO  
818 TOWN & COUNTRY BOULEVARD  
SUITE 200

City-State-Zip: HOUSTON TX 77024

Title DIRECTOR OF CONTRACTS &  
COMPLIANCE

Name JOINER, CHERYL

Address CITYCENTRE TWO  
818 TOWN & COUNTRY BOULEVARD  
SUITE 200

City-State-Zip: HOUSTON TX 77024

**Continues on page 2**

*I hereby certify that the information indicated on this report or supplemental report is true and accurate and that my electronic signature shall have the same legal effect as if made under oath; that I am a managing member or manager of the limited liability company or the receiver or trustee empowered to execute this report as required by Chapter 605, Florida Statutes; and that my name appears above, or on an attachment with all other like empowered.*

**SIGNATURE:** WILLIAM C. LONG

**EVP/CLO/SECRETARY**

**03/24/2021**

Electronic Signature of Signing Authorized Person(s) Detail

Date

**Authorized Person(s) Detail Continued :**

Title            VICE PRESIDENT & CHIEF INFORMATION  
                  OFFICER

Name            SCHIFANO, MICHAEL

Address        CITYCENTRE TWO  
                  818 TOWN & COUNTRY BOULEVARD

City-State-Zip: HOUSTON TX 77024

# *State of Florida*

## *Department of State*

I certify from the records of this office that WITT O'BRIEN'S LLC is a Delaware limited liability company authorized to transact business in the State of Florida, qualified on July 14, 2010.

The document number of this limited liability company is M10000003124.

I further certify that said limited liability company has paid all fees due this office through December 31, 2020, that its most recent annual report was filed on June 24, 2020, and that its status is active.

I further certify that said limited liability company has not filed a Certificate of Withdrawal.

*Given under my hand and the  
Great Seal of the State of Florida  
at Tallahassee, the Capital, this  
the First day of March, 2021*



*Randy R. Lee*  
**Secretary of State**

Tracking Number: 0925330925CU

To authenticate this certificate, visit the following site, enter this number, and then follow the instructions displayed.

<https://services.sunbiz.org/Filings/CertificateOfStatus/CertificateAuthentication>

**APPENDIX B: RESUMES**

**Charles Bryant is the Director of Disaster Debris Services with Witt O'Brien's and has more than 40 years of experience in emergency response services, including 15 years specifically in debris monitoring.**

Charles has managed complex, large-scale debris management operations in Louisiana, Georgia, New York/New Jersey, and Texas. Charles is one of only two preeminent, nationally recognized instructors of debris management at FEMA's national training center, the Emergency Management Institute (EMI). Charles is also a recognized authority on private property debris removal (PPDR). During Hurricanes Rita and Katrina, Charles served under contract as the Louisiana Deputy Director for Debris Operations, with the responsibility for overall coordination of debris operations for the state. In this capacity, he wrote the state's policy for PPDR, which was later adopted and used by FEMA.

He is fully qualified in providing problem resolution assistance and coordination for FEMA Public Assistance (PA) Category A and B grant funding and liaising with state agencies for PA grant funding and project development. He served as technical advisor for FEMA eligibility determinations providing contractor oversight of debris management site and monitoring operations. His expertise also includes serving as debris technical advisor providing technical assistance for development of FEMA Project Worksheets (PWs) for Category A debris removal projects. Charles has also designed Homeland Security Exercise and Evaluation Program (HSEEP) exercises and provided instructional and educational services.

Prior to leading debris monitoring operations at Witt O'Brien's, Charles owned and operated C. Bryant, Inc., an emergency management consulting firm, and worked under two FEMA Technical Assistance Contracts at Witt Associates and AECOM, respectively. He performed various contracted debris operations and planning, debris removal program development, project management, and FEMA public assistance services. He also served 25 years with the Sulphur Fire Department (SFD) in the city of Sulphur, Louisiana, and was the fire chief and emergency manager for 18 of those years.

#### **DEBRIS MONITORING SERVICES, HANOVER COUNTY AND WILMINGTON, NC (2020)**

Charles served as Project Principal for Witt O'Brien's debris monitoring operations in North Carolina resulting from Hurricane Isaias. Collectively, his teams monitored the removal of more than 400,000 CY of vegetative and C&D debris and 740 hazardous trees.

#### **CHARLES BRYANT PROJECT PRINCIPAL**



##### **YEARS OF EXPERIENCE**

45+ Years

##### **EDUCATION**

Louisiana State University, Eunice  
Associate Fire Science Degree Programs.

##### **LICENCES/CERTIFICATIONS/TRAINING**

NIMS Advanced ICS Curricula Train the Trainer E449 – Certified Instructor  
EMI E202 National Debris Management Planning – Certified Instructor  
EMI National Debris Management – Trainer  
FEMA Pilot Program Train the Trainer – Trainer  
FEMA Intro to Emergency Management – Trainer  
FEMA Liability Issues in Emergency Management – Trainer  
National Fire Academy Fire Service, Financial Management & Planning – Trainer

##### **PROFESSIONAL EXPERIENCE**

**Witt O'Brien's (2014 – Present).**  
Project Director.

**AECOM (2007 – 2012).** Technical Assistance Contractor (TAC).

**Witt Associates (2005 – 2012).**  
Technical Assistance Contractor.

**FEMA National Emergency Management Institute (EMI) (2005 – 2008, 2010).** Instructor.

**C. Bryant Inc. (2003 - 2011).**  
Owner/President.

**City of Sulphur, LA (1978 – 2003).** Fire Chief.

### **DEBRIS MONITORING SERVICES, MULTIPLE CLIENTS, LA (2020)**

Charles served as Witt O'Brien's Project Principal for all debris monitoring operations in Louisiana resulting from Hurricane Zeta (Lafourche Parish and City of New Orleans) and Hurricane Laura (Natchitoches Parish and City of Ruston). Collectively, his teams monitored the removal of 153,382 CY of vegetative debris, 50,554 CY of C&D debris, and nearly 11,997 hazardous trees. Vegetative debris was burned in accordance with state regulations.

### **DEBRIS MONITORING SERVICES, MILTON, FL (2020)**

Charles served as Witt O'Brien's Project Principal for debris monitoring operations in Milton resulting from Hurricane Sally. The team monitored the removal of more than 14,000 CY of vegetative debris and 235 hazardous trees.

### **DEBRIS MONITORING SERVICES, VARIOUS CLIENTS, NC (2018-2019)**

Charles served as Witt O'Brien's Project Principal for all North Carolina debris monitoring operations resulting from Hurricane Florence. Collectively, his teams monitored the removal of more than 2.5 million CY of vegetative and C&D debris and 18,000 hazardous trees. He also served as project manager for two concurrent client projects.

### **DEBRIS MONITORING SERVICES, WASHINGTON COUNTY, FL (2018-2019)**

Charles served as Witt O'Brien's Regional Operations Manager for all Florida debris monitoring operations in Washington County due to Hurricane Michael. This involved monitoring the removal of removal of 1,963,689 CY vegetative and C&D debris and 54,495 hazardous trees.

### **DEBRIS MONITORING SERVICES, VARIOUS CLIENTS, TX (2017-2018)**

Charles served as Witt O'Brien's Regional Operations Manager for all debris monitoring operations in Texas resulting from Hurricane Harvey (DR 4332). He was project manager for 6 concurrent client projects including Village of Jones Creek, City of West Columbia, Waller County, Clear Brook Municipal Utility District, City of West University Place, and City of Port Arthur, TX. Collectively, he oversaw the monitoring of more than 750,000 CY of vegetative and C&D debris as well as household hazardous waste, e-waste, and white goods.

### **DEBRIS MONITORING SERVICES, CITY OF NEW ORLEANS, LA (2017)**

Charles served as the Senior Project Manager for debris monitoring operations in New Orleans-East that resulted from the February 2017 tornado event. This event involved monitoring more than 55,000 CY of vegetative and C&D debris, as well as hazardous trees and household hazardous waste.

### **DEBRIS MONITORING SERVICES, LIVINGSTON PARISH, LA (2016)**

Charles served as Technical Advisor, Logistics Support, and Operations Support for Livingston Parish following the Louisiana Flood Event of 2016 (DR 4277). This effort involved monitoring the removal of 850,019 CY of vegetative and C&D debris, 20,000 white goods, 338,000 lbs. of putrescible waste, 26,000 lbs. of e-waste, and 34,420 lbs. of hazardous waste.

### **DEBRIS MONITORING SERVICES, STATE OF LOUISIANA (2016)**

In response to the Louisiana Severe Storms and Flooding Event of 2016 (DR 4263), Charles served as the State of Louisiana Public Assistance Debris Manager for Debris Operations, with the responsibility for overall coordination of debris operations for the State of Louisiana, serving as technical advisor for local applicants, and providing FEMA liaison support and problem resolution.

**DEBRIS MONITORING SERVICES, COLUMBIA COUNTY, GA (2014)**

Charles served as a debris technical advisor and provided technical assistance to Columbia County, Georgia, following the 2014 Severe Winter Storm (DR-4165). As Debris Technical Advisor, Charles provided technical assistance to the county for development of FEMA Project Worksheets for Category A debris removal. He also served as technical advisor for FEMA eligibility determinations, contractor oversight, debris management site operations, and monitoring operations.

**DEBRIS MONITORING SERVICES, STATE OF NEW JERSEY (2012 – 2013).**

After Superstorm Sandy, Charles served as a Subject Matter Expert (SME) to provide technical assistance for the New Jersey Governor's Office of Recovery and Rebuilding (GORR), providing planning and operational support for recovery operations. He worked with other recovery team personnel to identify recovery strategies as they relate to debris removal operations, and provided assistance in the development, management and establishment of operational strategies for wet debris removal for New Jersey Department of Environmental Protection.

**DEBRIS MONITORING SERVICES, STATE OF LOUISIANA (2012)**

Charles provided technical assistance and served as SME for debris operations for the State in response to Hurricane Isaac (DR 4080). He served as technical advisor to Governor's Office of Homeland Security and Emergency Preparedness (GOHSEP), providing planning and operational support for recovery operations. Charles also provided technical assistance and operational support and problem resolution to all local applicants for right-of-way debris removal, private property debris removal and private property demolition. He also provided problem resolution assistance and coordination for Public Assistance Category A and B grant funding and developed and reviewed project worksheets

**DEBRIS REMOVAL EXERCISE, BALTIMORE METROPOLITAN COUNCIL, MARYLAND (2009)**

As a FEMA Homeland Security Exercise and Evaluation Program (HSEEP) Exercise Developer, Charles developed the first HSEEP-compliant exercise focused specifically on debris removal operations and coordination. This exercise was conducted for the Baltimore Metropolitan Council in 2009, which provides regional planning for the Baltimore, MD area, that includes Baltimore City, Baltimore County, Anne Arundel County, Howard County, and Harford County, MD.

**DEBRIS MONITORING SERVICES, STATE OF LOUISIANA (2008 - 2009).**

Under the Technical Assistance Contract, Charles served as Debris Manager for the State of Louisiana and coordinated debris operations across the state after Hurricanes Gustav and Ike (DR 1786 and 1791). He was responsible for coordinating and overseeing debris removal, identifying staffing and monitoring levels, establishing schedules and monitoring plans, developing Project Worksheets, and providing environmental and historical guidance.

**DEBRIS MONITORING SERVICES, VARIOUS CLIENTS, TEXAS (2008).**

After Hurricanes Gustav and Ike, Charles served as Technical Assistance Coordinator and provided assistance to Houston and Galveston communities and Texas A&M to coordinate debris removal, Project Worksheet development, and management of historical and environmental guidance for all debris operations.

**DEBRIS MONITORING SERVICES, STATE OF LOUISIANA (2005).**

After Hurricanes Katrina and Rita (DR 1603 and 1607), Charles served as Louisiana's Debris Planning Manager under the TAC contract. He oversaw structural demolition activities and private property debris removal (PPDR), coordination, and development of planning strategies and operational



objectives related to debris removal, with liaison support to all federal, state, and local partners after Hurricanes Katrina and Rita. He later served as the State of Louisiana Deputy Debris Manager for Debris Operations, with the responsibility for overall coordination of debris operations for the State of Louisiana to include coordination of debris removal, identifying staffing and monitoring levels, establish monitoring operations plan, project worksheet development and management and environmental and historical guidance for all debris operations and project oversight.

**Curt has more than 15 years of professional experience, including 10 years supporting and managing debris removal monitoring projects in response to major disasters.**

Curt has served as Project Manager and Subject Matter Expert for debris removal monitoring projects following Hurricanes Isaias, Florence, Matthew, Irma, Maria, Hermine, and Isaac. He has also served in operations management positions for debris removal monitoring projects in North Carolina, following a severe winter ice storm, and in New Jersey, following Superstorm Sandy. To date, he has overseen the removal, management, and reduction of over 9 million cubic yards (CY) of various types of debris, including vegetative, C&D, hazardous trees, and white goods. He is experienced in Private Property Debris Removal (PPDR) and the process of obtaining Rights of Entry (ROEs). He has also managed debris removal operations in sites requiring coordination and compliance with environmental and historical preservation requirements. Prior to joining Witt O'Brien's, Curt proudly served in the US Coast Guard.

**DEBRIS MONITORING MANAGEMENT, SOUTHEAST LOUISIANA FLOOD PROTECTION AUTHORITY (2021 - 2022)**

Curt was the Project Manager for debris removal operations for the Authority following Hurricane Ida, for which he oversaw the removal of 6,783 CY of vegetative debris, 34,855 CY of C&D debris, and 517 hazardous trees, limbs, & stumps. His team also monitored the removal of 82 creosote pilings/timber, 49 tires, and 3 boats from levees; debris was deposited by high water during the storm. In addition, Curt assisted the client in developing the scope of work for the hauling contractor.

**DEBRIS MONITORING MANAGEMENT, NEW HANOVER COUNTY, NORTH CAROLINA (2020)**

Curt was the Project Manager for debris removal operations following Hurricane Isaias, for which he managed the removal of 173,344 CY of vegetative debris, 643 CY of C&D debris, 44,378 CY of mulch, and 743 hazardous trees, limbs, & stumps.

**DEBRIS MONITORING MANAGEMENT, MOREHEAD CITY, NORTH CAROLINA (2020)**

Curt served as the Project Manager for a specialized debris removal operation in Morehead City, NC, as a result of Hurricane Florence. He managed the identification, removal, and disposal of hazardous limbs, hazardous trees, and hazardous stumps from 2 historical cemeteries, which required coordination with archeological specialists to ensure compliance with environmental and historic preservation requirements.

**DEBRIS MONITORING MANAGEMENT, NEW HANOVER COUNTY, NORTH CAROLINA (2018 – 2019)**

Curt was the Project Manager for debris removal operations following Hurricane Florence, for which he managed the removal of over 1.6 million CY of vegetative and C&D debris as well as more than 7500 hazardous trees.

**DEBRIS MONITORING MANAGEMENT, US VIRGIN ISLANDS (2017 – 2018)**

Curt worked in the US Virgin Islands as the Debris Manager for St. Thomas island, and the Debris SME for all of the Virgin Islands. He managed the removal of USVI WAPA (Water and Power Authority) debris generated by Hurricanes Irma & Maria. After completing the WAPA debris project, he worked as

**CURT JOHNSON  
PROJECT MANAGER**



**YEARS OF EXPERIENCE**

20 Years

**LICENCES/CERTIFICATIONS/TRAINING**

FEMA IS-100.c, FEMA IS-101.c,  
FEMA IS-102.c, FEMA IS-200.c,  
FEMA IS-230.d, FEMA IS-235.c,  
FEMA IS-632.a, FEMA IS-700.b,  
FEMA IS-800.c

Certified Hazard Analysis and  
Critical Control Points (HACCP)  
Manager

the Debris Manager for St. Thomas, St. John, Water Island and St. Croix, overseeing the electronic mapping of all hazardous limbs, hazardous trees, and hazardous stumps for the USVI Department of Public Works.

**DEBRIS MONITORING MANAGEMENT, MULTIPLE CLIENTS, FLORIDA (2017)**

Following Hurricane Irma (2017), Curt served as Project Manager for the debris removal monitoring operations for multiple cities and counties in Central Florida, including Gainesville, Alachua County, and the City of Edgewater, FL. Total amounts monitored included more than 425,000 CY of vegetative and C&D debris, and 32,000 hazardous trees. Additionally, he managed the South Florida Data Processing Center in Ft. Lauderdale, FL, which handled the data reconciliation process for 17 individual municipalities.

**DEBRIS MONITORING MANAGEMENT, LIVINGSTON PARISH, LA (2016)**

Curt served as Operations Manager and assistant Project Manager for the debris removal operations for Livingston Parish, LA, following a major flood (2016). This project involved the removal and disposal of more than 850,000 CY of vegetative, C&D, and putrescent debris as well household hazardous waste, e-waste, white goods, and refrigerant. During this activation, Curt oversaw the execution of over 2,000 ROEs and the subsequent Private Property Debris Removal (PPDR) of those parcels.

**DEBRIS MONITORING MANAGEMENT, EDGEWATER AND PONCE INLET, FLORIDA (2016)**

Curt served as Project Manager for the debris removal operations for Edgewater, FL and Ponce Inlet, FL following Hurricane Matthew (2016). He managed the removal of nearly 275,000 cubic yards of vegetative and C&D debris and 2800 hazardous trees.

**DEBRIS MONITORING MANAGEMENT, LEON COUNTY AND TALLAHASSEE, FLORIDA (2016)**

Curt served as the Operations Manager and Project Manager for the debris removal operations for Tallahassee and Leon County, FL, following Hurricane Hermine.

**DEBRIS MONITORING & CLEAN-UP, SANTA BARBARA, CALIFORNIA (2015)**

Curt was a Division Supervisor for Witt O'Brien's, overseeing all oil cleanup efforts by contractors for the Plains All American Pipeline spill in Santa Barbara, California.

**DEBRIS MONITORING MANAGEMENT, NEW HANOVER COUNTY, NORTH CAROLINA (2014)**

Following the severe winter storms of 2014, Curt managed the debris removal effort in New Hanover County, North Carolina, overseeing debris removal operations of more than 125,000 CY of vegetative debris and 1000 hazardous trees.

**DEBRIS MONITORING MANAGEMENT, BOROUGH OF UNION BEACH, NEW JERSEY (2012 – 2013)**

Following Superstorm Sandy (2012), Curt served as assistant project manager in the overall debris monitoring operations for the Borough of Union Beach, New Jersey, which involved nearly 7,000 CY of C&D debris.

**DEBRIS MONITORING MANAGEMENT, ST. BERNARD PARISH, LOUISIANA (2012)**

Curt served as Assistant Project Manager responsible for the debris monitoring operations for St. Bernard Parish, Louisiana in the recovery from Hurricane Isaac.

**Rodney Byrd has more than 20 years of senior management experience, including 5 years in the management of disaster recovery and debris monitoring.**

Rodney has an advanced working knowledge of eligibility guidelines for FEMA debris regulations and funding programs. Rodney has both managed and been a part of management teams monitoring the successful removal of millions of cubic yards (CY) of storm-related debris, including vegetative and construction and demolition (C&D) debris, hazardous trees, household hazardous waste, and e-waste. He is adept at handling complex, on-site operations and has successfully managed large monitoring teams (e.g., nearly 100 staff for Hurricane Florence). In 2020, Rodney was responsible for the successful execution of four debris monitoring contracts simultaneously.

He is experienced in debris removal not only from public Right of Way (ROW) but also Private Property Debris Removal (PPDR) and the process of obtaining Right of Entry (ROEs), private roads, commercial property, and state roads. He has served as the Project Manager for debris monitoring operations following Hurricanes Harvey, Irma, Maria, Florence, Barry, Laura, Zeta, and Ida for multiple clients. Rodney has experience dealing with state and federal agencies to ensure all requirements are met for reimbursement.

Prior to joining Witt O'Brien's, Rodney had 20 years of experience in managing multi-level retail operations with successively increasing seniority and responsibilities. In this capacity, he was responsible for supervising teams of hundreds of employees.

#### **DEBRIS MONITORING PROJECT MANAGER, NEW ORLEANS, LA (2021 - 2022)**

Rodney served as the Project Manager for debris removal monitoring operations in the City of New Orleans following Hurricane Ida (2021). He managed the team of more than 120 staff monitoring the removal of 220,073 CY of vegetative debris, 74,431 CY of mulch, 61,981 CY of C&D, 16,730 hazardous trees/limbs, and 80 hazardous stumps. Furthermore, the City of New Orleans had to employ its debris hauler to remove the City's solid waste; under Rodney's leadership, Witt O'Brien's established a dedicated team of more than 40 monitors to oversee removal of 8,306,665 lbs of solid waste (trash).

#### **DEBRIS MONITORING PROJECT OVERSIGHT, MULTIPLE CLIENTS, LA (2021 - 2022)**

In his capacity as Witt O'Brien's Regional Manager, Rodney provided oversight for four debris monitoring projects following Hurricane Ida. The clients served were the City of Thibodaux, Lafourche Parish, the Greater Lafourche Port Commission, and the Southeast Louisiana Flood Protection Authority. Across all four projects, the teams monitored more than 1.7 million CY of vegetative and C&D debris and 9,000 hazardous trees/limbs.

#### **DEBRIS MONITORING PROJECT MANAGER, NEW ORLEANS, LA (2020 - 2021)**

Rodney served as the Project Manager for debris removal monitoring operations in the City of New Orleans following Hurricane Zeta (2020). He oversaw two hauling contractors for removal of 72,282 CY of vegetative debris, 11,220 CY of C&D debris, 19,758 CY of mulch, and 4,550 hazardous trees. He was responsible for managing a team of up to 60 monitors and supervisors. He managed the reduction and haul-out of mulch and provided the required weekly debris management reports (WDMRs) to

### **RODNEY W. BYRD** **OPERATIONS MANAGER**



#### **YEARS OF EXPERIENCE**

25 Years

#### **LICENCES/CERTIFICATIONS/TRAINING**

IS-632.a; IS-633; IS-100.c; IS-200; IS-200.b; IS-700.b; IS-800.c; IS-300; IS-400

OSHA 24-Hour HAZWOPER

Louisiana DEQ on reduction progress. At the client's request, he oversaw the development of frequently updated GIS maps that presented data on debris removal progress in cleared subzones. The City then shared the data through social media to keep the public informed.

**DEBRIS MONITORING PROJECT MANAGER, RUSTON, LA (2020)**

Rodney served as the Project Manager for debris removal operations in the City of Ruston following Hurricane Laura, overseeing the removal of 15,078 CY of debris from public right of way (ROW). He was responsible for managing a team of 15 monitors and supervisors.

**DEBRIS MONITORING PROJECT MANAGER, LAFOURCHE PARISH, LA (2020)**

Rodney served as the Project Manager for debris removal monitoring operations for public right of way (ROW) in Lafourche Parish following Hurricane Zeta. Rodney managed the removal of 67,468 CY of vegetation and C&D debris. He oversaw the final disposal of vegetive debris, which was burned in accordance with state regulations and haul-out of C&D debris to landfill for final disposal. Rodney provided the required weekly debris management reports (WDMRs) to Louisiana DEQ on the burning progress. He was responsible for managing a team of up to 15 monitors and supervisors.

**DEBRIS MONITORING PROJECT MANAGER, NATCHITOCHE PARISH, LA (2020)**

Rodney served as the Project Manager for debris removal monitoring operations for public ROW in Natchitoches Parish following Hurricane Laura, overseeing the removal of 18,430 CY of vegetative debris and 7,447 hazardous trees. In addition to overseeing the final disposal of waste, which was burned in accordance with state regulations. He provided the required WDMRs to Louisiana DEQ on reduction progress. He was responsible for managing a team of up to 45 monitors and supervisors.

**DEBRIS MONITORING PROJECT MANAGER, LAFOURCHE PARISH, LA (2019)**

Rodney served as the Project Manager for debris removal monitoring operations for public ROW and state roads in Lafourche Parish following Hurricane Barry. Rodney managed the removal of 8,415 CY of vegetative debris and oversaw the final disposal of waste, which was burned in accordance with state regulations. He provided the required weekly debris management reports (WDMRs) to Louisiana DEQ on burning progress. He was responsible for managing a team of up to 15 monitors and supervisors.

**DEBRIS MONITORING PROJECT MANAGER, CITY OF WILMINGTON, NORTH CAROLINA (2018)**

Rodney served as the Project Manager for debris removal operations in the City of Wilmington following Hurricane Florence, overseeing the removal of approximately 896,462 CY of debris and nearly 10,000 hazardous trees. He managed the reduction and haul-out of mulch, as well as removal of debris from state roads, private property, private roads, and commercial properties, and the process of obtaining Right of Entry (ROEs) for all Private Property Debris Removal (PPDR). He was responsible for managing a team of nearly 100 monitors and supervisors.

**HURRICANE RECOVERY SUPPORT, U.S. VIRGIN ISLANDS (2018)**

Rodney supervised mapping efforts in the Virgin Islands to identify hazardous limbs, trees, and stumps eligible for FEMA reimbursement following hurricanes Irma and Maria.

**DEBRIS MONITORING MANAGEMENT, VARIOUS CLIENTS, TEXAS (2017)**

Rodney managed field operations on multiple projects during the Hurricane Harvey response, resulting in the collection of over 700,000 CY of public ROW debris in Waller County, Clearbrook City Municipal Utility District, West University Place, TX, and Port Arthur, TX. Debris types included C&D debris, white

goods, and e-waste. Port Arthur, TX and West University Place, TX also involved monitoring and disposal of household hazardous waste.

**DEBRIS MONITORING PROJECT MANAGER, VARIOUS CLIENTS, GEORGIA (2017)**

Rodney served as the Project Manager for Glynn County and the City of Brunswick during the debris removal operations following Hurricane Irma. He managed the successful removal of approximately 685,000 CY of vegetation and C&D and more than 10,000 hazardous trees, as well as the reduction of mulch. Glynn County also required Private Property Debris Removal (PPDR) and private roads, which involved verification of Right of Entry (ROEs).

**James Gross has five years of experience in field operations of debris removal monitoring in response to major disasters.**

James has served as a Project Manager, Operations Manager, Field Supervisor, DMS Supervisor, and Field Monitor for debris monitoring projects following Hurricanes Matthew, Irma, Maria, Florence, and Ida. To date, he has supported projects totaling nearly 2 million cubic yards (CY) of various types of debris. Prior to joining Witt O'Brien's, James was the assistance maintenance manager at Yellowstone National Park. He managed a crew of sixteen personnel to oversee daily maintenance tasks and reports

**DEBRIS PROJECT MANAGER, GREATER LAFOURCHE PORT COMMISSION, LA (2021 - 2022)**

In response to Hurricane Ida, James is serving as the Project Manager overseeing the Witt O'Brien's team debris removal operations. The team has removed more than 50,000 CY of C&D debris, reduced CD haul-out, and recyclable C&D haul-out.

**DEBRIS OPERATIONS MANAGER, CITY OF THIBODAUX, LA (2021)**

James served as the Operations Manager for debris removal operations following Hurricane Ida. The team monitored the removal of 86,723 CY of vegetative debris, 28,092 CY of mulch, 18,968 CY of C&D, 7,839 CY of reduced C&D haul-out, and 746 hazardous trees/limbs.

**DEBRIS OPERATIONS MANAGER, NEW HANOVER COUNTY, NC (2018 – 2019)**

Following Hurricane Florence, James served as the Operations Manager for debris removal operations, providing oversight over field operations, field supervisors, and field monitors. The team monitored the removal of 1,603,715 CY vegetative and C&D debris and 7,690 hazardous trees.

**DEBRIS SUPERVISOR US VIRGIN ISLANDS (2017 - 2018)**

James worked in the US Virgin Islands as the Debris Monitoring Site Supervisor and Field Supervisor for St. Thomas Island after Hurricanes Irma and Maria. He managed the disposal management site for removal of USVI WAPA (Water and Power Authority) debris generated by the hurricanes. After completing the WAPA debris project, he worked as a Field Supervisor completing the electronic mapping of all hazardous limbs, hazardous trees and hazardous stumps for the USVI Department of Public Works.

**DEBRIS SUPERVISOR, MULTIPLE CLIENTS, FL (2017)**

James served as a Field Supervisor and DMS Supervisor for the Central Florida jurisdictions of Edgewater and Fernandina Beach for the debris removal operations following Hurricane Irma. The combined operations involved more than 100,000 CY of vegetative and C&D debris and nearly 4,500 hazardous trees/limbs.

**DEBRIS FIELD MONITOR, EDGEWATER, FL (2016)**

James served as a field monitor for the debris removal operations for Edgewater, FL following Hurricane Matthew. He monitored the removal of vegetative and C&D debris.

**JAMES GROSS**  
**FIELD SUPERVISOR**



**YEARS OF EXPERIENCE**

9 years

**EDUCATION**

Wyotech Technical School  
Daytona State College.

**LICENCES/CERTIFICATIONS/TRAINING**

IS-632.a, IS-633, IS-100, IS-120, IS-200, IS-240, IS-700, IS-800

Structural Welding Certified, Heavy Equipment Operator

**Valarie Philipp is an Associate Managing Director at Witt O'Brien's and a registered Professional Engineer (PE) in the states of Florida and Georgia.**

Valarie has more than 20 years of experience in disaster preparedness, response, and FEMA Public Assistance (PA) recovery support. She has assisted state, county, and municipal governments; health care providers; educational institutions; and non-governmental organizations (NGOs) with disaster preparedness, response, and recovery. She is a subject matter expert in grants management, cost recovery, FEMA disaster closeouts, procurement compliance, and appeals resolution. She also has extensive experience with debris monitoring and operations support. Valarie regularly assists governmental clients with annual contract procurement and maintenance activities, as well as disaster planning and all-encompassing FEMA program training initiatives.

Presently, Valarie is serving as the interim practice lead for all FEMA PA and grant recovery efforts in the continental United States. Prior to joining Witt O'Brien's, Valarie served as FEMA Technical Assistance Contractor (TAC) from 2004 – 2006, where she performed building damage assessments, prepared cost estimates, developed Project Worksheets (PWs), managed building assessment teams, and served as the Deputy Public Assistance Coordinator (PAC) for debris operations for Hurricane Katrina in South Florida. She also worked as a structural engineer for Wiss, Janney, Elstner, and Associates, undertaking forensic investigations, structural analysis, repair design, construction period services, and litigation support for structural failures, construction defects and natural disasters.

**COVID-19 RECOVERY SUPPORT, NATIONWIDE (2020 – PRESENT)**

Valarie is currently serving as the Project Manager for multiple COVID-19 cost recovery projects involving FEMA and other Federal grants supporting municipal, educational, and healthcare clients with their expenditure tracking, grant eligibility analysis, grant submittal, CARES act grant accountability, cost recovery, audit, and compliance.

**HURRICANE DORIAN DISASTER RECOVERY SUPPORT, VARIOUS FLORIDA CLIENTS (2019 – PRESENT)**

Valarie is currently serving as the Project Manager for 6 FEMA PA projects supporting clients in Florida with their PW preparation and submittal including Category A, B, E and G damages totaling approximately \$10 million.

**VALARIE PHILIPP  
FEMA REIMBURSEMENT SPECIALIST**



**YEARS OF EXPERIENCE**

24 Years

**EDUCATION**

University of Florida  
MSCE – Master's, Structural Engineering

University of Florida  
B.S. – Civil Engineering

**LICENCES/CERTIFICATIONS**

Professional Engineer (PE):  
Florida and Georgia

**TRAINING**

**FEMA Classroom Training:**

Operations I, Cost Estimating Format,  
G-202 – Debris Management

**FEMA EMI Courses:** FEMA IS-008, FEMA IS-056, FEMA IS-100, FEMA IS-156, FEMA IS-200, FEMA IS-253, FEMA IS-279, FEMA IS-300, FEMA IS-318, FEMA IS-340, FEMA IS-386, FEMA IS-393, FEMA IS-400, FEMA IS-403, FEMA IS-547, FEMA IS-613, FEMA IS-631, FEMA IS-632, FEMA IS-700, FEMA IS-800, FEMA IS-801, FEMA IS-803, and more



**DISASTER RECOVERY SUPPORT, BOARD OF TRUSTEES OF BAY MEDICAL CENTER - BAY HEALTH FOUNDATION, FLORIDA (2019 – PRESENT)**

Valarie is responsible for the management and oversight of a team of personnel working to support Bay Health Foundation with recovery from the devastating impacts of Hurricane Michael that struck the Florida Panhandle as a Category 5 hurricane in October 2018. The damages documented on FEMA projects to date total over \$124 million. The hospital facilities sustained significant damages to many of their health care facilities county-wide with many buildings condemned and in need of complete replacement. The project has required working with outside teams of engineers, architects, and construction firms to assess damages, develop repair and replacement strategies, and complete the vision for a functional and accessible community hospital to serve the needs of the surrounding area.

**HURRICANE IRMA DISASTER RECOVERY SUPPORT, VARIOUS CLIENTS, FLORIDA (2017 – PRESENT)**

Valarie is managing 10 disaster debris monitoring projects in Florida (9 in Broward County and 1 in Palm Beach County) and 15 FEMA grants management projects, some still in process, resulting from Hurricane Irma that impacted Florida and Georgia in September 2017. PWs were prepared for Categories A, B, C, E, F, and G for damages totaling \$74.7 million.

**DISASTER RECOVERY SUPPORT, SCHOOL BOARD OF BROWARD COUNTY (SBBC), FL (2008 – PRESENT)**

Valarie has directed SBBC's long-term recovery efforts after the various disasters that impacted the Broward County School District from 2004 to 2020 including the COVID-19 response and recovery. She has overseen the reconciliation and closeout of debris removal projects, emergency protective measures, and permanent work that totaled more than \$60 million.

Valarie has assisted with gathering, reviewing, and compiling the relevant documentation for the final inspection and closeout of PWs up through the 2016 disasters. This has involved identifying and pursuing more than \$9 million in unclaimed FEMA funds and project cost over-runs, as well as more than \$3 million in originally unclaimed insurance benefits.

When FEMA's Office of the Inspector General (OIG) conducted an audit of 32 of the School Board's projects, which documented \$15 million in damages, Valarie assisted by gathering and submitting supporting documentation to satisfy the audit findings and conditions through project closeout. She also prepared formal appeals to FEMA to dispute adverse funding decisions, successfully recovering over \$1.7 million in de-obligated funds.

Most recently, she has supported efforts to comply with updates to the FEMA program guidelines including updating procurement policies and procedures to align with federal procurement regulations as well as implementing disaster expenditure recording procedures to capture damages through the County by department, location, and by FEMA category of work.

**SUPERSTORM SANDY RECOVERY, BOROUGH OF ALLENDALE, NJ (2013 – 2018)**

Valarie assisted the Borough of Allendale, New Jersey with their recovery efforts from Superstorm Sandy. She worked with the borough, state, and FEMA to prepare PWs and to prepare subsequent reimbursement requests and final closeout packages. She reviewed disasters that remained open prior to Sandy and prepared reports on their completeness to provide to the state to complete disaster closures. Valarie also prepared the Borough's FEMA project packages for Winter Storm Jonas that hit in February 2016.

### **LONG-TERM RECOVERY EFFORTS, FLORIDA DEPARTMENT OF TRANSPORTATION (FDOT), FLORIDA (2008 – 2015)**

Valarie assisted FDOT with recovery efforts from the Spring 2014 flooding that impacted North Florida. She had previously served as FDOT's PAC and helped the department perform closeout activities for 110 large PWs related to nine State-declared disasters from 2004-2008, which represented more than \$75 million in obligated funds. She assisted with final inspections, appeals, and grant reimbursements, and QA/QC services.

Valarie also worked with FDOT districts in Southeastern Florida to compile supporting documents to ensure the successful allocation of obligated funding. She prepared and reviewed documentation to file Detailed Damage Inspection Reports (DDIRs) with the Federal Highway Administration (FHWA) for multiple jurisdictions throughout the Miami-Dade area, which totaled more than \$8 million in federal disaster aid.

Valarie assisted with the development of FEMA PA and FHWA-ER training materials for FDOT and other local government applications. She delivered training to more than 3,000 representatives and public officials across the State of Florida from the Panhandle to the Keys.

### **LONG-TERM RECOVERY EFFORTS, CITY OF MIAMI, FL (2008 – 2012)**

Valarie provided oversight and guidance for the City of Miami's long-term recovery efforts. She assisted city staff with all aspects of the debris planning and preparation process, from project inception through disaster closure and financial audits. She also supported the final inspection and closeout of 27 large PWs that represented more than \$34 million in obligated funds. The majority of the PWs were related to debris removal and emergency protective measures.

Valarie secured more than \$9.5 million in unclaimed obligated funds and cost overruns, which resulted in successful project closeouts. To secure the funds, Valarie collected, reviewed, and prepared all pertinent documentation from various City departments.

She also assisted the City in preparing a response to findings from an audit by FEMA's OIG. Her assistance led to the recovery of more than two-thirds of the \$3.8 million of funds in question. She worked with the City to complete a FEMA-approved Disaster Debris Management Plan and assisted during the bidding and contracting phases. She also helped select and approve a temporary debris management site and facilitated annual debris coordination meetings with City staff and contracted vendors.

### **RECOVERY EFFORTS, FLORIDA DIVISION OF EMERGENCY MANAGEMENT, FLORIDA (2006 – 2008)**

While working with FDEM, Valarie served as the Lead PAC responsible for recovery efforts in Miami-Dade County, which included 218 municipal and private non-profit organizations applying for more than \$560 million in federal funds. She oversaw PA program activities for six State of Florida declared disasters, which impacted the Miami metro area in 2004 and 2005.

### **TECHNICAL ASSISTANCE CONTRACTOR (TAC), FEMA, FLORIDA (2004 – 2006)**

While working with FEMA, Valarie assisted Palm Beach County's (Florida) efforts to respond to Hurricanes Frances and Jeanne. She performed building damage assessments, prepared cost estimates, wrote PWs, and managed building assessment team members. She also assisted applicants in Miami-Dade and Broward Counties for Hurricanes Katrina and Wilma. During the recovery efforts, Valarie helped determine debris removal project eligibility and funding obligations. She also managed debris specialists and performed QA/QC to help resolve special projects.

**Sheletta Cossey has more than 10 years of professional experience, including more than 5 years of experience in debris monitoring, project data management, and data administration.**

Sheletta serves as Witt O'Brien's Data Management Lead, overseeing data processes and procedures for reimbursement for all debris monitoring projects from start-up through reconciliation and close-out. She is a thoroughly trained as a debris specialist as well as knowledgeable in data reconciliation purposes, having reconciled data for nearly 7 million cubic yards (CY) of debris across multiple large-scale debris monitoring projects.

As data manager, she manages the electronic ticketing process from its inception, which involves determining cubic yard estimations, managing upwards of 3,000 tickets, and 20,000 CY daily. Following Hurricane Irma, Sheletta managed the South Florida Data Processing Center, overseeing the work of 12 to 36 data entry clerks. She is also experienced in providing statistical data and operational coordination, preparation, and organization of disaster recovery data.

When not activated to support specific monitoring contracts and operations, Sheletta is the Witt O'Brien's Regional Manager for stand-by debris monitoring contracts in Broward County, Miami Dade County, Lee County, and Manatee County in Florida, providing on-going client relationship management and pre-event planning.

Prior to joining Witt O'Brien's, Sheletta worked in financial advisement and management, which provides her with the necessary skills in ensuring robust and accurate data management. She is accustomed to working closely with clients to analyze financial data and objectives, including account management, advisement strategies, risk tolerance, and updating client portfolios.

**DATA MANAGER, DEBRIS MONITORING, NEW ORLEANS, LA (2021 - 2022)**

Sheletta served as data manager in the City of New Orleans to support debris removal monitoring operations following Hurricane Ida (2021). The team monitored more than 350k CY of vegetative and C&D debris and 16,730 hazardous trees/limbs. In addition, Witt O'Brien's monitored the City's use of the hauling contractor for removal of more than 8.3 million pounds of solid waste. She is currently supporting project close-out and reconciliation of invoices.

**REGIONAL DATA MANAGER, DEBRIS MONITORING, MULTIPLE CLIENTS, LA (2021 – 2022)**

Following Hurricane Ida, Sheletta served as the Regional Data Manager for debris monitoring projects for the City of Thibodaux, Lafourche Parish, the Greater Lafourche Port Commission, and the Southeast Louisiana Flood Protection Authority. Across all four projects, the teams monitored more than 1.7 million CY of vegetative and C&D debris and 9,000 hazardous trees/limbs.

**DATA MANAGER, DEBRIS MONITORING, NEW ORLEANS, LA (2020 - 2021)**

Sheletta served as data manager in the City of New Orleans to support debris removal monitoring operations following Hurricane Zeta. She managed the QA/QC process and reconciliation of 103,260

**SHELETTA COSSEY  
DATA CLERK**



**YEARS OF EXPERIENCE**

13 Years

**EDUCATION**

Allied American University, B.S. Business Administration

**LICENCES/CERTIFICATIONS/TRAINING**

FEMA: IS-1000, IS-1101, IS-1002, IS-100 IS-200, IS-230, IS-235, IS-300, IS-318, IS-400, IS-632.a, IS-633, IS-650, IS-700, IS-800, 24-Hour HAZWOPER

CY of vegetative and C&D and the removal of 4,550 hazardous trees. She is currently supporting project close-out and reconciliation of invoices.

**REGIONAL DATA MANAGER, DEBRIS MONITORING, NATCHITOCHE PARISH AND RUSTON, LA (2020)**

Sheletta served as the Regional Data Manager for Natchitoches Parish and City of Ruston following Hurricane Laura. For both projects, she oversaw the QA/QC process and reconciliation of 33,508 CY of debris and 7,447 hazardous trees.

**FEMA PUBLIC ASSISTANCE AUDIT SUPPORT, VARIOUS CLIENTS, FL (2018 – PRESENT)**

Following Hurricane Irma, in support of the Category A Debris Removal project preparation, obligation and reimbursement process, both FEMA and the State of Florida conducted audits of all debris projects documentation to ensure compliance with federal and state requirements. Sheletta has been managing the response to the audits and requests for information for all Witt O'Brien's debris clients who require assistance in providing the required documentation to satisfy programmatic requirements and support eligibility of the costs.

**DEBRIS MONITORING DATA MANAGER, NEW HANOVER COUNTY, NC (2018 – 2019)**

Sheletta served as Data Manager for Witt O'Brien's debris monitoring and management for New Hanover County, NC following Hurricane Florence. The team monitored the removal of 1,246,902 CY of vegetative debris, and 77,057CY of C&D debris, and 279,664 CY of mulch. Sheletta provided daily updates on total cubic yards of debris hauled, QA/QC of ticketing data, and reconciliation of financial hauling data.

**DEBRIS MONITORING DATA MANAGER, CITY OF WILMINGTON, NC (2018 – 2019)**

Sheletta served as the data manager for disaster recovery debris monitoring for the City of Wilmington following Hurricane Florence. Totals for City were 769,613 CY of vegetative debris, 17,035 CY of C&D debris, 109,814 CY of mulch, and 9,859 hazardous trees. Sheletta provided daily updates on total cubic yards of debris hauled, QA/QC of ticketing data, and reconciliation of financial hauling data.

**DEBRIS MONITORING DATA MANAGER, MULTIPLE CLIENTS IN FLORIDA AND GEORGIA (2017 – 2018)**

Witt O'Brien's was engaged in debris monitoring and management of multiple client operations in Florida and Georgia after Hurricane Irma. The team monitoring the removal of nearly 4.3 million CY ROW vegetative debris, approximately 208,000 CY of C&D debris, and hauled approximately 702,000 CY of mulch. Across these nearly 30 cities, towns, and counties, Sheletta served as the data manager for all debris monitoring activities. She managed the work of 12 to 36 Data Entry clerks in the South Florida Data Processing Center in Ft. Lauderdale and Ocala, Florida.

**DEBRIS MONITORING DATA MANAGER, SAVANNAH, GA (2016 – 2017)**

Sheletta was the Data Manager for disaster recovery debris monitoring for Savannah following Hurricane Matthew in 2016. The hurricane dropped 17 inches of rain on the historic city and caused massive amounts of hazardous storm-related debris. Witt O'Brien's monitored the removal of 450,000 CY of various types of debris, including 49,000 CY of waterway debris; 1,232 hazardous trees; 26,230 hazardous limbs; and 338 hazardous stumps. Debris removal was made more complex by the city's many historic landmarks and museums. Sheletta provided expert documentation services to support FEMA cost reimbursement services, which totaled nearly \$15 million, including archaeological services.



**WITT O'BRIEN'S**  
PART OF THE SEACOR FAMILY

1201 15th Street NW, Suite 600  
Washington DC 20005

T: +1 202 585 0780  
F: +1 202 580 8877

24/7 Emergency  
+1 985 781 0804

[wittobriens.com](http://wittobriens.com)

**EXHIBIT "C"**  
**DISASTER DEBRIS MONITORING SERVICES**  
**PRICE SUBMITTAL SCHEDULE FORM**

Form 8: PRICE SUBMITTAL SCHEDULE

Below we provide a table of positions and rates for debris monitoring services. These rates are fully burdened with all travel and ODCs, as the RFP indicated that the travel and lodging are not covered by the Town. Should travel / ODCs be reimbursable with no mark-up, Witt O'Brien's would be happy to adjust rates accordingly.

<u>POSITIONS</u>	<u>HOURLY RATE</u>
Project Manager	\$ 80.00
Operations Manager / Assistant Project Manager	\$ 62.00
GIS Specialist	\$ 68.00
Field Supervisor	\$ 49.00
Debris Site / Tower Monitors	\$ 32.50
Load Site / Field Monitors	\$ 32.50
Data Manager	\$ 52.00
Data Entry Clerks	\$ 32.00
Administrative Assistant	\$ 32.00
Billing Invoice Analyst	\$ 49.00

The Scope of Work indicates that in addition to debris monitoring, the Town may also require comprehensive services to support oversight and management of FEMA Public Assistance applications. The Town may also need assistance in developing a comprehensive emergency management plan (CEMP) and mitigation program. Below we provide a table of positions and rates for these additional services. These rates are also fully burdened with all travel and ODCs.

<u>Positions</u>	<u>Hourly Rate</u>
Project Manager – Grants	\$ 168.00
Subject Matter Expert	\$ 155.00
Senior Grants Manager	\$ 164.20
Grant Manager	\$ 154.90
Senior Planner	\$ 120.00
Planner	\$ 90.00
Senior Mitigation Advisor	\$ 155.00
Mitigation Specialist	\$ 130.00
Document Control Specialist	\$ 79.00
Administrative Assistant – Grants	\$ 45.00

**EXHIBIT “D”**  
**FEMA CONTRACT PROVISIONS GUIDE**



# Contract Provisions Guide

Navigating Appendix II to Part 200—Contract Provisions  
for Non-Federal Entity Contracts Under Federal Awards

Procurement Disaster Assistance Team (PDAT)

June 2021

*(FI-207-21-0001)*



FEMA

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# Introduction

FEMA grant recipients and subrecipients (also known as non-federal entities or NFEs)<sup>1</sup> will often use contractors to help them carry out work under their awards. These contracts are a commercial transaction between the NFE and its contractor, and FEMA has no contractual relationship with NFEs' contractors. Although FEMA is not a party to the contract, if an NFE is using federal funding to pay for the contract, the NFE must comply with federal laws, including the [federal procurement standards](#).

This Guide is applicable to *all* NFEs purchasing in support of declarations and FEMA awards issued on or after November 12, 2020 and reflects [Office of Management and Budget \(OMB\) revisions](#) to the federal procurement standards.

For FEMA declarations and awards issued between December 26, 2014 and November 11, 2020 please refer to the [Contract Provisions Template](#). While the *Contract Provisions Template* is only directly applicable to FEMA's Public Assistance (PA) Program, all FEMA grant recipients and subrecipients are encouraged to review this resource since it provides guidance on the federal procurement under grants regulations.

The federal procurement standards for NFEs are described in Title 2 of the Code of Federal Regulations (C.F.R.), Part 200, sections 200.317-200.327. [2 C.F.R. § 200.327](#) states that “the non-federal entity's contracts *must contain the applicable provisions* described in [Appendix II to this part](#)” (emphasis added).

This Guide is designed to help FEMA grant recipients and subrecipients navigate Appendix II to Part 200—Contract Provisions for Non-Federal Entity Contracts Under Federal Awards, including providing mandatory language and/or suggested language for each required contract provision. This Guide also describes contract clauses that FEMA *recommends* in addition to those required by 2 C.F.R. Part 200.

This Guide provides:

- Sample language or references to find sample language for some of the federally required clauses.
- Required language for clauses that require exact language.

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<sup>1</sup> Non-federal entity is defined as a state, local government, Indian tribe, institution of higher education, or nonprofit organization carrying out a federal award as a recipient or subrecipient. 2 C.F.R. § 200.1. State is defined as “any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and any agency or instrumentality thereof exclusive of local governments.” 2 C.F.R. § 200.1. The term “non-state entity” therefore refers to a non-federal entity other than a state, which includes local and tribal governments as well as nonprofit organizations.

- Sample language for some of the federally recommended clauses.

This Guide does *not* provide:

- Sample language for certain federally required or recommended clauses that must be included in accordance with the NFE's applicable laws, rules, and procedures.
- Provisions required by applicable state, tribal, or local laws or rules separate from the federal provisions.

Many of the provisions described in this Guide only apply when certain circumstances are present, such as the type of work being procured, the dollar amount, or the date when it is procured. Each section will describe the applicable requirements.

**NOTE:** The NFE is solely responsible for ensuring that all language included in its contracts meets the requirements of 2 C.F.R. Part 200, including 2 C.F.R. § 200.327 and Appendix II. While the Contract Provisions Guide provides general guidance, NFEs should reach out to their applicable [FEMA grant program representative\(s\)](#) if they have specific questions on the applicability of the contract provisions to a particular FEMA grant program. NFEs are encouraged to visit [www.fema.gov](http://www.fema.gov) for additional information regarding FEMA grant programs and [www.fema.gov/grants/procurement](http://www.fema.gov/grants/procurement) for procurement under grants reference material.

## Summary of Applicable Federal Procurement Standards

For the NFE to determine which federal procurement rules to follow, it must first determine whether it is a state entity or a non-state entity. Below are the federal procurement rules applicable to state and non-state entities effective November 12, 2020:

- [State entities](#)<sup>2</sup>, including their agencies and instrumentalities, must follow their own documented procurement policies and procedures when purchasing under a FEMA award pursuant to 2 C.F.R. § 200.317. These entities must also comply with socioeconomic affirmative steps (2 C.F.R. § 200.321), requirement for domestic preferences for procurement (2 C.F.R. § 200.322), the requirements for procurement of recovered materials (2 C.F.R. § 200.323) and ensure that all necessary contract provisions are included in their contracts (2 C.F.R. § 200.327).
- NFEs other than states (collectively referred to as non-state entities<sup>3</sup>), which include local governments, tribes and eligible private nonprofit organizations, must have documented procurement policies and procedures, which reflect applicable local, state or tribal law, and ensure compliance with the federal requirements listed at 2 C.F.R. §§ 200.318 – 200.327.

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<sup>2</sup> A state entity is “any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and any agency or instrumentality thereof exclusive of local governments.” 2 C.F.R. § 200.1

<sup>3</sup> A non-state entity is any non-federal entity (as defined above) other than a state (as defined above).

In the case of noncompliance with the federal procurement rules, FEMA may apply a remedy, as appropriate, in accordance with its authorities found at 2 C.F.R. § 200.339 *Remedies for Noncompliance*.

## **Policy and Guidance Document(s) Incorporated and Superseded**

This Guide supersedes the [Contract Provisions Template](#) and other provisions pertaining to the procurement under grants process in policy or guidance circulated prior to the publication date of the Contract Provisions Guide. This Guide provides the most updated and authoritative information regarding required provisions under Appendix II to Part 200—Contract Provisions for Non-Federal Entity Contracts Under Federal Awards and FEMA-recommended contract provisions.

## **Document Management and Maintenance**

FEMA Policy FI-207-21-0001, Contract Provisions Guide, will be reviewed, reissued, revised, and/or rescinded within four years for the issue date. The Procurement Disaster Assistance Team (PDAT), a subcomponent of FEMA's Grant Programs Directorate's (GPD) Policy Division, developed this Guide to provide accurate and updated information to assist both FEMA staff and FEMA award recipients and subrecipients navigate Appendix II to Part 200—Contract Provisions for Non-Federal Entity Contracts Under Federal Awards. PDAT is responsible for the management and maintenance of this Guide. Comments and feedback from FEMA personnel and stakeholders regarding this Guide should be directed to the Grants Program Directorate Policy Division at FEMA headquarters (HQ) at [FEMA-GPD-Policy@fema.dhs.gov](mailto:FEMA-GPD-Policy@fema.dhs.gov).



## Contract Provisions Quick Reference Guide

Tables A and B are designed to help FEMA grant recipients and subrecipients conduct a quick reference of the applicability of a specific contract provision and whether sample contract language is included within this Guide to incorporate within the NFE’s contract.

The Tables are divided between the required contract provisions set forth under 2 C.F.R. Part 200 Appendix II and those that FEMA *recommends* in addition to those required by 2 C.F.R. Part 200.

**Table A: Required Contract Provisions** *(continued next page)*

	Provision (Appendix II Section)	Applicability	Sample Contract Language Included
1	<a href="#">Legal/contractual/administrative remedies for breach of contract</a>	Greater than Simplified Acquisition Threshold (SAT)- \$250,000	No. It is based on NFE’s procedures.
2	<a href="#">Termination for cause and convenience</a>	Greater than \$10,000	No. It is based on NFE’s procedures.
3	<a href="#">Equal Employment Opportunity</a>	Construction work	Yes. Exact language from 41 C.F.R. § 60-1.4(b) included.
4	<a href="#">Davis-Bacon Act</a>	Construction work	Yes, via reference to required language at 29 C.F.R. § 5.5(a).
5	<a href="#">Copeland “Anti-Kickback” Act</a>	Construction work greater than \$2,000	Yes.
6	<a href="#">Contract Work Hours and Safety Standards Act</a>	Greater than \$100,000 + mechanics or laborers	Yes. Exact language required from 29 C.F.R. § 5.5(b).
7	<a href="#">Rights to inventions made under a contract or agreement</a>	Funding agreement	Yes.
8	<a href="#">Clean Air Act and federal Water Pollution Control Act</a>	Greater than \$150,000	Yes.
9	<a href="#">Debarment and Suspension</a>	Greater than \$25,000	Yes.
10	<a href="#">Byrd Anti-Lobbying Amendment</a>	Greater than \$100,000; and Certification required for all contracts greater than \$100,000	Yes. Clause and certification.

	Provision (Appendix II Section)	Applicability	Sample Contract Language Included
11	<a href="#">Procurement of Recovered Materials</a>	NFE is a state or political subdivision of a state. Work involves the use of materials and the contract is for more than \$10,000.	Yes.
12	<a href="#">Prohibition on Contracting for Covered Telecommunications Equipment or Services</a>	All FEMA declarations and awards issued on or after November 12, 2020.	Yes.
13	<a href="#">Domestic Preferences for Procurements</a>	All FEMA declarations and awards issued on or after November 12, 2020.	Yes.

Table B: Recommended Contract Provisions

	Provision	Applicability	Sample Contract Language Included
1	<a href="#">Access to Records</a>	All	Yes.
2	<a href="#">Contract Changes or Modifications</a>	All	No. It depends on nature of contract and end-item procured.
3	<a href="#">DHS Seal, Logo, and Flags</a>	All	Yes.
4	<a href="#">Compliance with federal Law, Regulations and Executive Orders</a>	All	Yes.
5	<a href="#">No Obligation by Federal Government</a>	All	Yes.
6	<a href="#">Program Fraud and False or Fraudulent Statements or Related Acts</a>	All	Yes.
7	<a href="#">Affirmative Socioeconomic Steps</a>	State entities: all FEMA declarations and awards issued on or after November 12, 2020. Non-state entities: all procurements	Yes.
8	<a href="#">Copyright</a>	All procurements that may involve creation of copyrightable material.	Yes.

# Required Contract Provisions

## 1. Remedies

Contracts for more than the federal simplified acquisition threshold (SAT), the dollar amount below which an NFE may purchase property or services using small purchase methods, currently set at \$250,000 for procurements made on or after June 20, 2018,<sup>4</sup> must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and must provide for sanctions and penalties as appropriate.<sup>5</sup>

### 1.1 Applicability

This contract provision is required for contracts over the SAT, currently set at \$250,000 for procurements made on or after June 20, 2018. Although not required for contracts at or below the SAT, FEMA suggests including a remedies provision.

### 1.2 Additional Considerations

For FEMA's Assistance to Firefighters Grant (AFG) Program, recipients must include a penalty clause in all contracts for any AFG-funded vehicle, regardless of dollar amount. In that situation, the contract must include a clause addressing that non-delivery by the contract's specified date or other vendor nonperformance will require a penalty of no less than \$100 per day until such time that the vehicle, compliant with the terms of the contract, has been accepted by the recipient. This penalty clause should, however, account for *force majeure* or acts of god. AFG recipients should refer to the applicable year's Notice of Funding Opportunity (NOFO) for additional information, which can be accessed at [FEMA.gov](https://www.fema.gov).

## 2. Termination for Cause and Convenience

Contracts for more than \$10,000 must address termination for cause and for convenience by the non-federal entity, including how it will be carried out and the basis for settlement.<sup>6</sup>

### 2.1 Applicability

This contract provision is required for procurements exceeding \$10,000. FEMA suggests including a termination for cause and for convenience in all contracts even when not required.

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<sup>4</sup> See FEMA Grant Programs Directorate Information Bulletin No. 434, Increases and Changes to the Micro-Purchase and Simplified Acquisition Thresholds (Aug. 28, 2018), [https://www.fema.gov/sites/default/files/2020-08/ib\\_434\\_changes\\_micro\\_purch\\_simp\\_acquisition\\_thresholds.pdf](https://www.fema.gov/sites/default/files/2020-08/ib_434_changes_micro_purch_simp_acquisition_thresholds.pdf). For procurements subject to 2 C.F.R. Part 200 that were made before June 20, 2018, the SAT was \$150,000.

<sup>5</sup> 2 C.F.R. Part 200, Appendix II, § A.

<sup>6</sup> See 2 C.F.R. Part 200, Appendix II, § B.

## 3. Equal Employment Opportunity

Any contract that uses federal funds to pay for construction work is a “federally assisted construction contract” and must include the equal opportunity clause found in 2 C.F.R. Part 200, unless otherwise stated in 41 C.F.R. Part 60.<sup>7</sup>

### 3.1 Applicability

This contract provision is required for all procurements that meet the definition of a “federally assisted construction contract.”

### 3.2 Key Definitions

- *Federally Assisted Construction Contract:* The regulation at 41 C.F.R. § 60-1.3 defines a *federally assisted construction contract* as “any agreement or modification thereof between any applicant and a person for construction work which is paid for in whole or in part with funds obtained from the Government or borrowed on the credit of the Government pursuant to any federal program involving a grant, contract, loan, insurance or guarantee, or undertaken pursuant to any federal program involving such grant, contract, loan, insurance, or guarantee, or any application or modification thereof approved by the Government for a grant, contract, loan, insurance, or guarantee under which the applicant itself participates in the construction work.”
- *Construction Work:* The regulation at 41 C.F.R. § 60-1.3 defines *construction work* as “the construction, rehabilitation, alteration, conversion, extension, demolition or repair of buildings, highways, or other changes or improvements to real property, including facilities providing utility services. The term also includes the supervision, inspection, and other onsite functions incidental to the actual construction.”
- *Contract:* The regulation at 41 C.F.R. § 60-1.3 defines *contract* as “any Government contract or subcontract or any federally assisted construction contract or subcontract.”
- Additional definitions pertaining to this contract provision can be found at 41 C.F.R. § 60-1.3.

### 3.3 Required Language

The regulation at 41 C.F.R. § 60-1.4(b) requires, except as otherwise provided or exempted in 41 C.F.R. Part 60, the insertion of the following contract clause: “During the performance of this contract, the contractor agrees as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual

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<sup>7</sup> See 2 C.F.R. Part 200, Appendix II, § C.

orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

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

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

(4) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other

sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

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

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

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

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

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

## 4. Davis-Bacon Act

This statute requires that contractors must pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in the Secretary of Labor's wage determination. Additionally, contractors are required to pay wages at least once per week.<sup>8</sup> Additional requirements are listed below, and relevant definitions are at 29 C.F.R. § 5.2. NFEs should refer to the applicable NOFO or other program guidance or contact their applicable FEMA grant representative for additional information on how to implement this requirement.

### 4.1 Applicability

When required by the federal program legislation, prime construction contracts over \$2,000 awarded by NFEs must include a provision for compliance with the Davis-Bacon Act.<sup>9</sup>

The Davis-Bacon Act only applies to the Emergency Management Performance Grant Program,<sup>10</sup> Homeland Security Grant Program,<sup>11</sup> Nonprofit Security Grant Program,<sup>12</sup> Tribal Homeland Security Grant Program,<sup>13</sup> Port Security Grant Program,<sup>14</sup> Transit Security Grant Program,<sup>15</sup> Intercity Passenger Rail Program,<sup>16</sup> and Rehabilitation of High Hazard Potential Dams Program.<sup>17</sup> Unless otherwise stated in a program's authorizing statute, it *does not* apply to other FEMA grant and cooperative agreement programs, including the PA Program. .

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<sup>8</sup> See *id.*; 40 U.S.C. §§ 3141-3144 and 3146-3148. The Davis-Bacon Act is supplemented by Department of Labor regulations at 29 C.F.R. Part 5 (Labor Standards Provisions Applicable to Contracts Covering federally Financed and Assisted Construction)

<sup>9</sup> 2 C.F.R. Part 200, Appendix II, § D.

<sup>10</sup> See section 611(j)(9) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), Pub. L. No. 93-288 (codified as amended at 42 U.S.C. § 5196(j)(9)).

<sup>11</sup> See section 2008(b)(4)(B)(ii) of the Homeland Security Act of 2002, Pub. L. No. 107-296 (codified as amended at 6 U.S.C. § 609(b)(4)(B)(ii)) (citing to section 611(j)(9) of the Stafford Act).

<sup>12</sup> *Id.* The Davis-Bacon Act only applies to the Nonprofit Security Grant Program (NSGP) where that program is funded as a carve-out of the appropriations for the Homeland Security Grant Program (HSGP). See, e.g., Department of Homeland Security Appropriations Act, 2020, Pub. L. No. 116-93, Title III, Protection, Preparedness, Response, and Recovery, Federal Emergency Management Agency, Federal Assistance §§ 1-2. Compare *id.* with section 2009 of the Homeland Security Act of 2002 (6 U.S.C. § 609a) (authorizing NSPG as a stand-alone program where the Davis-Bacon Act does not apply, but as of the date of publication of this document, NSGP has not been funded as a standalone program).

<sup>13</sup> See section 2008(b)(4)(B)(ii) of the Homeland Security Act of 2002.

<sup>14</sup> See section 102 of the Maritime Transportation Security Act of 2002 (MTSA), Pub. L. No. 107-295 (codified as amended at 46 U.S.C. § 70107); 46 U.S.C. § 70107(b)(2). While the MTSA requires that PSGP construction activities are carried out consistent with section 611(j)(8) of the Stafford Act, a subsequent amendment to the Stafford Act by section 3 of Pub. L. No. 109-308 in 2006 redesignated the text of section 611(j)(8) to 611(j)(9). The cross-reference in the MTSA has not been updated.

<sup>15</sup> See section 1406 of the Implementing Recommendations of the 9/11 Commission Act of 2007 (9/11 Act), Pub. L. No. 110-53 (6 U.S.C. § 1135) (applying the requirements of section 49 U.S.C. § 5307); 49 U.S.C. § 5333 (applying the Davis-Bacon Act to grants provided under 49 U.S.C. § 5307).

<sup>16</sup> See section 1513(h) of the 9/11 Act (6 U.S.C. § 1163(h)) (citing to 49 U.S.C. § 24312, which requires compliance with the Davis-Bacon Act).

<sup>17</sup> See section 8A(d)(2)(E) of the National Dam Safety Program Act (codified as amended at 33 U.S.C. § 467f-2(d)(2)(E)) (requiring compliance with 42 U.S.C. § 5196(j)(9), which is section 611(j)(9) of the Stafford Act that applies the Davis-Bacon Act).

## 4.2 Additional Requirements

If applicable, in addition to the requirements mentioned in the beginning of this section, the NFE must do the following:

- Place a copy of the Department of Labor’s current prevailing wage determination in each solicitation. Contracts or subcontracts must be awarded on the condition that the prevailing wage determination is accepted. The non-federal entity must report all suspected or reported violations to the federal awarding agency.<sup>18</sup>
- Include a provision for compliance with the Copeland “Anti-Kickback” Act for all contracts subject to the Davis-Bacon Act.<sup>19</sup> See Required Contract Provisions, Section 5. Copeland Anti-Kickback Act in this Guide for additional information. According to 29 C.F.R. § 5.5(a)(5), the regulatory requirements for the Copeland “Anti-Kickback” Act are incorporated by reference into the required contract provision, so a separate contract provision is not necessary. However, the NFE may include a separate contract provision specific to the Copeland “Anti-Kickback” Act.
- Per Department of Labor’s implementing regulations for the Davis-Bacon Act, the NFEs contractor and any subcontractors are required to insert, or incorporate by reference, the clauses contained at 29 C.F.R. § 5.5(a)(1)-(10)<sup>20</sup> into any subcontracts.
- Follow the other requirements of the Davis-Bacon Act and implementing regulations.<sup>21</sup>

## 4.3 Required Language<sup>22</sup>

If applicable per the standard described above, the NFE must include the provisions at 29 C.F.R. § 5.5(a)(1)-(10) in full into all applicable contracts, and all applicable contractors must include these provisions in full in any subcontracts.<sup>23</sup>

# 5. Copeland “Anti-Kickback” Act

The Copeland “Anti-Kickback” Act prohibits workers on construction contracts from giving up wages that they are owed.<sup>24</sup> Additional requirements are listed below, and relevant definitions are at 29 C.F.R. § 3.2. The applicable implementing regulations are intended to assist with enforcement of the

<sup>18</sup> 2 C.F.R. Part 200, Appendix II, § D.

<sup>19</sup> 2 C.F.R. Part 200, Appendix II, § D.

<sup>20</sup> 29 C.F.R. § 5.5(a)(6).

<sup>21</sup> 40 U.S.C. §§ 3141-3144, 3146-3148; 29 C.F.R. Part 5.

<sup>22</sup> 29 C.F.R. § 5.5(a).

<sup>23</sup> 29 C.F.R. § 5.5(a)(1), (6).

<sup>24</sup> See *id.*; 40 U.S.C. § 3145. The Copeland “Anti-Kickback” Act is supplemented by Department of Labor regulations at 29 C.F.R. Part 3 (Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States).



Davis-Bacon Act's minimum wage provisions as well as various statutes with similar minimum wage provisions for federally assisted construction.<sup>25</sup>

## 5.1 Applicability

For all prime construction contracts above \$2,000, when the Davis-Bacon Act also applies,<sup>26</sup> NFEs must include a provision in contracts and subcontracts for compliance with the Copeland "Anti-Kickback" Act.<sup>27</sup> This requirement applies to all prime construction contracts above \$2,000 in situations where the Davis-Bacon Act also applies.<sup>28</sup> In situations where the Davis-Bacon Act does not apply, neither does the Copeland "Anti-Kickback" Act. As described in section A.4 regarding the Davis-Bacon Act, this provision only applies to certain FEMA grant and cooperative agreement programs. Please reference that list discussed above. Of note, it does not apply to the PA Program.

## 5.2 Additional Requirements

If applicable, the NFE must do the following:

- Include a provision for compliance with the Copeland "Anti-Kickback" Act.<sup>29</sup> According to the Davis-Bacon Act implementing regulations, the requirements for the Copeland "Anti-Kickback" Act are incorporated into the required contract provision for the Davis-Bacon Act by reference.<sup>30</sup> Therefore, a separate contract provision is not necessary. However, the NFE may include a separate contract provision specific to the Copeland "Anti-Kickback" Act with language suggested below.
- The Copeland "Anti-Kickback Act" prohibits each contractor or subcontractor from any form of persuading a person employed in construction, completion, or repair of public work to give up any part of their rightful compensation. The NFE must report all suspected or reported violations of the Copeland "Anti-Kickback Act" to FEMA.<sup>31</sup>
- Each contractor and subcontractor must provide weekly reports of the wages paid during the prior week's payroll period to each employee covered by the "Copeland Anti-Kickback" Act and the Davis-Bacon Act. The reports must be delivered to a representative of a federal or state agency in charge at the building or work site by the contractor or subcontractor within seven days of the payroll period's payment date.<sup>32</sup>

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<sup>25</sup> See 29 C.F.R. § 3.1.

<sup>26</sup> See 2 C.F.R. Part 200, Appendix II, § D; 29 C.F.R. §§ 3.1, 3.3(c).

<sup>27</sup> 2 C.F.R. Part 200, Appendix II, § D.

<sup>28</sup> See 2 C.F.R. Part 200, Appendix II, § D; 29 C.F.R. § 3.3(c).

<sup>29</sup> See 29 C.F.R. § 3.11.

<sup>30</sup> 29 C.F.R. § 5.5(a)(5).

<sup>31</sup> See 2 C.F.R. Part 200, Appendix II, § D.

<sup>32</sup> See 29 C.F.R. § 3.4.

- Follow the other requirements of the Copeland “Anti-Kickback” Act and implementing regulations.<sup>33</sup>

### 5.3 Suggested Language

The following provides a sample contract clause:

“Compliance with the Copeland “Anti-Kickback” Act.

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

Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.

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

## 6. Contract Work Hours and Safety Standards Act

Where applicable,<sup>34</sup> all contracts awarded by the NFE of more than \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with statutory requirements on work hours and safety standards.<sup>35</sup> Under 40 U.S.C. § 3702, each contractor must base wages for every mechanic and laborer on a standard 40-hour work week. Work over 40 hours is allowed, so long as the worker is paid at least one and a half times the base pay rate for all hours worked over 40 hours in the work week. Additionally, for construction work, under 40 U.S.C. § 3704, work surroundings and conditions for laborers and mechanics must not be unsanitary or unsafe. Relevant definitions are at 40 U.S.C. § 3701 and 29 C.F.R. § 5.2.

### 6.1 Applicability

This required contract provision applies to all procurements over \$100,000 that involve the employment of mechanics, laborers, and construction work.<sup>36</sup> These requirements *do not* apply to

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<sup>33</sup> 18 U.S.C. § 874; 40 U.S.C. § 3145; 29 C.F.R. Part 3.

<sup>34</sup> See 40 U.S.C. §§ 3701-3708.

<sup>35</sup> 40 U.S.C. §§ 3702, 3704. The Contract Work Hours and Safety Standards Act is supplemented by Department of Labor regulations at 29 C.F.R. Part 5. See 2 C.F.R. Part 200, Appendix II, § E.

<sup>36</sup> 41 C.F.R. Part 60-1.3.

the purchase of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.<sup>37</sup>

## 6.2 Additional Requirements

If applicable per the standard described above, the non-federal entity must include the provisions at 29 C.F.R. § 5.5(b)(1)-(4), verbatim, into all applicable contracts, and all applicable contractors must include these provisions, in full, into any subcontracts.<sup>38</sup>

In addition to the required language from 29 C.F.R. § 5.5(b)(1)-(4), in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any other statutes cited in 29 C.F.R. § 5.1, the NFE must also insert a clause meeting the requirements of 29 C.F.R. § 5.5(c). Specific language is not required, but FEMA has provided suggested language below.

## 6.3 Required Language

For the required contract provision, the language from 29 C.F.R. § 5.5(b)(1)-(4) is provided here for ease of reference:

“Compliance with the Contract Work Hours and Safety Standards Act.

**(1) Overtime requirements.** No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

**(2) Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.

**(3) Withholding for unpaid wages and liquidated damages.** The **(insert name of grant recipient or subrecipient)** shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other

<sup>37</sup> 29 C.F.R. Part 200, Appendix II, § E.

<sup>38</sup> 29 C.F.R. § 5.5(b)(1), (4).

federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

(4) *Subcontracts.* The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.”

## 6.4 Suggested Language

For contracts that are only subject to Contract Work Hours and Safety Standards Act and are not subject to the other statutes in 29 C.F.R. § 5.1 where an additional contract provision is required, FEMA suggests including the following language:

“Further Compliance with the Contract Work Hours and Safety Standards Act.

- (1) The contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid.
- (2) Records to be maintained under this provision shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the Department of Homeland Security, the Federal Emergency Management Agency, and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.”

## 7. Rights to Inventions Made Under a Contract or Agreement

This contract provision outlines the rules governing the ownership of inventions created using federal funds. If the FEMA award meets the definition of funding agreement<sup>39</sup> and the NFE enters into any contract involving substitution of parties, assignment or performance of experimental, developmental, or research work under that funding agreement, then the NFE must comply with the requirements of 37 C.F.R. Part 401 and any implementing regulations issued by FEMA.

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<sup>39</sup> Funding agreement definition found under 37 C.F.R. § 401.2(a).

## 7.1 Applicability

This provision *does not* apply to all FEMA grant and cooperative agreement programs. NFEs should refer to applicable NOFO or other program guidance or contact their applicable FEMA grant representative to determine if this provision is required for the procurement. However, the Rights to Inventions Made Under a Contract or Agreement clause is not required for procurements under FEMA's PA Program.

## 7.2 Key Definitions

*Funding Agreements:* The regulation at 37 C.F.R. § 401.2(a) defines *funding agreement* as “any contract, grant, or cooperative agreement entered into between any federal agency, other than the Tennessee Valley Authority, and any contractor for the performance of experimental, developmental, or research work funded in whole or in part by the federal government. This term also includes any assignment, substitution of parties, or subcontract of any type entered into for the performance of experimental, developmental, or research work under a funding agreement as defined in the first sentence of this paragraph.”

# 8. Clean Air Act and Federal Water Pollution Control Act

For contracts over \$150,000, contracts must contain a provision requiring contractors to comply with the Clean Air Act<sup>40</sup> and the Federal Water Pollution Control Act.<sup>41</sup> Violations must be reported to FEMA and the Regional Office of the Environmental Protection Agency (EPA).<sup>42</sup>

## 8.1 Applicability

This contract provision is required for all procurements over \$150,000.

## 8.2 Suggested Language

The following provides a sample contract clause:

“Clean Air Act”

The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 *et seq.*

The contractor agrees to report each violation to the **(insert name of non-federal entity entering into the contract)** and understands and agrees that the **(insert name of the non-federal entity entering into the contract)** will, in turn, report each violation as required to

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<sup>40</sup> 42 U.S.C. §§ 7401-7671q. This also includes all applicable standards, orders, or regulations issued pursuant to the Clean Air Act.

<sup>41</sup> 33 U.S.C. §§ 1251-1387, as amended.

<sup>42</sup> 2 C.F.R. Part 200, Appendix II, § G.

assure notification to the Federal Emergency Management Agency (FEMA), and the appropriate [Environmental Protection Agency Regional Office](#).

The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with federal assistance provided by FEMA.

“Federal Water Pollution Control Act”

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

The contractor agrees to report each violation to the ([insert name of the non-federal entity entering into the contract](#)) and understands and agrees that the ([insert name of the non-federal entity entering into the contract](#)) will, in turn, report each violation as required to assure notification to the ([insert name of the pass-through entity, if applicable](#)), Federal Emergency Management Agency (FEMA), and the appropriate [Environmental Protection Agency Regional Office](#).

The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with federal assistance provided by FEMA.”

## 9. Debarment and Suspension

NFEs contractors and subcontractors are subject to debarment and suspension regulations.<sup>43</sup> Applicable contracts and subcontracts must include a provision requiring compliance with debarment and suspension regulations.<sup>44</sup>

### 9.1 Applicability

The debarment and suspension clause is required for all contracts and subcontracts for \$25,000 or more, all contracts that require the consent of an official of a federal agency, and all contracts for federally required audit services.<sup>45</sup>

NFEs, even for procurements under \$25,000, must also comply with the regulation requiring non-state entities to only award contracts to responsible vendors.<sup>46</sup>

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<sup>43</sup> 2 C.F.R. Part 180 (implementing Executive Order 12549, Debarment and Suspension (1986) and Executive Order 12689, Debarment and Suspension (1989)); 2 C.F.R. Part 3000 (Department of Homeland Security regulations for Nonprocurement Debarment and Suspension, implementing 2 C.F.R. Part 180).

<sup>44</sup> 2 C.F.R. § 180; 2 C.F.R. Part 200, Appendix II, § H; 2 C.F.R. § 3000.332.

<sup>45</sup> 2 C.F.R. § 180.220(b); 2 C.F.R. § 3000.220.

<sup>46</sup> 2 C.F.R. § 200.318(h). For contracts and subcontracts under \$25,000, a contract provision is only required if those contracts or subcontracts are for federally required audit services or require the consent of a federal agency. However, even where a contract provision is not required, non-state entities must still ensure they are only awarding contracts to responsible vendors.

## 9.2 Additional Requirements

The debarment and suspension regulations restrict awards, subawards, contracts, and subcontracts with parties that are debarred, suspended, or otherwise excluded, or declared ineligible for participation in federal assistance programs and activities.<sup>47</sup>

If applicable, a contract or subcontract must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM). SAM Exclusions is the list maintained by the General Services Administration that contains the names of parties that are debarred, suspended, or otherwise excluded, or declared ineligible under statutory or regulatory authority other than Executive Order 12549.<sup>48</sup> SAM Exclusions can be accessed at [www.sam.gov](http://www.sam.gov).<sup>49</sup>

In general, an “excluded” party cannot receive a federal grant award or a contract considered to be a “covered transaction,” which includes parties that receive federal funding indirectly such as subawards and subcontracts. The key to the exclusion is whether there is a covered transaction. A covered transaction is a nonprocurement transaction at either a primary or secondary tier.<sup>50</sup>

Specifically, a covered transaction includes the following contracts for goods or services under FEMA grant and cooperative agreement programs:

- The contract is at least \$25,000.
- The contract requires the approval of FEMA, regardless of amount.
- The contract is for federally required audit services.
- It is a subcontract for \$25,000 or more.<sup>51</sup>

## 9.3 Suggested Language

The following provides a debarment and suspension clause. It also incorporates an optional method of verifying that contractors are not excluded or disqualified<sup>52</sup>:

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<sup>47</sup> See 2 C.F.R. Part 200, Appendix II, § H; 2 C.F.R. § 200.213. See also 2 C.F.R. Parts 180, 3000.

<sup>48</sup> See 2 C.F.R. Part 200, Appendix II, § H.

<sup>49</sup> 2 C.F.R. § 180.530.

<sup>50</sup> The regulations at 2 C.F.R. Parts 180 and 3000 are titled “nonprocurement” because they do not apply to procurements by the federal government but rather to federal financial assistance. There are separate debarment and suspension regulations covering procurements by the federal government. However, although the term “covered transactions” under 2 C.F.R. Parts 180 and 3000 *does not* include contracts awarded by the federal government, it *does* include some contracts awarded by recipients and subrecipients.

<sup>51</sup> See 2 C.F.R. §§ 180.220, 3000.220.

<sup>52</sup> Per 2 C.F.R. § 180.300, non-federal entity about to enter into an applicable contract, or a contractor about to enter into an applicable subcontract, must verify that the contractor or subcontractor is not excluded or disqualified by doing one of three things: 1) check SAM Exclusions; 2) collect a certification from the contractor or subcontractor; or 3) add a clause or condition to the contract or subcontract. The additional suggested language in this sample clause is for purposes of this requirement.

#### “Suspension and Debarment

This contract is a covered transaction for purposes of 2 C.F.R. Part 180 and 2 C.F.R. Part 3000. As such, the contractor is required to verify that none of the contractor’s principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

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

This certification is a material representation of fact relied upon by **(insert name of recipient/subrecipient/applicant)**. If it is later determined that the contractor did not comply with 2 C.F.R. Part 180, subpart C and 2 C.F.R. Part 3000, subpart C, in addition to remedies available to **(insert name of recipient/subrecipient/applicant)**, the federal government may pursue available remedies, including but not limited to suspension and/or debarment.

The bidder or proposer agrees to comply with the requirements of 2 C.F.R. Part 180, subpart C and 2 C.F.R. Part 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.”

## 10. Byrd Anti-Lobbying Amendment

NFEs who intend to award contracts of more than \$100,000, and their contractors who intend to award subcontracts of more than \$100,000, must include a contract provision prohibiting the use of federal appropriated funds to influence officers or employees of the federal government. Contractors that apply or bid for a contract for more than \$100,000 must also file the required certification regarding lobbying.<sup>53</sup>

Each tier certifies to the tier above that it will not and has not used federal appropriated funds to pay any person or organization for influencing or attempting to influence an employee of a federal agency, a Member of Congress, an employee of Congress, or an employee of a Member of Congress in connection with receiving any federal contract, grant, or other award covered by 31 U.S.C. § 1352.

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<sup>53</sup> See 2 C.F.R. Part 200, Appendix II, § I (citing 31 U.S.C. § 1352); 44 C.F.R. § 18.110.



The required certification form is found in FEMA regulations.<sup>54</sup> Each tier must also disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal funding. These disclosures are forwarded from tier to tier, all the way up to the federal awarding agency.<sup>55</sup>

## 10.1 Applicability

The Byrd Anti-Lobbying Amendment clause and certification are required for contracts of more than \$100,000, and for subcontracts of more than \$100,000.

## 10.2 Suggested Language

The following provides a sample contract clause:

“Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended)

Contractors who apply or bid for an award of more than \$100,000 shall file the required certification. Each tier certifies to the tier above that it will not and has not used federally appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the federal awarding agency.”

## 10.3 Required Certification

### 10.3.1 REQUIRED CERTIFICATION LANGUAGE

If applicable, contractors must sign and submit the following certification to the NFE with each bid or offer exceeding \$100,000:

“APPENDIX A, 44 C.F.R. PART 18 – CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

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

No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee

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<sup>54</sup> See 44 C.F.R. §§ 18.100, 18.110; 44 C.F.R. Part 18, Appendix A. FEMA’s regulations at 44 C.F.R. Part 18 implement the requirements of 31 U.S.C. § 1352 and provides, in Appendix A to Part 18, a copy of the certification that is required to be completed by each entity as described in 31 U.S.C. § 1352.

<sup>55</sup> See 44 C.F.R. §§ 18.100, 18.110; 44 C.F.R. Part 18, Appendix B. The specific form for disclosures is referenced in Appendix B to 44 C.F.R. Part 18 and is SF-LLL, also available at <https://www.grants.gov/web/grants/forms/sf-424-family.html>.

of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

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

### 10.3.2 RECOMMENDED SIGNATURE LINE:

At the end of the certification language, FEMA recommends including the following signature line.

"The Contractor, \_\_\_\_\_, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

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Signature of Contractor's Authorized Official

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Name and Title of Contractor's Authorized Official

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Date"

## 11. Procurement of Recovered Materials

An NFE that is a state agency or an agency of a political subdivision of a state, and the NFE's contractors must comply with Section 6002 of the Solid Waste Disposal Act.<sup>56</sup> Applicable NFEs must include a contract provision requiring compliance with this requirement.<sup>57</sup> This includes contracts awarded by a state agency or political subdivision of a state and its contractors for certain items, as designated by the EPA, with a purchase price greater than \$10,000.<sup>58</sup> Indian Tribal Governments and nonprofit organizations are not required to comply with this provision. Additional requirements are listed below.

### 11.1 Applicability

This required contract provision applies to all procurements over \$10,000 made by a state agency or an agency of a political subdivision of a state and its contractors.

### 11.2 Additional Requirements

The requirements include:

- Procuring only items designated in EPA guidelines<sup>59</sup> that contain the highest practical percentage of recovered materials consistent with maintaining competition, where the purchase price of the item is greater than \$10,000, or the value of the amount of items purchased in the preceding fiscal year was greater than \$10,000;
- Procuring solid waste management services in a way that maximizes energy and resource recovery; and
- Establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.<sup>60</sup>

### 11.3 Suggested Language

The following provides a sample contract clause:

“In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired—

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<sup>56</sup> Pub. L. No. 89-272 (1965) (codified as amended by the Resource Conservation and Recovery Act at 42 U.S.C. § 6962). 2 C.F.R. § 200.323.

<sup>57</sup> See 2 C.F.R. Part 200, Appendix II, § J (citing 2 C.F.R. § 200.323).

<sup>58</sup> See 2 C.F.R. Part 200, Appendix II, § J; 2 C.F.R. § 200.323; 40 C.F.R. Part 247.

<sup>59</sup> 40 C.F.R. Part 247.

<sup>60</sup> 42 U.S.C. § 6962; 2 C.F.R. § 200.323.

Competitively within a timeframe providing for compliance with the contract performance schedule;

Meeting contract performance requirements; or

At a reasonable price.

Information about this requirement, along with the list of EPA-designated items, is available at EPA's Comprehensive Procurement Guidelines webpage:

<https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.”

## 12. Prohibition on Contracting for Covered Telecommunications Equipment or Services

Section 889(b)(1) of the [John S. McCain National Defense Authorization Act for Fiscal Year 2019 \(FY2019 NDAA\)](#) and 2 C.F.R. § 200.216, as implemented by [FEMA Policy 405-143-1](#), Prohibitions on Expending FEMA Award Funds for Covered Telecommunications Equipment or Services (Interim), prohibit the obligation or expending of federal award funds on certain telecommunication products or from certain entities for national security reasons. Effective August 13, 2020, FEMA recipients and subrecipients, as well as their contractors and subcontractors, *may not* obligate or expend any FEMA award funds to:

- a. Procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;
- b. Enter into, extend, or renew a contract to procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system; or
- c. Enter into, extend, or renew contracts with entities that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

### 12.1 Applicability

For purchases in support of FEMA declarations and awards issued on or after November 12, 2020, all FEMA recipients and subrecipients, and their contractors and subcontractors, are required to include this contract provision in all FEMA-funded contracts and subcontracts, including any purchase orders.<sup>61</sup> FEMA strongly encourages the use of this contract clause for any contracts where

<sup>61</sup> 2 C.F.R. Part 200, Appendix II, § K (citing 2 C.F.R. § 200.216).

FEMA funding will be used regardless of whether the funding is from FEMA declarations or awards issued on or after November 12, 2020.

## 12.2 Suggested Language

The following provides a sample contract clause:

### “Prohibition on Contracting for Covered Telecommunications Equipment or Services

- (a) *Definitions.* As used in this clause, the terms backhaul; covered foreign country; covered telecommunications equipment or services; interconnection arrangements; roaming; substantial or essential component; and telecommunications equipment or services have the meaning as defined in FEMA Policy 405-143-1, Prohibitions on Expending FEMA Award Funds for Covered Telecommunications Equipment or Services (Interim), as used in this clause—
- (b) *Prohibitions.*
  - (1) Section 889(b) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, and 2 C.F.R. § 200.216 prohibit the head of an executive agency on or after Aug. 13, 2020, from obligating or expending grant, cooperative agreement, loan, or loan guarantee funds on certain telecommunications products or from certain entities for national security reasons.
  - (2) Unless an exception in paragraph (c) of this clause applies, the contractor and its subcontractors may not use grant, cooperative agreement, loan, or loan guarantee funds from the Federal Emergency Management Agency to:
    - (i) Procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;
    - (ii) Enter into, extend, or renew a contract to procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;
    - (iii) Enter into, extend, or renew contracts with entities that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system; or
    - (iv) Provide, as part of its performance of this contract, subcontract, or other contractual instrument, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.
- (c) *Exceptions.*
  - (1) This clause does not prohibit contractors from providing—
    - (i) A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or

- (ii) Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.
- (2) By necessary implication and regulation, the prohibitions also do not apply to:
  - (i) Covered telecommunications equipment or services that:
    - i. Are *not used* as a substantial or essential component of any system; and
    - ii. Are *not used* as critical technology of any system.
  - (ii) Other telecommunications equipment or services that are not considered covered telecommunications equipment or services.
- (d) *Reporting requirement.*
  - (1) In the event the contractor identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or the contractor is notified of such by a subcontractor at any tier or by any other source, the contractor shall report the information in paragraph (d)(2) of this clause to the recipient or subrecipient, unless elsewhere in this contract are established procedures for reporting the information.
  - (2) The Contractor shall report the following information pursuant to paragraph (d)(1) of this clause:
    - (i) Within one business day from the date of such identification or notification: The contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.
    - (ii) Within 10 business days of submitting the information in paragraph (d)(2)(i) of this clause: Any further available information about mitigation actions undertaken or recommended. In addition, the contractor shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.
- (e) *Subcontracts.* The Contractor shall insert the substance of this clause, including this paragraph (e), in all subcontracts and other contractual instruments.”

## 13. Domestic Preferences for Procurements

As appropriate, and to the extent consistent with law, NFEs should, to the greatest extent practicable under a federal award, provide a preference for the purchase, acquisition, or use of goods, products or materials produced in the United States. This includes, but is not limited to, iron, aluminum, steel, cement, and other manufactured products.<sup>62</sup>

### 13.1 Applicability

For purchases in support of FEMA declarations and awards issued on or after November 12, 2020, all FEMA recipients and subrecipients are required to include in all contracts and purchase orders for work or products a contract provision encouraging domestic preference for procurements.<sup>63</sup>

### 13.2 Suggested Language

The following provides a sample contract clause:

“Domestic Preference for Procurements

As appropriate, and to the extent consistent with law, the contractor should, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States. This includes, but is not limited to iron, aluminum, steel, cement, and other manufactured products.

For purposes of this clause:

*Produced in the United States* means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

*Manufactured products* mean items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.”

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<sup>62</sup> See 2 C.F.R. § 200.322.

<sup>63</sup> 2 C.F.R. Part 200, Appendix II, § L (citing 2 C.F.R. § 200.322). The requirements of 2 C.F.R. § 200.322 must also be included in all subawards.

# FEMA Recommended Contract Provisions

Appendix II to Part 200 authorizes FEMA to require or recommend additional provisions for NFE contracts. Therefore, FEMA recommends the following:

## 1. Access to Records

NFEs and their contractors and subcontractors must give the Department of Homeland Security (DHS) and FEMA access to records associated with their awards during the federally required record retention period and as long as the records are retained.<sup>64</sup> All parties agree to comply with DHS provisions about accessing people, places, and things related to the federal financial award as necessary or as required by DHS regulations or other applicable laws and policies.<sup>65</sup> Additionally, for contracts entered into after August 1, 2017, under a major disaster or emergency declaration under Titles IV or V of the Robert T. Stafford Disaster Relief Act, FEMA is prohibited from funding any contracts that prevent audits or internal reviews by the FEMA Administrator or Comptroller General.<sup>66</sup>

### 1.1 Suggested Language for All Procurements

The following provides a sample contract clause:

“The Contractor agrees to provide **(insert non-federal entity), (insert name of pass-through entity, if applicable)**, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.

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

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

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<sup>64</sup> 2 C.F.R. §§ 200.334, 200.337.

<sup>65</sup> See DHS Standard Terms and Conditions, available at <https://www.dhs.gov/publication/fy15-dhs-standard-terms-and-conditions>.

<sup>66</sup> See Sections 1202 and 1225 of the Disaster Recovery Reform Act of 2018, Pub. L. No. 115-254.



## 1.2 Additional Suggested Language Applicable to Contracts Entered into After August 1, 2017 Under a Major Disaster or Emergency Declaration

The following provides a sample contract clause:

In compliance with section 1225 of the Disaster Recovery Reform Act of 2018, the **(insert name of the non-federal entity)** and the Contractor acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.”

## 2. Changes

To be allowable under a FEMA grant or cooperative agreement award, the cost of any contract change, modification, amendment, addendum, change order, or constructive change must be necessary, allocable, within the scope of the grant or cooperative agreement, reasonable for the scope of work, and otherwise allowable.<sup>67</sup>

### 2.1 Applicability

FEMA recommends that all contracts include a changes clause that describes how, if at all, changes can be made by either party to alter the method, price, or schedule of the work without breaching the contract. The language of the clause may depend on the nature of the contract and the procured item(s) or service(s). The NFE should also consult their servicing legal counsel to determine whether and how contract changes are permissible under applicable state, local, or tribal laws or regulations.

## 3. DHS Seal, Logo, and Flags

Recipients must obtain permission before using the DHS seal(s), logos, crests, reproductions of flags, or likenesses of DHS agency officials.<sup>68</sup>

### 3.1 Applicability

FEMA recommends that all NFEs include in their contracts a statement that a contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without FEMA's pre-approval.

### 3.2 Suggested Language

The following provides a sample contract clause:

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<sup>67</sup> See 2 C.F.R. § 200.403.

<sup>68</sup> See DHS Standard Terms and Conditions, available at <https://www.dhs.gov/publication/fy15-dhs-standard-terms-and-conditions>.

“The contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval. The contractor shall include this provision in any subcontracts.”

## 4. Compliance with Federal Law, Regulations, And Executive Orders and Acknowledgement of Federal Funding

The NFEs and its contractors are required to comply with all federal laws, regulations, and executive orders. Additionally, recipients must acknowledge their use of federal funding when issuing statements, press releases, requests for proposal, bid invitations, and other documents describing projects or programs funded in whole or in part with federal funds.<sup>69</sup>

### 4.1 Applicability

FEMA recommends that all NFEs include in their contracts a statement acknowledging that FEMA funding will be used in the contract, as well as a requirement that contractors will comply with all applicable federal law, regulations, executive orders, and FEMA policies, procedures, and directives.

### 4.2 Suggested Language

The following provides a sample contract clause:

“This is an acknowledgement that FEMA financial assistance will be used to fund all or a portion of the contract. The contractor will comply with all applicable federal law, regulations, executive orders, FEMA policies, procedures, and directives.”

## 5. No Obligation by Federal Government

FEMA is not a party to any transaction between a NFE and its contractor. Therefore, FEMA is not subject to any obligations or liable to any party for any matter relating to the contract between an NFE and its contractor.<sup>70</sup>

### 5.1 Applicability

FEMA recommends that the NFE include a statement in its contract that the federal government *is not* a party to the contract and, thus, *is not* subject to any obligations or liabilities to any party resulting from the contract.

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<sup>69</sup> See DHS Standard Terms and Conditions, available at <https://www.dhs.gov/publication/fy15-dhs-standard-terms-and-conditions>.

<sup>70</sup> See, e.g., 2 C.F.R. § 200.318(k) (stating that the NFE alone is responsible for the settlement of all contractual and administrative issues arising out of procurements).

## 5.2 Suggested Language

The following provides a sample contract clause:

“The federal government is not a party to this contract and is not subject to any obligations or liabilities to the non-federal entity, contractor, or any other party pertaining to any matter resulting from the contract.”

## 6. Program Fraud and False or Fraudulent Statements or Related Acts

NFEs must comply with the requirements of the False Claims Act which prohibits submitting false or fraudulent claims for payment to the federal government.<sup>71</sup> As a part of the contract with a NFE, contractors must acknowledge that 31 U.S.C. Chap. 38, regarding administrative remedies for false claims and statements,<sup>72</sup> applies to their actions under their contract.<sup>73</sup>

### 6.1 Applicability

FEMA recommends that contracts include a provision prohibiting making false or fraudulent claims to the federal government.

### 6.2 Suggested Language

The following provides a sample contract clause:

“The contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the contractor’s actions pertaining to this contract.”

## 7. Affirmative Socioeconomic Steps

For procurements under FEMA declarations and awards issued on or after November 12, 2020, all NFEs are required to take the six affirmative steps to ensure use of small and minority businesses, women’s business enterprises, and labor surplus area firms when possible. One of the six steps is to require the prime contractor, if subcontracts are to be let, to take the five other affirmative steps,<sup>74</sup> For procurements under FEMA declarations and awards issued between December 26, 2014, and November 12, 2020, this requirement *only* applies to non-state entities.

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<sup>71</sup>31 U.S.C. §§ 3729-3733.

<sup>72</sup> 31 U.S.C. §§ 3801-3812 (detailing the administrative remedies for false claims and statements made).

<sup>73</sup> See DHS Standard Terms and Conditions, available at <https://www.dhs.gov/publication/fy15-dhs-standard-terms-and-conditions>.

<sup>74</sup> See 2 C.F.R. § 200.321; compare 2 C.F.R. § 200.317 (2019), with 2 C.F.R. § 200.317 in Office of Management and Budget, Guidance for Grants and Agreements, 85 Fed. Reg. 49,506, 49,552 (Aug. 13, 2020).

## 7.1 Applicability

FEMA recommends that applicable NFEs include in their contracts a statement requiring prime contractors, if subcontracts are to be let, to take the required affirmative socioeconomic steps.

## 7.2 Suggested Language

The following provides a sample contract clause:

“If subcontracts are to be let, the prime contractor is required to take all necessary steps identified in 2 C.F.R. § 200.321(b)(1)-(5) to ensure that small and minority businesses, women’s business enterprises, and labor surplus area firms are used when possible.”

# 8. Copyright and Data Rights

An NFE is required by 2 C.F.R. § 200.315 to provide certain licenses with respect to copyright and data to the federal awarding agency. 2 C.F.R. § 200.315(b) provides to the federal awarding agency “a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use [any work that is subject to copyright] for federal purposes, and to authorize others to do so.” 2 C.F.R. § 200.315(d) provides to the federal government the rights to “obtain, reproduce, publish, or otherwise use” data produced under a federal award and to authorize others to do the same.

## 8.1 Applicability

When an NFE enters into a contract requiring a contractor or subcontractor to produce copyrightable subject matter and/or data for the NFE under the award, the NFE should include appropriate copyright and data licenses to meet its obligations under 2 C.F.R. § 200.315(b) and (d), respectively. Work that is subject to copyright, or copyrightable subject matter, includes any written reports or literary works, software and/or source code, music, choreography, pictures or images, graphics, sculptures, videos, motion pictures or other audiovisual works, sound and/or video recordings, and architectural works.<sup>75</sup>

## 8.2 Suggested Language

The following provides a sample contract clause:

“License and Delivery of Works Subject to Copyright and Data Rights”

The Contractor grants to the **(insert name of the non-federal entity)**, a paid-up, royalty-free, nonexclusive, irrevocable, worldwide license in data first produced in the performance of this contract to reproduce, publish, or otherwise use, including prepare derivative works, distribute copies to the public, and perform publicly and display publicly such data. For data required by the contract but not first produced in the performance of this contract, the Contractor will identify

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<sup>75</sup> See 17 U.S.C. § 102.

such data and grant to the **(insert name of the non-federal entity)** or acquires on its behalf a license of the same scope as for data first produced in the performance of this contract. Data, as used herein, shall include any work subject to copyright under 17 U.S.C. § 102, for example, any written reports or literary works, software and/or source code, music, choreography, pictures or images, graphics, sculptures, videos, motion pictures or other audiovisual works, sound and/or video recordings, and architectural works. Upon or before the completion of this contract, the Contractor will deliver to the **(insert name of the non-federal entity)** data first produced in the performance of this contract and data required by the contract but not first produced in the performance of this contract in formats acceptable by the **(insert name of the non-federal entity).**”

# Appendix

## Acronyms

**AFG:** Assistance to Firefighter Grants

**CAGE:** Commercial and Government Entity

**CFR:** Code of Federal Regulations

**DHS:** U.S. Department of Homeland Security

**DRRA:** Disaster Recovery and Reform Act of 2018

**EPA:** U.S. Environmental Protection Agency

**FEMA:** Federal Emergency Management Agency

**GPD:** Grant Programs Directorate

**HQ:** FEMA Headquarters

**NDAA:** National Defense Authorization Act

**NFE:** Non-Federal Entity

**NOFO:** Notice of Funding Opportunity

**OMB:** Office of Management and Budget

**PA:** Public Assistance Program

**PNP:** Private Non-Profit

**PDAT:** Procurement Disaster Assistance Team

**SAM:** System for Award Management

**SAT:** Simplified Acquisition Threshold

**USC:** United States Code

## Definitions

- **Contract:** A legal instrument by which a FEMA award recipient or subrecipient purchases property or services needed to carry out the project or program under a federal award.<sup>76</sup> A contract, for the purposes of this Guide, does not mean a federal award or subaward.
- **Contractor:** *Contractor* means an entity that receives a contract.<sup>77</sup>
- **Cooperative agreement:** A legal instrument of financial assistance between a federal awarding agency or pass-through entity and a non-Federal entity, that is consistent with 31 U.S.C. 6302-6305.<sup>78</sup>
- **Federal awarding agency:** The federal agency that provides a federal award directly to a non-Federal entity (NFE). The federal awarding agency discussed in this Guide is FEMA.
- **Federal Emergency Management Agency (FEMA):** *FEMA's* statutory mission is to reduce the loss of life and property and protect the Nation from all hazards, including natural disasters, acts of terrorism, and other man-made disasters, by leading and supporting the Nation in a risk-based, comprehensive emergency management system of preparedness, protection, response, recovery, and mitigation.<sup>79</sup> Among other things:
  - FEMA administers its programs and carries out its activities through its headquarters offices in Washington, D.C.; ten Regional Offices; Area Offices for the Pacific, Caribbean, and Alaska; various Recovery Offices; and temporary Joint Field Offices (JFO).
  - FEMA administers numerous assistance programs annually for on a regular basis to increase the Nation's preparedness, readiness and resilience to all hazards. These assistance programs are typically available to NFEs including, but not limited to, states, local governments, Indian Tribes, universities, hospitals, and certain private nonprofit organizations.
  - Each program is governed by the applicable federal law, regulations, executive orders and FEMA program-specific policies. As the Federal awarding agency for these programs, FEMA is responsible for the proper management and administration of these programs as otherwise required by law and enforcing the terms of the agreements it enters with NFEs that receive FEMA financial assistance, consistent with the requirements at 2 C.F.R. Part 200.

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<sup>76</sup> 2 C.F.R. § 200.1 *Contracts*.

<sup>77</sup> 2 C.F.R. § 200.1 *Contractor*.

<sup>78</sup> 2 C.F.R. § 200.1 *Cooperative agreement*.

<sup>79</sup> See Homeland Security Act of 2002, Pub. L. No. 107-296, § 503 (2002) (codified as amended at 6 U.S.C. § 313).

- **Federal award:** The financial assistance that an NFE receives either directly from a Federal awarding agency or indirectly from a pass-through entity.<sup>80</sup> In this Guide, the term is used interchangeably with “FEMA Award,” “grant,” and “financial assistance.”
- **Grant agreement:** A legal instrument of financial assistance between a Federal awarding agency or pass-through entity and an NFE that, consistent with 31 U.S.C. §§ 6302, 6304: Is used to transfer anything of value from the Federal awarding agency or pass-through entity to the NFE to carry out a public purpose authorized by a law of the United States (see 31 U.S.C. § 6101(3)); and does not include an agreement that provides only:
  - Direct United States government cash assistance to an individual;
  - A loan;
  - A loan guarantee; or
  - A subsidy;
  - Insurance.
- **Indian tribe (or “federally recognized Indian tribe”):** *Indian tribe* means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. Chapter 33), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians (25 U.S.C. 450b(e)).<sup>81</sup> See annually published [Bureau of Indian Affairs list of Indian Entities Recognized and Eligible to Receive Services](#). For the purposes of this Guide, used interchangeably with “Indian Tribal government”.
- **Local government:** *Local government*<sup>82</sup> means any unit of government within a state, including a:
  - County
  - Borough
  - Municipality
  - City
  - Town
  - Township
  - Parish
  - Special district
  - School District
  - Intrastate district
  - Council of governments, whether incorporated or not as a nonprofit corporation under state law
  - Local public authority, including any public housing agency under the United States Housing Act of 1937
  - Any other agency or instrumentality of a multi-regional, or intra-state or local government

<sup>80</sup> 2 C.F.R. § 200.1 *Federal award*.

<sup>81</sup> 2 C.F.R. § 200.1 *Indian tribe*.

<sup>82</sup> 2 C.F.R. § 200.1 *Local government*.



- **Non-Federal Entity (NFE):** A state, local government, Indian tribe, Institution of Higher Education, or eligible private nonprofit organization that carries out a federal award as a recipient or subrecipient.<sup>83</sup> In this Guide, NFEs include state and non-state entities.
- **Non-State Entity:** A *non-state entity* is an eligible FEMA award recipient or subrecipient that does not meet the definition of a “state under 2 CFR 200.1.
- **Nonprofit organization** (in this Guide, it is used interchangeably with “Private Nonprofit Organization or PNP”): *Nonprofit organization*<sup>84</sup> means any corporation, trust, association, cooperative, or other organization, not including Institutions of Higher Education, that:
- **Recipient:** An NFE that receives a federal award directly from a Federal awarding agency to carry out an activity under a federal program. The term recipient does not include subrecipients.<sup>85</sup> A recipient is responsible for administering the federal award in accordance with applicable federal laws. Examples of recipients include state, Indian tribe, or territorial governments.
- **Pass-through entity:** A recipient that provides a subaward to a subrecipient to carry out part of a federal program is known as the pass-through entity.<sup>86</sup> Pass-through entities are responsible for processing subawards to subrecipients and ensuring subrecipient compliance with the terms and conditions of the FEMA award agreement.
- **Political Subdivision:** A *political subdivision* means the unit of government that the State determines to have met the State’s legislative definition of a political subdivision.<sup>87</sup>
- **Simplified Acquisition Threshold (SAT):** *Simplified acquisition threshold* means the dollar amount below which an NFE may purchase property or services using small purchase methods. NFEs adopt small purchase procedures to expedite the purchase of items costing less than the simplified acquisition threshold. The federal SAT is set by the FAR at 48 C.F.R. Subpart 2.1 (Definitions) and in accordance with [41 U.S.C. 1908](#).<sup>88</sup> As of June 2018, the federal SAT is \$250,000,<sup>89</sup> but is periodically adjusted for inflation.
- **State:** *State* means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and any agency or instrumentality thereof exclusive of local governments.<sup>90</sup> In this Guide, state is used interchangeably with “state entity”.

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<sup>83</sup> 2 C.F.R. § 200.1 *Non-Federal entity*.

<sup>84</sup> 2 C.F.R. § 200.1 *Nonprofit organization*.

<sup>85</sup> 2 C.F.R. § 200.1 *Recipient*.

<sup>86</sup> 2 C.F.R. § 200.1 *Pass-through entity*.

<sup>87</sup> 40 C.F.R. § 35.6015(a) *Political subdivision*

<sup>88</sup> 2 C.F.R. § 200.1 *Simplified acquisition threshold*.

<sup>89</sup> Section 805 codified at 41 U.S.C. § 134; OMB Memo (M-18-18), available at <https://www.whitehouse.gov/wp-content/uploads/2018/06/M-18-18.pdf>.

<sup>90</sup> 2 C.F.R. § 200.1 *State*. Some hospitals and IHEs as defined by 2 C.F.R. § 200.1 *Hospitals* and 2 C.F.R. § 200.1 *Institutions of Higher Education* respectively, may meet the definition of a State.

- **Subaward:** An award provided by a pass-through entity to a subrecipient for the subrecipient to carry out part of a federal award received by the pass-through entity. It does not include payments to a contractor or payments to an individual that is a beneficiary of a federal program. A subaward may be provided through any form of legal agreement, including an agreement that the pass-through entity considers a contract.<sup>91</sup> In this Guide, the term is used interchangeably with “subgrant.”
- **Subrecipient:** An NFE that receives a subaward from a pass-through entity to carry out part of a federal program but does not include an individual that is a beneficiary of such program.<sup>92</sup>
- **Uniform Rules:** The series of regulations found at 2 C.F.R. Part 200 that establishes *Uniform Administrative Requirements, Cost Principles, and Audit Requirements* for federal awards to NFEs. The *Uniform Rules* are referred to by several names throughout the remaining portions of this Guide. Some of the names include standards, requirements, rules, and regulations.

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<sup>91</sup> 2 C.F.R. § 200.1 *Subaward*.

<sup>92</sup> 2 C.F.R. § 200.1 *Subrecipient*.



## MEMORANDUM

ITEM NO. 3K.

**To:** Honorable Mayor, Vice-Mayor and Members of the Town Commission  
**From:** Andrew Hyatt, Town Manager  
**Date:** June 14, 2022  
**Subject:** **Surfside Farmer's Market Extension**

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Town Administration recommends approval of 12-month extension to the Surfside Farmer's Market agreement.

Mr. Javier Valmana, founder and organizer of the Surfside Farmers Market, seeks to extend his agreement with the Town of Surfside for his weekly Farmers Market, held at the Municipal Parking Lot on 9500 Collins Avenue each Sunday from 9 a.m. to 3 p.m.

With set-up and operations from 7:30 a.m. to 4:00 p.m. every Sunday, Mr. Valmana is responsible for all operations, selection of vendors, use of sustainable products, clean up and general liability insurance. The Town provides use of the parking lot, minimal staff assistance and promotion through the Town website, Channel 663, the Town Gazette and e-blasts.

Since being reinstated in March of 2020 and thanks to additional funding support from the Tourist Board for enhancements, the Market has rapidly grown in popularity, significantly increasing foot traffic in recent years despite the COVID-19 pandemic. The Market also introduced "Sunday Jams," on the last Sunday of the month which features a band and live music, further activating the area near the Town's Harding Avenue business district. It is a popular Sunday attraction for both residents and visitors, it animates the area near the business district, and it is run by a Surfside resident.

[Resolution Approving Second Amendment to Wavey Acai Bowls LLC Agreement - Farmers Market.DOCX](#)

[Second Amendment to Wavey Acai Bowls LLC Agreement - Farmers Market.DOC](#)

**RESOLUTION NO. 2022-\_\_\_\_\_**

**A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, APPROVING A SECOND AMENDMENT TO THE LIMITED REVOCABLE LICENSE AGREEMENT WITH WAVEY ACAI BOWLS, LLC FOR THE OPERATION OF THE TOWN OF SURFSIDE'S FARMERS' MARKET; PROVIDING FOR AUTHORIZATION; PROVIDING FOR IMPLEMENTATION; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the Town of Surfside (the "Town") is the owner of a parcel of real property located at the northwest corner of 95<sup>th</sup> Street and Collins Avenue, Surfside, Florida, designated as Folio Number 14-2235-007-0190 ("Property"); and

**WHEREAS**, on September 11, 2019, the Town entered into a Limited Revocable License Agreement (the "Agreement") with Wavey Acai Bowls, LLC (the "Licensee") for the coordination, operation, and management of a weekly event known as the "Surfside Farmers Market" (the "Services"); and

**WHEREAS**, due to the local state of emergency arising from the COVID-19 pandemic, the Agreement was temporarily suspended; and

**WHEREAS**, on January 4, 2021, the Town and Licensee entered into a First Amendment to the Agreement in order to (1) reinstate the Agreement and extend the term of the Agreement for a one (1) year period effective January 1, 2021, through December 31, 2021, with three (3) additional one year options to renew and (2) to include safety protocols for the provision of the Services at the Property for the duration of the COVID-19 state of emergency; and

**WHEREAS**, the Town Commission wishes to authorize the Town Manager to execute a Second Amendment to the Agreement, in substantially the form attached hereto as Exhibit "A" (the "Second Amendment"), in order to (1) retroactively extend the term of the Agreement for a

one year period effective January 1, 2022, through December 31, 2022, with five automatic one year renewal terms and (2) to delete reference to COVID-19 safety protocols that are no longer valid; and

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

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

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

**Section 2.** **Approval.** That the Town Commission approves the Second Amendment to the Agreement with the Licensee in substantially the form attached hereto as Exhibit “A.”

**Section 3.** **Authorization.** That the Town Manager is hereby authorized to execute the Second Amendment to the Agreement attached hereto as Exhibit “A,” subject to final approval by the Town Attorney as to form, content, and legal sufficiency.

**Section 4.** **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 Second Amendment to the Agreement.

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

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

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

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

**FINAL VOTE ON ADOPTION:**

Commissioner Fred Landsman \_\_\_\_\_

Commissioner Marianne Meisheid \_\_\_\_\_  
Commissioner Nelly Velasquez \_\_\_\_\_  
Vice Mayor Jeff Rose \_\_\_\_\_  
Mayor Shlomo Danzinger \_\_\_\_\_

\_\_\_\_\_  
Shlomo Danzinger, Mayor

Attest:

\_\_\_\_\_  
Sandra McCready, MMC  
Town Clerk

Approved as to Form and Legal Sufficiency:

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

**SECOND AMENDMENT TO LICENSE AGREEMENT BETWEEN**  
**TOWN OF SURFSIDE**  
**AND**  
**WAVEY ACAI BOWLS, LLC**

**THIS SECOND AMENDMENT TO THE LICENSE AGREEMENT** ("Second Amendment") is entered into as of this \_\_\_\_ of \_\_\_\_\_, 2022, by and between the **TOWN OF SURFSIDE, FLORIDA**, a Florida municipal corporation (hereinafter the "Town"), and **WAVEY ACAI BOWLS, LLC**, a Florida corporation (hereinafter the "Licensee").

**WHEREAS**, the Town owns a parcel of real property located at the northwest corner of 95<sup>th</sup> Street and Collins Avenue, Surfside, Florida, designated as Folio Number 14-2235-007-0190 ("Property"); and

**WHEREAS**, the Town entered into a License Agreement with Licensee for the coordination, operation, and management of a weekly event known as the "Surfside Farmers Market" (the "Services") at the Property on September 11, 2019 (the "Agreement"); and

**WHEREAS**, on January 4, 2021, the Town and Licensee entered into a First Amendment to the Agreement (1) to reinstate the Agreement and extend the term of the Agreement for a one (1) year period effective January 1, 2021, through December 31, 2021, with three (3) additional one year options to renew and (2) to include safety protocols for the provision of the Services at the Property for the duration of the COVID-19 state of emergency; and

**WHEREAS**, the Town and Licensee wish to enter into a Second Amendment to the Agreement in order to retroactively extend the term of the Agreement for a one (1) year period effective January 1, 2022, through December 31, 2022, with five (5) automatic one (1) year renewal terms, and delete reference to COVID-19 rules and regulations that are no longer in effect, as set forth herein; and

**NOW, THEREFORE**, for and in consideration of the mutual promises set forth herein, the parties do hereby agree as follows:

1. **Recitals Adopted.** The above recitals are true and correct and are incorporated herein by this reference. All initially capitalized terms used but not otherwise defined herein shall have the meaning ascribed thereto in the Agreement.
2. **Rules and Regulations.** Section 4 of the Agreement is hereby amended as follows:

The Town may promulgate and enforce reasonable rules and regulations governing the use of the Property by the Licensee. ~~For the duration of the state of emergency due to the COVID-19 health pandemic issued by the Town pursuant to Resolution No. 2020-2676, the Licensee shall ensure that all safety protocols and emergency orders and measures issued by the State of Florida, Miami Dade County, and/or the Town are strictly adhered to at the Property. Additionally,~~

~~Licensee shall ensure all individuals, activities, and events at the Property comply with the Miami Dade County “*Moving to a New Normal Handbook*.”~~

3. **Extension of Term.** Section 5 of the Agreement is hereby amended to retroactively extend the term of the Agreement for one (1) year effective January 1, 2022, through December 31, 2022. The term of the Agreement shall automatically renew for up to five (5) one (1) year renewal terms on the same terms and conditions as set forth in the Agreement and this Second Amendment, Notwithstanding the foregoing, the Town Manager may cancel the automatic renewal of any term of this Agreement upon five (5) days written notice to the Licensee.
4. **Conflict; Amendment Prevails.** In the event of any conflict or ambiguity between the terms and provisions of this Second Amendment and the terms and provisions of the Agreement, the terms and provisions of this Second Amendment shall control.
5. **Agreement Ratified.** Except as otherwise specifically set forth or modified herein, all terms and conditions in the Agreement are hereby ratified and affirmed and shall remain unmodified and in full force and effect in accordance with its terms.

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



**IN WITNESS WHEREOF**, the parties have executed this Second Amendment as of the date first set forth above.

**TOWN:**

TOWN OF SURFSIDE, a Florida municipal corporation

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

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

Attest:

\_\_\_\_\_  
Sandra McCready, MMC  
Town Clerk

Approved as to Legal Form and  
Legal Sufficiency:

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

**IN WITNESS WHEREOF**, the parties have executed this Second Amendment as of the date first set forth above.

**LICENSEE:**

Witnesses:

WAVEY ACAI BOWLS, LLC, a Florida corporation

\_\_\_\_\_

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

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

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

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

\_\_\_\_\_

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

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



## MEMORANDUM

ITEM NO. 3L.

**To:** Honorable Mayor, Vice-Mayor and Members of the Town Commission  
**From:** Andrew Hyatt, Town Manager  
**Date:** June 14, 2022  
**Subject:** **FY 2022 Budget Amendment Resolution No. 6**

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Town Administration recommends approval of the budget amendment.

The State of Florida, the Charter of the Town of Surfside, and sound financial management practices require monitoring of the Town's budgetary condition. Budget requirements include maintaining a balanced budget and a prohibition against entering into encumbrances for which there is not sufficient appropriation.

The Town Commission monitors the budget to actual summary at the fund level monthly on each agenda. The Town Manager is authorized by the Charter to make adjustments within funds so long as the appropriation for each fund is not exceeded. The purpose of this budget amendment is for the Town Commission to amend the FY 2022 annual budget and to recognize changes in revenues and expenditures that differ from the adopted budget.

The attached document represents the amendment that ensures compliance with State law, Town Charter, and sound financial management practices.

Staff has reviewed FY 2022 actual revenues and expenditures and recommends a change to the FY 2022 Annual Budget is as follows:

### **GENERAL FUND (Attachment A)**

The General Fund is being amended to fund the FPL Binding Cost Estimate of the Utility Undergrounding project as follows:

1. Appropriate \$4,874,370 of Fund Balance;
2. Transfer \$4,874,370 to the Capital Improvement Project Fund.

### **CAPITAL IMPROVEMENT PROJECT FUND (Attachment A)**

The Capital Improvement Project Fund is being amended to:

1. Record a transfer from the General Fund in the amount of \$4,874,370 to fund the FPL Binding Cost Estimate of the Utility Undergrounding project;
2. Appropriate \$4,874,370 for the FPL Binding Cost Estimate of the Utility Undergrounding

project.

**RESORT TAX FUND (Attachment A)**

The Resort Tax Fund is being amended to:

1. Record an increase to revenues based on revised estimates to Municipal Resort Taxes in the amount of \$1,306,668;
2. Increase current year reserves in the amount of \$1,306,668.

**BUILDING FUND (Attachment A)**

The Building Fund is being amended to:

1. Appropriate \$573,471 of Fund Balance for the document scanning program (\$250,000) and for front office renovations (\$323,471).

**STORMWATER FUND (Attachment A)**

The Stormwater Fund is being amended to:

1. Record an increase to revenues for the use of ARPA funds in the amount of \$122,500;
2. Record an increase in revenues in the amount of \$107,500 from a Florida Department of Environmental Protection (FDEP) grant;
3. Appropriate \$230,000 for a Stormwater Master Plan.

[Resolution Approving Budget Amendment No 6 for FY 2022.DOCX](#)

[FY 2022 Budget Amendment No. 6.pdf](#)

**RESOLUTION NO. 2022-\_\_\_\_\_**

**A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, APPROVING BUDGET AMENDMENT NO. 6 FOR THE FISCAL YEAR 2022 BUDGET; PROVIDING FOR IMPLEMENTATION; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, on September 30, 2021, the Town of Surfside (the “Town”) Commission adopted Resolution No. 2021- 2820 approving the budget for Fiscal Year 2022 and establishing revenues and appropriations for the Town; and

**WHEREAS**, the General Fund is being amended to (1) appropriate \$4,874,370 from the Fund Balance and (2) transfer \$4,874,370 to the Capital Improvement Project Fund for the FPL Binding Cost Estimate for the Utility Undergrounding Project (the “Project”); and

**WHEREAS**, the Capital Improvement Project Fund is being amended to (1) record a transfer from the General Fund in the amount of \$4,874,370 and (2) appropriate \$4,874,370 for the Project; and

**WHEREAS**, the Resort Tax Fund is being amended to (1) record an increase in revenues based on revised estimates to the Municipal Resort Tax in the amount of \$1,306,668 and (2) increase current year reserves in the amount of \$1,306,668; and

**WHEREAS**, the Building Fund is being amended to appropriate \$573,471 of Fund Balance for the document scanning program (\$250,000) and for the Town Hall front office renovations (\$323,471); and

**WHEREAS**, the Stormwater Fund is being amended to (1) record an increase to revenues from the American Rescue Plan Act funds in the amount of \$122,500, (2) record an increase in revenues in the amount of \$107,500 due to award of a Florida Department of Environmental Protection (FDEP) grant to the Town, and (3) appropriate \$230,000 for a Stormwater Master Plan; and

**WHEREAS**, the Town Commission desires to amend the Fiscal Year 2022 budget by amending the General Fund, the Capital Improvement Project Fund, the Resort Tax Fund, the Building Fund, and the Stormwater Fund all as set forth in Attachment “A” attached hereto; and

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

**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 2. Approving Amended Budget; Budget Amendment No. 6.** That the Town Commission approves the 2022 fiscal year budget amendment provided for in Attachment “A” attached hereto.

**Section 3. Implementation.** The Town Manager and/or his designee are directed to take any and all action necessary to accomplish this Budget amendment and the purposes of this Resolution.

**Section 4. Effective Date.** This Resolution shall take effect immediately upon its adoption.

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

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

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

**FINAL VOTE ON ADOPTION:**

Commissioner Fred Landsman	_____
Commissioner Marianne Meisheid	_____
Commissioner Nelly Velasquez	_____
Vice Mayor Jeff Rose	_____
Mayor Shlomo Danzinger	_____

\_\_\_\_\_  
Shlomo Danzinger, Mayor

Attest:

\_\_\_\_\_  
Sandra McCready, MMC  
Town Clerk

Approved as to Form and Legal Sufficiency:

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

**TOWN OF SURFSIDE  
BUDGET AMENDMENT  
ATTACHMENT A**

Fiscal Year 2021/2022  
 BA No. 6  
 Fund Nos. 001 General Fund  
 301 Capital Projects Fund  
 102 Tourist Resort Fund  
 150 Building Fund  
 404 Stormwater Fund

6/14/2022

Account Number	Account Description	Justification	Original/ Adjusted Budget	Increase	Decrease	Adjusted Budget
<b>GENERAL FUND</b>						
<b>REVENUES</b>						
001-511-392-00-00	Appropriated Fund Balance	Appropriate for Utility Undergrounding Project	\$930,129	\$4,874,370		\$5,804,499
<b>TOTAL</b>	<b>GENERAL FUND REVENUES</b>			<b>\$4,874,370</b>	<b>\$0</b>	
<b>EXPENDITURES</b>						
001-7900-581-91-30	Transfers Out - Capital Projects Fund	Transfer to Capital Projects Fund for Undergrounding Project - FPL Binding Cost Estimate	\$1,656,481	\$4,874,370		\$6,530,851
<b>TOTAL</b>	<b>GENERAL FUND EXPENDITURES</b>			<b>\$4,874,370</b>	<b>\$0</b>	

<b>CAPITAL PROJECTS FUND</b>						
<b>REVENUES</b>						
301-590-381-01-00	Transfers In - General Fund	Transfer from General Fund for Undergrounding Project	\$1,656,481	\$4,874,370		\$6,530,851
<b>TOTAL</b>	<b>CAPITAL PROJECTS FUND REVENUES</b>			<b>\$4,874,370</b>	<b>\$0</b>	
<b>EXPENDITURES</b>						
301-4400-539-63-50	Utilities Undergrounding Project	FPL Binding Cost Estimate	\$1,656,481	\$4,874,370		\$6,530,851
<b>TOTAL</b>	<b>CAPITAL PROJECTS FUND EXPENDITURES</b>			<b>\$4,874,370</b>	<b>\$0</b>	

<b>RESORT TAX FUND</b>						
<b>REVENUES</b>						
102-552-312-12-00	Municipal Resort Taxes-2% Food & Beverage		\$ 945,740	\$ 255,290		\$ 1,201,030
102-552-312-14-00	Municipal Resort Taxes-4% Transient Rental	Increase from revised revenue estimate	\$ 2,558,083	\$ 1,051,378		\$ 3,609,461
<b>TOTAL</b>	<b>RESORT TAX FUND REVENUES</b>			<b>\$ 1,306,668</b>	<b>\$ -</b>	
<b>EXPENDITURES</b>						
102-8000-552-99-10	Return to Reserves		\$ 310,842	\$ 444,267		\$ 755,109
102-8000-572-99-10	Return to Reserves	Increase from revised revenue estimate	\$ (165,569)	\$ 862,401		\$ 696,832
<b>TOTAL</b>	<b>RESORT TAX FUND EXPENDITURES</b>			<b>\$ 1,306,668</b>	<b>\$ -</b>	

<b>BUILDING FUND</b>						
<b>REVENUES</b>						
150-524-392-00-00	Appropriated Fund Balance	Appropriate for additional needs	\$ 680,160	\$ 573,471		\$ 1,253,631
<b>TOTAL</b>	<b>BUILDING FUND REVENUES</b>			<b>\$ 573,471</b>	<b>\$ -</b>	
<b>EXPENDITURES</b>						
150-2500-524-31-10	Professional Services	Document scanning	\$ 132,436	\$ 250,000		\$ 382,436
150-2500-524-62-20	Capital Outlay - Town Hall	Building Dept. front office renovations	\$ -	\$ 323,471		\$ 323,471
<b>TOTAL</b>	<b>BUILDING FUND EXPENDITURES</b>			<b>\$ 573,471</b>	<b>\$ -</b>	

<b>STORMWATER FUND</b>						
<b>REVENUES</b>						
404-538-331-50-40	Federal Grant -Treasury (ARPA)	Use of ARPA funds	\$ 15,000	\$ 122,500		\$ 137,500
404-538-334-36-05	State Grant - FDEP	Grant from Florida Department of Environmental Protection	\$ -	\$ 107,500		\$ 107,500
<b>TOTAL</b>	<b>STORMWATER FUND REVENUES</b>			<b>\$ 230,000</b>	<b>\$ -</b>	
<b>EXPENDITURES</b>						
404-5500-538-31-10	Professional Services	Stormwater Master Plan	\$ 442,785	\$ 230,000		\$ 672,785
<b>TOTAL</b>	<b>STORMWATER FUND EXPENDITURES</b>			<b>\$ 230,000</b>	<b>\$ -</b>	



## MEMORANDUM

ITEM NO. 4A1.

**To:** Honorable Mayor, Vice-Mayor and Members of the Town Commission

**From:** Commissioner Marianne Meisheid

**Date:** June 14, 2022

**Subject:** **Nonhabitable Understory**

---

Consider and adopt an ordinance at second reading to amend the zoning code to allow a nonhabitable understory in low-rise residential areas.

At first reading, the proposed ordinance was adopted as presented. However, at the Commission meeting on May 10, 2022 and subsequently, concerns were raised alleging that the proposed ordinance violated Article 1, Section 4, of the Town of Surfside Charter, by increasing the number of stories permitted from that allowed under the 2004 Code. An extensive review of the “code in effect in 2004,” which includes both the zoning code and the flood code, clearly indicates the following:

1. In the zoning code in place in 2004, the definition of “story” refers to “that portion of a building included between the surface of any floor and the surface of the floor next above it . . .” (emphasis added)
2. In the flood code in 2004:
  - a. the term “floor” was expressly defined as “the top surface of an enclosed area in a building (including basement), i.e. top of slab in concrete slab construction or top of wood flooring in wood frame construction. The term does not include the floor of a garage used solely for parking vehicles.” (emphasis added)
  - b. single family construction was required to elevate its lowest floor to base flood elevation “to allow for the entry and exit of flood waters . . .”
  - c. the term “elevated building” was defined as “a non-basement building built to have the lowest floor elevated above the ground level by means of fill, solid foundation perimeter walls, pilings, columns (posts and piers), shear walls, or breakaway walls” (emphasis added)
  - d. elevated buildings were permitted to enclose areas below the base flood elevation provided finished living spaces were precluded, were designed to allow the entry of flood waters, and uses were limited to parking of vehicles, limited storage of maintenance equipment, or entry into the living area (stairway or elevator)



Consequently, the concept of unhabitable enclosed and unenclosed spaces below the “lowest floor” was set out in the 2004 code referenced in the Charter. In sum, the space between grade and the elevation of the first habitable floor is not a “story” because it does not meet the definition of “floor” and is located below the “lowest floor” as defined in the Code. Therefore, the attached draft ordinance removes the amendment to the definition of “story” as it is unnecessary in light of the above. The ordinance has been revised for second reading to include the above findings that demonstrate that the proposed understory regulations were permissible under the 2004 code and therefore do not violate the Charter. The proposed ordinance merely clarifies matters and imposes reasonable restrictions on the understory area.

Additionally, the proposed ordinance was reviewed and considered by the Planning and Zoning Board on May 26, 2022 where the Board recommended approval with changes to limit enclosures in H30A to 8% of the lot area, to limit enclosures in H30C to 50% of the footprint of the first habitable floor, and to not allow understories in the H40 district. The attached ordinance for second reading does not incorporate the Board’s recommended changes.

In support of the foregoing findings, the below diagrams from FEMA’s website demonstrate the concept and location of “lowest floor” in connection with design options for buildings on fill and buildings on pilings with an understory.

(See Exhibit A - <https://beachduneguide.uconn.edu/elevate-structure#>, [https://www.fema.gov/sites/default/files/documents/fema\\_fim-appendix-c-lowest-floor-guide\\_apr2020.pdf](https://www.fema.gov/sites/default/files/documents/fema_fim-appendix-c-lowest-floor-guide_apr2020.pdf))

Until recently, properties with features such as garages, storage, and entries beneath the first story of a building were approved. Such features were consistent with Chapter 42 - Floods of the Town Code and the Florida Building Code. Recent interpretation by the Town casts doubt on their consistency with Chapter 90 - Zoning. The Code should be amended to clarify that these features are allowed, as they provide many benefits. Among them are:

1. Provides an alternative to filling the roughly six-foot deep volume above grade and beneath the first floor with earth.
2. Increases the amount of pervious area per lot.
3. Increases the amount of light and air at the base of the houses.
4. Increases the amount of recreational area per lot.
5. Increases the flexibility of living areas on the first floor by eliminating garages and/or storage from the first floor.
6. Eliminates the tall, solid base of new houses facing the much lower older, existing homes.
7. Decreases the reliance on retaining walls to support elevated yards.

In addition, the proposed Ordinance or Code amendment does not add to the lot coverage or change the height of houses in feet or stories. A recently finished house at 8950 Irving Avenue shows how such a house would fit on the lot (see attached photos).

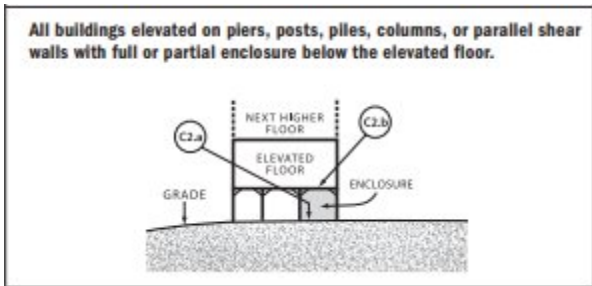
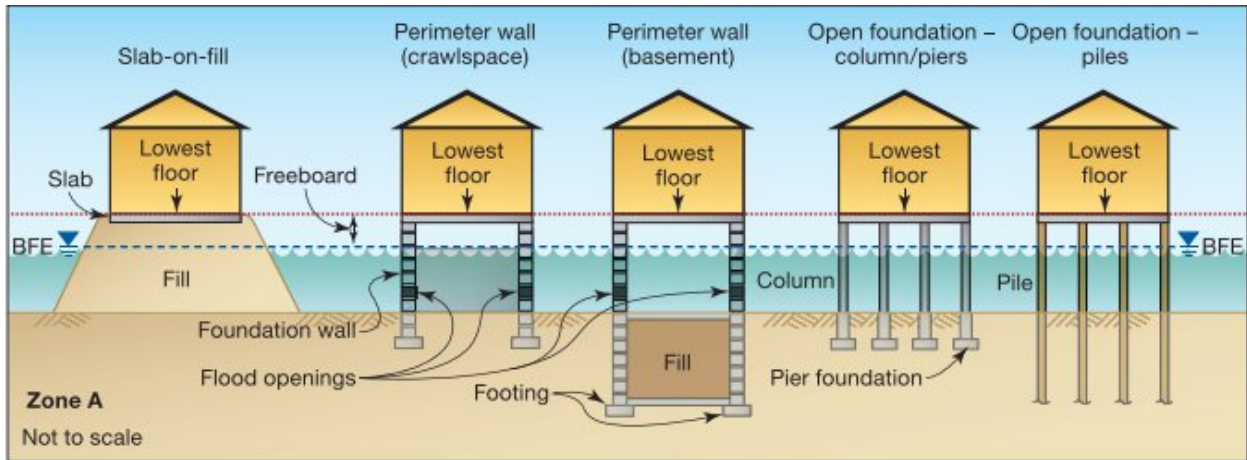
[EXHIBIT A.docx](#)

[Photo 8950 Irving UnderstoryFront.pdf](#)

Photo 8950 Irving Understory Light Air.pdf

Ordinance Re Nonhabitable Understory - Second Reading with PZB - 5-26-22.pdf

# EXHIBIT A





8950

8950 Irving



8950 Irving

ORDINANCE NO. 22 - \_\_\_\_\_

AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA AMENDING THE TOWN OF SURFSIDE CODE OF ORDINANCES BY AMENDING SECTION 90-2. - “DEFINITIONS” TO ~~AMEND THE DEFINITION OF “STORY” AND TO~~ CREATE A DEFINITION OF “NONHABITABLE UNDERSTORY;” CREATING A NEW SECTION 90-49.5. – “NONHABITABLE UNDERSTORY” TO REGULATE NONHABITABLE UNDERSTORIES IN LOW-RISE RESIDENTIAL DISTRICTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR CONFLICTS; AND PROVIDING FOR AN EFFECTIVE DATE.

1       **WHEREAS**, Article VIII, Section 2 of the Florida Constitution, and Chapter 166, Florida  
2 Statutes, provide municipalities with the authority to exercise any power for municipal purposes,  
3 except where prohibited by law, and to adopt ordinances in furtherance of such authority; and

4       **WHEREAS**, the Town Commission of the Town of Surfside (“Town Commission”) finds it  
5 periodically necessary to amend its Code of Ordinances and Land Development Code (“Code”) in  
6 order to update regulations and procedures to maintain consistency with state law, to implement  
7 municipal goals and objectives, to clarify regulations and address specific issues and needs that  
8 may arise; and

9       **WHEREAS**, consistent with National Flood Insurance Program (“NFIP”) requirements  
10 promulgated by the Federal Emergency Management Agency (“FEMA”), Section 42-11(c)(1) of  
11 the Code requires a minimum floor elevation for single family buildings and Section 42-11(c)(3)  
12 of the Code regulates enclosures beneath the minimum habitable floor elevation; and

13       **WHEREAS**, utility, parking, and storage uses of areas beneath the minimum habitable floor  
14 elevation regulated under Section 42-11(c)(3) are consistent with the Florida Building Code; and

15       **WHEREAS**, Section 90-2 of the Code, Definitions, defines “story” as “That portion of a  
16 building other than a basement, included between the surface of any *floor* and the surface of the  
17 floor next above it; or, if there be no floor next above it, then the space between such floor and  
18 ceiling next above it” (emphasis supplied); and

Coding: ~~Strikethrough words~~ are deletions to the existing words. Underlined words are additions to the existing words. Changes between first and second reading are indicated with highlighted double strikethrough and double underline.

19 WHEREAS, “floor” was originally defined in the Flood Damage Prevention Ordinance  
20 adopted by Ordinance No. 1300 on October 13, 1992 (and part of the code in effect in 2004), as  
21 “the top surface of an enclosed area in a building (including basement), i.e. top of slab in concrete  
22 slab construction or top of wood flooring in wood frame construction. The term does not include  
23 the floor of a garage used solely for parking vehicles,” and

24 WHEREAS, Article V, Section B(1) of Ordinance No. 1300 required single family  
25 construction to be elevated to have the “lowest floor” at base flood elevation; and

26 WHEREAS, “elevated building” was defined in Ordinance No. 1300 as “a non-basement  
27 building built to have the lowest floor elevated above the ground level by means of fill, solid  
28 foundation perimeter walls, pilings, columns (posts and piers), shear walls, or breakaway walls”  
29 (emphasis supplied); and

30 WHEREAS, elevated buildings under Ordinance No.1300 were permitted to enclose areas  
31 below the base flood elevation provided finished living spaces were precluded, were designed to  
32 allow the entry of flood waters, and uses were limited to parking of vehicles, limited storage of  
33 maintenance equipment, or entry into the living area (stairway or elevator); and

34 WHEREAS, based on the above, the concept of unhabitable enclosed and unenclosed spaces  
35 below the “lowest floor” was set out in the 2004 code referenced in the Charter; and

36 WHEREAS, the concept of “lowest floor” was summarized in Chapter 42 – Floods, of the  
37 Town Code adopted by Ordinance No. 1498 on September 9, 2008, to provide “lowest floor” means  
38 ‘the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant  
39 enclosure, used solely for parking of vehicles, building access, or storage, in an area other than a  
40 basement, is not considered a building’s lowest floor, provided that such enclosure is not built so  
41 as to render the structure in violation of the nonelevation design standards of this article;” and

42 WHEREAS, Section 42-9 of the Code adopted by Ordinance No. 2019-1697 on June 11, 2019,  
43 provides “The lowest floor of the lowest enclosed area of a building or structure, including  
44 basement, but excluding any unfinished or flood-resistant enclosure, other than a basement, usable  
45 solely for vehicle parking, building access or limited storage provided that such enclosure is not  
46 built so as to render the structure in violation of the non-elevation requirements of the Florida  
47 Building Code or ASCE 24. (Also defined in FBC, B, § 202.);” and

Coding: ~~Strikethrough words~~ are deletions to the existing words. Underlined words are additions to the existing words. Changes between first and second reading are indicated with highlighted ~~double strikethrough~~ and double underline.

48 WHEREAS, the space between grade and the elevation of the first habitable floor is not a  
49 “story” because it does not meet the definition of “floor” and is located below the “lowest floor” as  
50 defined in the Code; and

51 WHEREAS, the Town Commission finds that the space between grade and the elevation of  
52 the first habitable floor may be addressed through different design options, filled with earth or with  
53 a nonhabitable understory; and

54 **WHEREAS,** the resulting space between grade and the elevation of the first habitable floor is  
55 typically filled with earth which results in adverse impacts to light and air, and discrepancies in the  
56 yard elevations between neighboring properties, which itself requires retaining walls of increased  
57 heights; and

58 **WHEREAS,** the construction of these earth-filled retaining walls dramatically increases the  
59 solid mass of the building, otherwise referred to as building massing, and greatly reduces light and  
60 air to neighboring properties and displaces floodwaters onto neighboring properties during times of  
61 flood; and

62 **WHEREAS,** providing a viable home design option, commonly referred to as the understory,  
63 to property owners to leave this space open greatly decreases building massing, increases apparent  
64 light and air to neighboring properties, decreases floodwater displacement onto neighboring  
65 properties during times of flood, and increases the usable space on small lots; and

66 ~~WHEREAS, minimum habitable flood elevations could increase in the future due to resiliency~~  
67 ~~and flood prevention considerations to address the potential impacts of sea level rise, which could~~  
68 ~~result in the increase of this space between grade and minimum habitable floor elevations; and~~

69 **WHEREAS,** the Town Commission finds that nonhabitable understories are not “stories”  
70 under the Code because they do not meet the definition of “floor” and are located below the “lowest  
71 floor,” and are otherwise desirable in providing the same efficient site and storage space utilization  
72 as a basement, while at the same time allowing for greater pervious area, improved compatibility  
73 between existing and new construction, and more openness, light, and air in the neighborhood; and

74 **WHEREAS,** the Town Commission further finds a new definition of nonhabitable understory  
75 is warranted ~~needed~~ to address and regulate the use of the area between grade and the lowest floor  
76 and minimum habitable floor elevation; and

Coding: ~~Strikethrough words~~ are deletions to the existing words. Underlined words are additions to the existing words. Changes between first and second reading are indicated with highlighted ~~double strikethrough~~ and double underline.





109 ~~Story: That portion of a building other than a basement or a nonhabitable understory,~~  
110 ~~included between the surface of any floor and the surface of the floor next above it; or, if~~  
111 ~~there be no floor next above it, then the space between such floor and ceiling next above~~  
112 ~~it.~~

114 \*\*\*

116 Nonhabitable Understory: That unoccupied portion of a building located between grade  
117 and beneath the elevation of the lowest first habitable floor, and entirely within the  
118 building's footprint, that conforms to Section 90-49.5 and that is not a basement.

120 \*\*\*

122 **Sec. 90-49.5. – Nonhabitable Understory.**

124 A nonhabitable understory is only permitted in H30A, H30B, H30C and H40 districts  
125 subject to the following restrictions:

- 127 (a) Generally. A nonhabitable understory may consist of enclosed and unenclosed  
128 spaces, but all enclosed elements must conform to Section 42-11(c)(3), the  
129 Florida Building Code and this section. All enclosed space below design flood  
130 elevation shall used solely for parking of vehicles, building access and storage  
131 and shall be constructed and hydrostatically vented per Federal Emergency  
132 Management Agency National Flood Insurance Program rules and regulations,  
133 the Florida Building Code and the Town of Surfside Floodplain Management  
134 Ordinance
- 135 (b) In the H30A and H30B Districts, the cumulative area of all enclosed space  
136 shall not exceed 10% of the lot area. Pervious area equal to at least 20% of the  
137 lot area shall be provided within the nonhabitable understory, although such  
138 pervious area shall not be counted for the purpose of meeting pervious area  
139 requirements.
- 140 (c) In the H30C and H40 districts, the cumulative area of all enclosed space shall  
141 not exceed 90% of the footprint of the building's first habitable floor. The  
142 exterior design of enclosed portions of the nonhabitable understory shall be  
143 compatible with, but also distinguishable from the stories above.

146 \*\*\*

148 **Section 3. Severability.** If any section, sentence, clause or phrase of this Ordinance is  
149 held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall  
150 in no way affect the validity of the remaining portions of this Ordinance.

Coding: ~~Strikethrough words~~ are deletions to the existing words. Underlined words are additions to the existing words. Changes between first and second reading are indicated with highlighted double strikethrough and double underline.

151 **Section 4. Inclusion in the Code.** It is the intention of the Town Commission, and it is  
152 hereby ordained that the provisions of this Ordinance shall become and made a part of the Town of  
153 Surfside Code of Ordinances, that the sections of this Ordinance may be renumbered or re-lettered to  
154 accomplish such intentions; and the word “Ordinance” may be changed to “Section” or other  
155 appropriate word.

156  
157 **Section 5. Conflicts.** Any and all ordinances and resolutions or parts of ordinances or  
158 resolutions in conflict herewith are hereby repealed.

159  
160 **Section 6. Effective Date.** This ordinance shall become effective upon adoption on second  
161 reading.

162  
163 **PASSED** on first reading this 10<sup>th</sup> day of May, 2022.

164  
165 **PASSED** and **ADOPTED** on second reading this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

166  
167  
168  
169 **First Reading:**

170 Motion by: Vice Mayor Rose  
171 Second by: Commissioner Meischeid

172  
173  
174 **Second and Final Reading:**

175 Motion by: \_\_\_\_\_  
176 Second by: \_\_\_\_\_

177  
178 **AL VOTE ON ADOPTION**

179 Commissioner Fred Landsman \_\_\_\_\_  
180 Commissioner Marianne Meischeid \_\_\_\_\_  
181 Commissioner Nelly Velazquez \_\_\_\_\_  
182 Vice Mayor Jeffrey Rose \_\_\_\_\_  
183 Mayor Shlomo Danzinger \_\_\_\_\_

184  
185  
186 \_\_\_\_\_  
Shlomo Danzinger, Mayor

187 **ATTEST:**

188  
189 \_\_\_\_\_  
190 Sandra N. McCready, MMC  
191 Town Clerk

Coding: ~~Strikethrough words~~ are deletions to the existing words. Underlined words are additions to the existing words. Changes between first and second reading are indicated with highlighted ~~double strikethrough~~ and double underline.

192  
193 **APPROVED AS TO FORM AND LEGALITY FOR THE USE**  
194 **AND BENEFIT OF THE TOWN OF SURFSIDE ONLY:**

195  
196  
197  
198 \_\_\_\_\_  
198 Weiss Serota Helfman Cole & Bierman, P.L.  
199 Town Attorney  
200

Coding: ~~Strikethrough words~~ are deletions to the existing words. Underlined words are additions to the existing words. Changes between first and second reading are indicated with highlighted ~~double strikethrough~~ and double underline.



## MEMORANDUM

ITEM NO. 4B1

**To:** Honorable Mayor, Vice-Mayor and Members of the Town Commission

**From:** Shlomo Danzinger, Mayor

**Date:** June 14, 2022

**Subject:** **First Reading: Ordinance Amending Section 54-78 of Code - Prohibited Noises**

---

To adopt the first reading of the ordinance change as drafted by the town attorneys amending section 54-78 of code - Prohibited Noises as discussed in the May 10, 2022 commission meeting.

Currently, Section 54-78 - Prohibited Noises - in the Town code prohibits devices such as lawns mowers, hedge clippers, and other mechanical devices to be used on Sundays. (They are allowed Monday to Saturday between the hours of 8 AM - 6 PM). This ordinance ultimately restricts Sabbath observing Jewish residents restricted from such activity on Saturdays, and restricts other working residents, from maintaining their own lawns on weekends.

[Prohibited Noises Ordinance.docx](#)

ORDINANCE NO. 22 - \_\_\_\_\_

**AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, AMENDING THE TOWN OF SURFSIDE CODE OF ORDINANCES BY AMENDING SECTION 54-78. - “PROHIBITED NOISES” RELATING TO PERMITTED HOURS OF OPERATION FOR PERSONAL OR RESIDENT LANDSCAPING EQUIPMENT AND OTHER NOISE-PRODUCING MECHANICAL DEVICES; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR CONFLICTS; AND PROVIDING FOR AN EFFECTIVE DATE.**

1       **WHEREAS**, Article VIII, Section 2 of the Florida Constitution, and Chapter 166, Florida  
2 Statutes, provide municipalities with the authority to exercise any power for municipal purposes,  
3 except where prohibited by law, and to adopt ordinances in furtherance of such authority; and

4       **WHEREAS**, the Town Commission of the Town of Surfside (“Town Commission”) finds it  
5 periodically necessary to amend its Code of Ordinances in order to update regulations and  
6 procedures to maintain consistency with state law, to implement municipal goals and objectives, to  
7 clarify regulations and address specific issues and needs that may arise; and

8       **WHEREAS**, Chapter 54, Article III, of the Town of Surfside (the “Town”) Code of  
9 Ordinances (the “Code”) protects the health, safety, and welfare of Town residents and visitors  
10 by controlling noises and offenses involving public peace and order, including regulating hours of  
11 operation of lawn or landscaping equipment and mechanical devices; and

12       **WHEREAS**, the Town Commission desires to amend Section 54-78(7) of Division II. – Noise,  
13 of Article III. – Offenses Involving Public Peace and Order, of Chapter 54 – Offenses and  
14 Miscellaneous Provisions, of the Town Code, in order to allow for use of personal lawn or  
15 landscaping equipment by residents within certain hours on Saturdays, Sundays and federal  
16 holidays; and

17       **WHEREAS**, the proposed amendment to Section 54-78(7) of the Town Code would allow  
18 working residents and Sabbath observing Jewish residents to timely maintain their own lawns  
19 within specified hours on Saturday, Sundays and federal holidays, and provide for granter ease in  
20 lawn maintenance and care; and

<sup>1</sup>Additions to the text are shown in underline. Deletions are shown in ~~strikethrough~~.

21 **WHEREAS**, the Town Commission finds that the proposed amendment to Section 54-78(7)  
22 of the Town Code is in the best interest and welfare of Town residents.

23  
24 **NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COMMISSION OF THE**  
25 **TOWN OF SURFSIDE, FLORIDA<sup>1</sup>:**

26  
27 **Section 1. Recitals.** The above Recitals are true and correct and are incorporated herein by  
28 this reference:

29  
30 **Section 2. Town Code Amended.** Chapter 54 – “Offenses and Miscellaneous Provisions”  
31 of the Town of Surfside Code of Ordinances is hereby amended, by amending Section 54-78. --  
32 “Prohibited Noises” to read as follows<sup>1</sup>:

33 **Sec. 54-78. – Prohibited Noises.**

34  
35 The following noises and other noises of the same characteristics, intensity or annoyance  
36 shall be prohibited within the town as follows:

37  
38 \* \* \*

39  
40 (7) Lawn mowers, hedge clippers, pressure washing machines, etc. The operation  
41 of either hand or motor-operated lawn mowers, lawn edgers, weed trimmers, leaf  
42 blowers, chain saws, power tools, hedge clippers, pressure washing machines and  
43 other mechanical devices, within or without a building, in such a manner as to be  
44 plainly audible at a distance of 50 feet from the premises where operated, shall be  
45 allowed only from (i) 8:00 a.m. to 6:00 p.m. Monday through Saturday Friday, and  
46 (ii) 10:00 a.m. to 6:00 p.m. Saturday, Sunday and all federal holidays, but only for  
47 personal or resident lawn care, and shall be prohibited on Sundays and all federal  
48 holidays. and other mechanical equipment shall not be allowed at any time on  
49 Saturdays, Sundays and all federal holidays for use by commercial or hired  
50 contractors. ~~The operation of such lawn mowers, hedge clippers, pressure washing~~  
51 ~~machines and other mechanical devices, within or without a building, in a manner~~  
52 ~~to be plainly audible at a distance of 50 feet, shall be allowed only from 8:00 a.m.~~  
53 ~~until 6:00 p.m. Monday through Saturday and shall be prohibited on Sundays and~~  
54 ~~all federal holidays.~~ The operation of the aforesaid lawn, household and other  
55 mechanical equipment shall not be allowed at any time outside the prescribed  
56 hours set forth above, on Sundays and all federal holidays provided, however, that  
57 under emergency conditions the town manager may, in his discretion, grant  
58 exceptions thereto. Commercial or hired contractors, such as landscapers, will be  
59 prohibited from the operation of the aforesaid lawn, household, and other  
60 mechanical equipment on Saturday, Sunday, and all federal holidays.

61  
62 \*\*\*

<sup>1</sup> Additions to the text are shown in underline. Deletions to the text are shown in ~~strike through~~.

63 **Section 3. Severability.** If any section, sentence, clause or phrase of this Ordinance is  
64 held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall  
65 in no way affect the validity of the remaining portions of this Ordinance.

66 **Section 4. Inclusion in the Code.** It is the intention of the Town Commission, and it is  
67 hereby ordained that the provisions of this Ordinance shall become and made a part of the Town of  
68 Surfside Code of Ordinances, that the sections of this Ordinance may be renumbered or re-lettered to  
69 accomplish such intentions; and the word "Ordinance" may be changed to "Section" or other  
70 appropriate word.

71  
72 **Section 5. Conflicts.** Any and all ordinances and resolutions or parts of ordinances or  
73 resolutions in conflict herewith are hereby repealed.

74  
75 **Section 6. Effective Date.** This ordinance shall become effective upon adoption on second  
76 reading.

77  
78 **PASSED** on first reading this 14<sup>th</sup> day of June, 2022.

79  
80 **PASSED** and **ADOPTED** on second reading this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

81  
82  
83  
84 **First Reading:**

85 Motion by: \_\_\_\_\_

86 Second by: \_\_\_\_\_

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89 **Second and Final Reading:**

90 Motion by: \_\_\_\_\_

91 Second by: \_\_\_\_\_

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94 **FINAL VOTE ON ADOPTION**

95 Commissioner Fred Landsman \_\_\_\_\_

96 Commissioner Marianne Meischeid \_\_\_\_\_

97 Commissioner Nelly Velasquez \_\_\_\_\_

98 Vice Mayor Jeffrey Rose \_\_\_\_\_

99 Mayor Shlomo Danzinger \_\_\_\_\_

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102 \_\_\_\_\_  
Shlomo Danzinger, Mayor

103 **ATTEST:**



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Sandra N. McCready, MMC  
Town Clerk

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

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



## MEMORANDUM

ITEM NO. 4B2.

**To:** Honorable Mayor, Vice-Mayor and Members of the Town Commission

**From:** Fred Landsman, Commissioner

**Date:** June 14, 2022

**Subject:** **Amending the Town of Surfside Code of Ordinances by Amending Section 90-57. - "Marine Structures", to Amend Regulations for Construction of Docks, Pier and Moorings on Waterfront Lots.**

---

Request approval of this ordinance on first reading in order to move forward on second reading. Also, attached is an alternate proposed ordinance for consideration.

[Ordinance Amending Section 90-57 Marine Structures - 1st Reading TAv2.DOCX](#)

[Ordinance Amending Section 90-57 Marine Structures Alternate Landsman Proposal - 1st Reading TAv2.DOCX](#)

ORDINANCE NO. 21 - \_\_\_\_\_

**AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA AMENDING THE TOWN OF SURFSIDE CODE OF ORDINANCES BY AMENDING SECTION 90-57. - “MARINE STRUCTURES”, TO AMEND REGULATIONS FOR CONSTRUCTION OF DOCKS, PIERS AND MOORINGS ON WATERFRONT LOTS TO MODIFY ALLOWABLE DOCK PROJECTIONS INTO CERTAIN WATERWAYS; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR CONFLICTS; AND PROVIDING FOR AN EFFECTIVE DATE.**

1       **WHEREAS**, Article VIII, Section 2 of the Florida Constitution, and Chapter 166, Florida  
2 Statutes, provide municipalities with the authority to exercise any power for municipal purposes,  
3 except where prohibited by law, and to adopt ordinances in furtherance of such authority; and

4       **WHEREAS**, the Town Commission of the Town of Surfside (“Town Commission”) finds it  
5 periodically necessary to amend its Code of Ordinances and Land Development Code (“Code”) in  
6 order to update regulations and procedures to maintain consistency with state law, to implement  
7 municipal goals and objectives, to clarify regulations and address specific issues and needs that  
8 may arise; and

9       **WHEREAS**, the Town recently adopted Ordinance No. 2022-1718 amending Section 90-57  
10 of the Town Code to provide for specific regulations for marine structures on waterfront lots with  
11 water frontage on two sides, specific waterfront lots fronting portions of Point Lake that are  
12 particularly vulnerable to obstructions to navigation, other waterfront lots on Point Lake, waterfront  
13 lots on Biscayne Bay and Indian Creek, adding setbacks for docks, protecting unobstructed passage  
14 on waterways, and requiring owners to provide courtesy notices of a building permit application  
15 for a dock to all owners within 300 feet prior to building permit; and

16       **WHEREAS**, in addition to the Code, marine structures are regulated by the Miami-Dade  
17 County Department of Environmental Resources Management (DERM) which implements Section  
18 403.813, Florida Statutes, and Section 66-302.700, Florida Administrative Code, which together  
19 limit marine structures such as docks to 500 square feet, and enforces additional limitations such as  
20 the D-5 triangle; and

21  
<sup>1</sup>Additions to the text are shown in underline. Deletions are shown in ~~strikethrough~~.

22       **WHEREAS**, the Town finds that DERM’s regulations and enforcement provide ample  
23 restrictions that limit the size of marine structures; and

24       **WHEREAS**, given the marine structure area limitations enforced by DERM, the Town  
25 Commission seeks to modify the allowable projections of docks into waterways to provide for  
26 additional flexibility to waterfront owners located on waterways such as Indian Creek and Biscayne  
27 Bay that are wide enough to accommodate marine structure projections without adversely  
28 impacting navigability, and finds that such modifications are reasonable and in the best interests  
29 of the Town and its residents; and

30       **WHEREAS**, on May 10, 2022 at its regular monthly meeting, the Town Commission directed  
31 staff to evaluate and prepare an ordinance amending Section 90-57. – Marine Structures, to address  
32 such modification; and

33       **WHEREAS**, the Town Commission held its first public hearing on \_\_\_\_\_ and, having  
34 complied with the notice requirements in the Florida Statutes, approved the proposed amendment  
35 to Section 90-57 of the Code of Ordinances,; and

36       **WHEREAS**, the Planning and Zoning Board, as the local planning agency for the Town, held  
37 its hearing on the proposed amendment on \_\_\_\_\_, 2021 with due public notice and input,  
38 and recommended \_\_\_\_\_ of this proposed amendment; and

39       **WHEREAS**, the Town Commission has conducted a second duly noticed public hearing on  
40 these regulations as required by law on \_\_\_\_\_, 2021 and further finds the proposed  
41 changes to the Code are necessary and in the best interest of the community.

42  
43       **NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COMMISSION OF THE**  
44 **TOWN OF SURFSIDE, FLORIDA<sup>1</sup>:**

45  
46       **Section 1. Recitals.** The above Recitals are true and correct and are incorporated herein by  
47 this reference:

48  
49       **Section 2. Town Code Amended.** Section 90-57. – “Marine Structures”, of the Surfside  
50 Town Code of Ordinances is hereby amended as follows<sup>1</sup>:

51 **Sec. 90-57. – Marine Structures.**

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<sup>1</sup> Additions to the text are shown in underline. Deletions to the text are shown in ~~strike through~~.

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- (d) Maximum Projection of Lots on Biscayne Bay and Indian Creek. For any lot with water frontage on Biscayne Bay or Indian Creek, a marine structure may be constructed to project into the waterway by no more than the lesser of ~~(i)~~ 10% of the width of the adjacent waterway or:
- a. 35 feet maximum within Indian Creek, which applies commencing with Lot 13, Block 26, of the Second Amended Plat of Normandy Beach (Plat Book 16, Page 44) and all waterfront properties north of it along Biscaya or Bay Drive.
  - b. 60 feet maximum within Biscayne Bay, which applies commencing with Lot 14, Block 26 of the Second Amended Plat of Normandy Beach (Plat Book 16, Page 44) and all waterfront properties east of it along Biscaya or 88<sup>th</sup> Street, ~~or (ii) 15 feet, unless the Miami Dade County Department of Economic Resources or Florida Department of Environmental Protection determines that environmental resources require a further dock extension, in which case a finger pier not to exceed 8 feet in width, and any mooring piles, boat lifts, or other appurtenances, shall be allowed to project into the waterway no more than 35 feet, and vessels shall be required to dock along the side of the finger pier rather than at the end of the finger pier.~~

\* \* \*

**Section 3. Severability.** If any section, sentence, clause or phrase of this Ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this Ordinance.

**Section 4. Inclusion in the Code.** It is the intention of the Town Commission, and it is hereby ordained that the provisions of this Ordinance shall become and made a part of the Town of Surfside Code of Ordinances, that the sections of this Ordinance may be renumbered or re-lettered to accomplish such intentions; and the word “Ordinance” may be changed to “Section” or other appropriate word.

**Section 5. Conflicts.** Any and all ordinances and resolutions or parts of ordinances or resolutions in conflict herewith are hereby repealed.

**Section 6. Effective Date.** This ordinance shall become effective upon adoption.

**PASSED and ADOPTED** on first reading this \_\_\_ day of \_\_\_\_\_, 2022.

92 **PASSED** and **ADOPTED** on second reading this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

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95 **First Reading:**

96 Motion by: \_\_\_\_\_

97 Second by: \_\_\_\_\_

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99

100 **Second and Final Reading:**

101 Motion by: \_\_\_\_\_

102 Second by: \_\_\_\_\_

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105 **FINAL VOTE ON ADOPTION**

106 Commissioner Fred Landsman \_\_\_\_\_

107 Commissioner Marianne Meisheid \_\_\_\_\_

108 Commissioner Nelly Velazquez \_\_\_\_\_

109 Vice Mayor Jeffrey Rose \_\_\_\_\_

110 Mayor Shlomo Danzinger \_\_\_\_\_

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\_\_\_\_\_  
Shlomo Danzinger, Mayor

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114 **ATTEST:**

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117 \_\_\_\_\_

118 Sandra N. McCready, MMC

119 Town Clerk

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

123  
124

125 \_\_\_\_\_

126 Weiss Serota Helfman Cole & Bierman, P.L.

127 Town Attorney

128

ORDINANCE NO. 21 - \_\_\_\_\_

**AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA AMENDING THE TOWN OF SURFSIDE CODE OF ORDINANCES BY AMENDING SECTION 90-57. - "MARINE STRUCTURES", TO AMEND REGULATIONS FOR CONSTRUCTION OF DOCKS, PIERS AND MOORINGS ON WATERFRONT LOTS TO MODIFY ALLOWABLE DOCK PROJECTIONS INTO CERTAIN WATERWAYS; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR CONFLICTS; AND PROVIDING FOR AN EFFECTIVE DATE.**

1       **WHEREAS**, Article VIII, Section 2 of the Florida Constitution, and Chapter 166, Florida  
2 Statutes, provide municipalities with the authority to exercise any power for municipal purposes,  
3 except where prohibited by law, and to adopt ordinances in furtherance of such authority; and

4       **WHEREAS**, the Town Commission of the Town of Surfside ("Town Commission") finds it  
5 periodically necessary to amend its Code of Ordinances and Land Development Code ("Code") in  
6 order to update regulations and procedures to maintain consistency with state law, to implement  
7 municipal goals and objectives, to clarify regulations and address specific issues and needs that  
8 may arise; and

9       **WHEREAS**, the Town recently adopted Ordinance No. 22-1718 amending Section 90-57 of  
10 the Code to provide for specific regulations for marine structures on waterfront lots with water  
11 frontage on two sides, specific waterfront lots fronting portions of Point Lake that are particularly  
12 vulnerable to obstructions to navigation, other waterfront lots on Point Lake, waterfront lots on  
13 Biscayne Bay and Indian Creek, adding setbacks for docks, protecting unobstructed passage on  
14 waterways, and requiring owners to provide courtesy notices of a building permit application for a  
15 dock to all owners within 300 feet prior to building permit; and

16       **WHEREAS**, in addition to the Code, marine structures are regulated by the Miami-Dade  
17 County Department of Environmental Resources Management (DERM) which implements Section  
18 403.813, Florida Statutes, and Section 66-302.700, Florida Administrative Code, which together  
19 limit marine structures such as docks to 500 square feet, and enforces additional limitations such as  
20 the D-5 triangle; and

21  
<sup>1</sup>Additions to the text are shown in underline. Deletions are shown in ~~strikethrough~~.

22       **WHEREAS**, the Town finds that DERM’s regulations and enforcement provide ample  
23 restrictions that limit the size of marine structures; and

24       **WHEREAS**, given the marine structure area limitations enforced by DERM, the Town  
25 Commission seeks to modify the allowable projections of docks into waterways to provide for  
26 additional flexibility to waterfront owners located on waterways such as Indian Creek and Biscayne  
27 Bay that are wide enough to accommodate marine structure projections without adversely  
28 impacting navigability, and finds that such modifications are reasonable and in the best interests of  
29 the Town and its residents; and

30       **WHEREAS**, on May 10, 2022 at its regular monthly meeting, the Town Commission directed  
31 staff to evaluate and prepare an ordinance amending Section 90-57. – Marine Structures, to address  
32 such modification; and

33       **WHEREAS**, the Town Commission held its first public hearing on \_\_\_\_\_ and, having  
34 complied with the notice requirements in the Florida Statutes, approved the proposed amendment  
35 to Section 90-57 of the Code of Ordinances,; and

36       **WHEREAS**, the Planning and Zoning Board, as the local planning agency for the Town, held  
37 its hearing on the proposed amendment on \_\_\_\_\_, 2022 with due public notice and input,  
38 and recommended \_\_\_\_\_ of this proposed amendment; and

39       **WHEREAS**, the Town Commission has conducted a second duly noticed public hearing on  
40 these regulations as required by law on \_\_\_\_\_, 2022 and further finds the proposed  
41 changes to the Code are necessary and in the best interest of the community.

42  
43       **NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COMMISSION OF THE**  
44 **TOWN OF SURFSIDE, FLORIDA<sup>1</sup>:**

45  
46       **Section 1. Recitals.** The above Recitals are true and correct and are incorporated herein by  
47 this reference:

48  
49       **Section 2. Town Code Amended.** Section 90-57. – “Marine Structures”, of the Surfside  
50 Town Code of Ordinances is hereby amended as follows<sup>1</sup>:

51

52

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<sup>1</sup> Additions to the text are shown in underline. Deletions to the text are shown in ~~strike through~~.



53 **Sec. 90-57. – Marine Structures.**  
54

55 \*\*\*  
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57 (d) Maximum Projection of Lots on Biscayne Bay and Indian Creek. For any lot  
58 with water frontage on Biscayne Bay or Indian Creek, a marine structure may  
59 be constructed to project into the waterway by no more than the lesser of (i)  
60 10% of the width of the adjacent waterway or; , or (ii) 15 feet, unless the  
61 Miami-Dade County Department of Economic Resources or Florida  
62 Department of Environmental Protection determines that environmental  
63 resources require a further dock extension, in which case a finger pier not to  
64 exceed 8 feet in width, and any mooring piles, boat lifts, or other  
65 appurtenances, shall be allowed to project into the waterway no more than 35  
66 feet, and vessels shall be required to dock along the side of the finger pier  
67 rather than at the end of the finger pier.

- 68 a. 35 feet maximum within Indian Creek, which applies commencing with  
69 Lot 13, Block 26, of the Second Amended Plat of Normandy Beach  
70 (Plat Book 16, Page 44) and all waterfront properties north of it along  
71 Biscaya or Bay Drive.  
72 b. 45 feet maximum within Biscayne Bay, which applies commencing  
73 with Lot 14, Block 26 of the Second Amended Plat of Normandy Beach  
74 (Plat Book 16, Page 44) and all waterfront properties east of it along  
75 Biscaya or 88<sup>th</sup> Street.

76  
77 \* \* \*  
78

79 (f) Additional Limitations on Marine Structures for Lots on Biscayne Bay and  
80 Indian Creek. The maximum width of projections of marine structures shall be  
81 as follows:

- 82 a. Setbacks. Any marine structure shall be set back at least ten (10) feet  
83 from the waterward extension of any property line of the subject lot.  
84 b. Where the Miami-Dade County Department of Economic Resources,  
85 Department of Environmental Resource Management, and the Florida  
86 Department of Environmental Protection, determine that environmental  
87 resources allow for a dock platform greater than 8 feet in width adjacent  
88 to the sea wall, any portion of a marine structure that projects more than  
89 15 feet from the sea wall shall be limited to a finger pier no more than  
90 8 feet in width.

91 c. Where the Miami-Dade County Department of Economic Resources,  
92 Department of Environmental Resource Management, or Florida  
93 Department of Environmental Protection, determines that  
94 environmental resources do not allow for a dock platform wider than 8  
95 feet adjacent to the sea wall, a dock platform of up to 30 feet in width  
96 (dimension parallel to sea wall) by 15 feet in depth (dimension  
97 perpendicular to sea wall) may be constructed within 25 feet of the sea  
98 wall.

99 \* \* \*

100 **Section 3. Severability.** If any section, sentence, clause or phrase of this Ordinance is  
101 held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall  
102 in no way affect the validity of the remaining portions of this Ordinance.

103 **Section 4. Inclusion in the Code.** It is the intention of the Town Commission, and it is  
104 hereby ordained that the provisions of this Ordinance shall become and made a part of the Town of  
105 Surfside Code of Ordinances, that the sections of this Ordinance may be renumbered or re-lettered to  
106 accomplish such intentions; and the word “Ordinance” may be changed to “Section” or other  
107 appropriate word.

108  
109 **Section 5. Conflicts.** Any and all ordinances and resolutions or parts of ordinances or  
110 resolutions in conflict herewith are hereby repealed.

111  
112 **Section 6. Effective Date.** This ordinance shall become effective upon adoption.

113  
114 **PASSED and ADOPTED** on first reading this \_\_\_ day of \_\_\_\_\_, 2022.

115  
116 **PASSED and ADOPTED** on second reading this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

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119 **First Reading:**  
120 Motion by: \_\_\_\_\_  
121 Second by: \_\_\_\_\_  
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123  
124 **Second and Final Reading:**  
125 Motion by: \_\_\_\_\_  
126 Second by: \_\_\_\_\_  
127

128  
129 **FINAL VOTE ON ADOPTION**

130 Commissioner Fred Landsman \_\_\_\_\_  
131 Commissioner Marianne Meisheid \_\_\_\_\_  
132 Commissioner Nelly Velazquez \_\_\_\_\_  
133 Vice Mayor Jeffrey Rose \_\_\_\_\_  
134 Mayor Shlomo Danzinger \_\_\_\_\_

\_\_\_\_\_  
Shlomo Danzinger, Mayor

138 **ATTEST:**

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141 \_\_\_\_\_  
142 Sandra N. McCready, MMC  
143 Town Clerk

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

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149 \_\_\_\_\_  
150 Weiss Serota Helfman Cole & Bierman, P.L.  
151 Town Attorney  
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## MEMORANDUM

ITEM NO. 4B3.

**To:** Honorable Mayor, Vice-Mayor and Members of the Town Commission  
**From:** Jeffrey Rose, Vice Mayor  
**Date:** June 14, 2022  
**Subject:** **24 Inch Setback Encroachment Clarification**

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To approve this item on first reading and move it forward for second reading.

A potential ambiguity has been raised regarding whether and under what circumstances projections into the setback may be applied. I would like to clean up the ambiguous language in the zoning code to encourage architectural variety and creativity as suggested by our previous and current Planning and Zoning Board. The attached proposed ordinance seeks to address this potential ambiguity by amending the zoning code to provide clear language and direction.

[Ord Amending Section 90-47 - Yards Allowable Projections 1st Reading TA v2.DOCX](#)

ORDINANCE NO. 22 - \_\_\_\_\_

**AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA AMENDING THE TOWN OF SURFSIDE CODE OF ORDINANCES BY AMENDING SECTION 90-47. - “YARDS, GENERALLY ALLOWABLE PROJECTIONS” TO CLARIFY ALLOWANCES FOR PROJECTIONS INTO REQUIRED SETBACKS; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR CONFLICTS; AND PROVIDING FOR AN EFFECTIVE DATE.**

1       **WHEREAS**, Article VIII, Section 2 of the Florida Constitution, and Chapter 166, Florida  
2 Statutes, provide municipalities with the authority to exercise any power for municipal purposes,  
3 except where prohibited by law, and to adopt ordinances in furtherance of such authority; and

4       **WHEREAS**, the Town Commission of the Town of Surfside (“Town Commission”) finds it  
5 periodically necessary to amend its Code of Ordinances and Land Development Code (“Code”) in  
6 order to update regulations and procedures to maintain consistency with state law, to implement  
7 municipal goals and objectives, to clarify regulations and address specific issues and needs that  
8 may arise; and

9       **WHEREAS**, Section 90-47 generally governs projections into the setback; and

10       **WHEREAS**, following the adoption of Ordinance No. 21-1716 amending section 90-47 of the  
11 Code in connection with setback projections in the H-120 District, a potential ambiguity has been  
12 raised regarding whether and under what circumstances projections into the setback may be applied  
13 or combined; and

14       **WHEREAS**, the Town seeks to clarify the type and extent of allowable projections into the  
15 setback, including when and to what extent different projections may be combined; and

16       **WHEREAS**, the Town Commission held its first public hearing on \_\_\_\_\_, 2022 and  
17 recommended approval of the proposed amendments to the Code of Ordinances having complied  
18 with the notice requirements in the Florida Statutes; and

19       **WHEREAS**, the Planning and Zoning Board, as the local planning agency for the Town, held  
20 its hearing on the proposed amendment on \_\_\_\_\_, 2022 with due public notice and input and  
21 recommended [approval/denial] of the ordinance by a vote of \_\_\_\_; and

<sup>1</sup>Additions to the text are shown in underline. Deletions are shown in ~~strikethrough~~.

22 WHEREAS, the Town Commission has conducted a second duly noticed public hearing on  
23 these regulations as required by law on \_\_\_\_\_, 2022 and further finds the proposed  
24 changes to the Code are necessary and in the best interest of the community.

25  
26 NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COMMISSION OF THE  
27 TOWN OF SURFSIDE, FLORIDA<sup>1</sup>:

28  
29 **Section 1. Recitals.** The above Recitals are true and correct and are incorporated herein by  
30 this reference:

31  
32 **Section 2. Town Code Amended.** Section 90-47. – “Yards, Generally Allowable  
33 Projections”, of the Surfside Town Code of Ordinances is hereby amended as follows<sup>1</sup>:

34 *Sec. 90-47.1* Every part of a required yard shall be open to the sky, except:

35 (1) In any district other than H30A and H30B, ordinary projections of sills, cornices,  
36 roof eaves and ornamental features ~~that~~ may project not more than 24 inches into any  
37 required yard;

38 (2) In H30A and H30B districts:

39 (a) ordinary projections of sills, cornices, and ornamental features, exclusive of  
40 roof eaves, may project not more than 8 inches into any required interior side yard  
41 or not more than 24 inches into any required front, secondary frontage, or rear  
42 yard; and

43 (b) roof eaves may project not more than 24 inches into any required yard;

44 (3) Any other type of projection permitted in this section, whether alone or in  
45 combination with other projections allowed by this section, provided:

46 (a) the total distance of combined projection into the setbacks does not exceed the  
47 maximum allowed projection for the largest of the individual projection types so  
48 combined; or

49 (b) With design review approval by the Planning and Zoning Board, when  
50 combined with other projections, ornamental features may extend a maximum 24  
51 inches further into the setback beyond the other allowed projection if it does not  
52 increase the extent of the other projection.

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54 \* \* \*

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<sup>1</sup> Additions to the text are shown in underline. Deletions to the text are shown in ~~strike through~~.

55 **Section 3. Severability.** If any section, sentence, clause or phrase of this Ordinance is  
56 held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall  
57 in no way affect the validity of the remaining portions of this Ordinance.

58 **Section 4. Inclusion in the Code.** It is the intention of the Town Commission, and it is  
59 hereby ordained that the provisions of this Ordinance shall become and made a part of the Town of  
60 Surfside Code of Ordinances, that the sections of this Ordinance may be renumbered or re-lettered to  
61 accomplish such intentions; and the word "Ordinance" may be changed to "Section" or other  
62 appropriate word.

63  
64 **Section 5. Conflicts.** Any and all ordinances and resolutions or parts of ordinances or  
65 resolutions in conflict herewith are hereby repealed.

66  
67 **Section 6. Effective Date.** This ordinance shall become effective upon adoption on second  
68 reading.

69  
70 **PASSED** on first reading this \_\_\_ day of \_\_\_\_\_, 2022.

71  
72 **PASSED** and **ADOPTED** on second reading this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

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76 **First Reading:**

77 Motion by: \_\_\_\_\_

78 Second by: \_\_\_\_\_

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81 **Second and Final Reading:**

82 Motion by: \_\_\_\_\_

83 Second by: \_\_\_\_\_

84  
85  
86 **FINAL VOTE ON ADOPTION**

87 Commissioner Fred Landsman \_\_\_\_\_

88 Commissioner Marianne Meischeid \_\_\_\_\_

89 Commissioner Nelly Velazquez \_\_\_\_\_

90 Vice Mayor Jeffrey Rose \_\_\_\_\_

91 Mayor Shlomo Danzinger \_\_\_\_\_

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94 \_\_\_\_\_  
Shlomo Danzinger, Mayor

95 **ATTEST:**

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Sandra N. McCready, MMC  
Town Clerk

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

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





## MEMORANDUM

ITEM NO. 5A.

**To:**

**From:** Shlomo Danzinger, Mayor

**Date:** June 14, 2022

**Subject:** **Proclamation: Surfside Heroes Appreciation Month**

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To pass a resolution recognizing and honoring the many organizations who played a pivotal role in the aftermath of the tragic collapse of the Surfside condos on June 24, 2021.

Following the tragic collapse of the Champlain Towers South on June 24, 2021, there were many organizations, individuals, and residents who provided crucial aid and support during the weeks that followed. Many organization continue to support the victims until this very day. The Town of Surfside would like to honor these heroes by proclaiming the month of June 2022 as "Surfside Heroes Appreciation Month". A month in which the residents of the Town of Surfside are encouraged to recognize, and show appreciation for these heroes.

[CTS Proclamation Application.pdf](#)

[Surfside Heroes Proclamation.pdf](#)



# TOWN OF SURFSIDE

## PROCLAMATION, CERTIFICATE, COIN AND KEY TO THE TOWN REQUEST FORM

OFFICE OF THE TOWN CLERK

Request for: Proclamation  Certificate  Key  Brick  (check one)

Date of Request: June 7, 2022

Name of Requestor: Mayor Shlomo Danzinger

Organization: Town of Surfside

Address: 9293 Harding Ave., Surfside, FL 33154

Phone / E-Mail: (786) 835-4398 / sdanzinger@townofsurfsidefl.gov

Name of Individual / Organization to be honored:  
See attached

Title for Proclamation or Certificate:  
Surfside Heroes Appreciation Month

Date of Recognition: 06/14/2022

Reason for Recognition (Please attach 4 – 6 “whereas clauses” as draft text for a Proclamation):  
See attached

Document is to be:

- Presented at a Commission Meeting in N/A (month / year)
- Presented at the following event CTS June 24 Memorial Event (Please attach event information to the request form)
- Picked up by N/A on N/A (date)

### Administrative Use Only

Proclamation \_\_\_\_\_ Certificate \_\_\_\_\_ Key \_\_\_\_\_ Coin \_\_\_\_\_

Approved: Yes \_\_\_\_\_ No \_\_\_\_\_ If no, state reason: \_\_\_\_\_

Approved Date: \_\_\_\_\_

Date Submitted for Mayor's Signature: \_\_\_\_\_

Date Issued: \_\_\_\_\_

Completed by: \_\_\_\_\_



# Proclamation

## *Surfside Heroes Appreciation Month*

~ June 2022 ~

- Whereas, *on June 24<sup>th</sup>, 2021, at 1:20 AM Surfside Police officers were the first to respond to the Champlain Towers South collapse and aided in the evacuation of the survivors, AND*
- Whereas, *members of the Miami- Dade Fire Rescue, City of Miami Fire Rescue, and City of Miami Beach Fire Rescue responded without hesitation to the scene to provide aid, AND*
- Whereas, *search and rescue teams from South Florida (FL-TF1, FL-TF2), teams from across our State (FL-TF3, FL-TF4, FL-TF5, FL-TF6, FL-TF7, FL-TF8), and National teams from Ohio (OH-TF1), Indiana (IN-TF1), New Jersey (NJ-TF1), Pennsylvania (PA-TF1), Virginia (VA-TF2), and the Blue Incident Support Team (IST) responded to Surfside in our time of need to search for survivors and ultimately recover those lost to return them to their families, AND*
- Whereas, *the Israeli Defense Force's (IDF) Special Search & Rescue Team immediately mobilized and responded from overseas and provided vital intel, aid, and support in the rescue and recovery efforts, AND*
- Whereas, *all the employees of the Town of Surfside went above and beyond, working non-stop to provide much needed functions, aid, and support throughout the entire event, AND*
- Whereas, *Miami-Dade County Police and neighboring South Florida Municipal Law Enforcement agencies aided in providing safety and security for the residents of the Town of Surfside, AND*
- Whereas, *Hatzalah of South Florida, was on the scene providing medical aid to the victims, and remained on-site throughout the rescue and recovery effort to provide medical aid to the search and rescue teams, AND*
- Whereas, *volunteers from Chessed Shel Emes remained on-site throughout the rescue and recovery effort, ensuring that all those recovered were treated with the utmost dignity & respect as per Halachic traditions, AND*
- Whereas, *Strong for Surfside was a movement formed by many businesses, organizations, and private citizens who joined together to provide aid and support during the chaotic weeks that followed, AND*
- Whereas, *Jewish Community Services (JCS), Red Cross, Global Empowerment Mission (GEM), EZS, and the Shul provided and continue to provide much needed aid and support to the victims of the collapse.*
- Now *therefore I, Shlomo Danzinger, Mayor of Surfside, do hereby proclaim the month of June 2022, as "Surfside Heroes Appreciation Month" in the Town of Surfside and encourage all residents of Surfside to join in recognizing these heroes by actions of acknowledging, supporting, and showing appreciation to the aforementioned organizations.*

*Signed by my hand at Surfside Town Hall, in the Commission Chambers, on this the 14<sup>th</sup> day of June 2022.*

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*Shlomo Danzinger, Mayor  
Town of Surfside*



## MEMORANDUM

ITEM NO. 5B.

**To:** Honorable Mayor, Vice-Mayor and Members of the Town Commission

**From:** Shlomo Danzinger, Mayor

**Date:** June 14, 2022

**Subject:** **June 24th - Surfside Champlain Towers South Remembrance Day**

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To adopt a resolution to commemorate and honor the name June 24<sup>th</sup> as Surfside Champlain Towers South Remembrance Day.

On June 24, 2001 The Champlain Towers South collapsed killing 98 people. As the property on 88th Street is being sold, and a new development will be erected in its place, it's important that what happened on that night is never forgotten. This resolution - being mirrored by Miami Dade County - will ensure the the tragic event that occurred on June 24, 2021 will never be forgotten by the Town of Surfside.

[Resolution Surfside Champlain Towers South Remembrance Day.docx](#)

**RESOLUTION NO. 2022-\_\_\_\_\_**

**A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, COMMEMORATING AND HONORING THE VICTIMS, FAMILY AND FRIENDS, FIRST-RESPONDERS, AND SEARCH-AND-RESCUE TEAMS TO THE CHAMPLAIN TOWERS SURFSIDE COLLAPSE; DECLARING JUNE 24, 2022, AND EACH JUNE 24 THEREAFTER, AS “SURFSIDE CHAMPLAIN TOWERS SOUTH REMEMBRANCE DAY”; PROVIDING FOR IMPLEMENTATION; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, in the early morning hours of June 24, 2021, the residential condominium Champlain Towers South Condominium located at 8777 Collins Avenue, Surfside, Florida 33154 (“Champlain Towers South”), experienced a major structural collapse of a substantial portion of the building (“Building Collapse”); and

**WHEREAS**, the Town’s municipal first responders immediately mobilized to rescue as many Champlain Towers South residents as possible and to address the major threats posed by the Building Collapse to the health, safety, and welfare of the Town’s residents; and

**WHEREAS**, on June 24, 2021, the Governor Ron DeSantis issued Executive Order Number 21-148 declaring a State of Emergency in Miami-Dade County due to the Building Collapse in order to assist in the response and recovery of the Building Collapse and the development of mitigation plans necessary to address hazards posed by the Building Collapse; and

**WHEREAS**, similarly, on June 24, 2021, the Mayor of Miami-Dade County (“County”) issued a Declaration of Local State of Emergency in connection with the Building Collapse in order to assist in the search and rescue operation in the Town; and

**WHEREAS**, on June 25, 2021, the Town Commission adopted Resolution No. 2021-2802, declaring a Local State of Emergency due to the Building Collapse within the Town; and

**WHEREAS**, despite the courageous rescue efforts of the Town, County, State, and National first-responders, and other foreign search-and-rescue teams, the Building Collapse resulted in the deaths of 98 people and injuries to many others; and

**WHEREAS**, the Town desires to respectfully commemorate and honor the victims, families and friends, first-responders, and other search-and-rescue teams affected by the Champlain Towers South Building Collapse by declaring the 24<sup>th</sup> day of June, 2022, and the 24<sup>th</sup> day of June each year thereafter, as “Surfside Champlain Towers South Remembrance Day”; and

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

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

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

**Section 2. Commemoration; Declaration of “Surfside Champlain Towers South Remembrance Day”.** That the Town Commission respectfully commemorates and honors the victims, families and friends, first-responders, and search and rescue teams affected by the Champlain Towers South Building Collapse. The Town Commission hereby declares June 24, 2022, and each June 24 thereafter, as “Surfside Champlain Towers South Remembrance Day”.

**Section 3. Implementation.** That the Town Manager and Town Officials are hereby authorized to take all actions necessary to implement the purposes of this Resolution,

**Section 4. Effective Date.** This Resolution shall become effective immediately upon adoption.

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

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

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

**FINAL VOTE ON ADOPTION:**

Commissioner Fred Landsman \_\_\_\_\_

Commissioner Marianne Meisheid \_\_\_\_\_

Commissioner Nelly Velasquez \_\_\_\_\_

Vice Mayor Jeffrey Rose \_\_\_\_\_

Mayor Shlomo Danzinger \_\_\_\_\_

\_\_\_\_\_  
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



## MEMORANDUM

ITEM NO. 5C.

**To:** Honorable Mayor, Vice-Mayor and Members of the Town Commission

**From:** Vice Mayor Jeff Rose

**Date:** June 14, 2022

**Subject:** **New High School for Surfside and Neighboring Communities**

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For the town commission to adopt the resolution to work with the Miami Dade County School Board and Neighboring Communities in support of a new high school for Surfside and Neighboring Communities, including Golden Beach, Sunny Isles Beach, Bay Harbor Islands, Bal Harbour and the Village of Indian Creek

For the town commission to work with the Miami-Dade County School Board and surrounding neighborhood communities, Golden Beach, Sunny Isles Beach, Bal Harbour, Surfside, Bay Harbor Islands, and the Village of Indian Creek, to bring a new high school to the area.

[Resolution Expressing Support For New High School.DOCX](#)



**RESOLUTION NO. 2022-\_\_\_\_\_**

**A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, EXPRESSING SUPPORT FOR THE ESTABLISHMENT OF A NEW HIGH SCHOOL TO SERVICE SURFSIDE AND NEIGHBORING COMMUNITIES; AUTHORIZING THE TOWN MANAGER TO WORK WITH NEIGHBORING COMMUNITIES AND THE MIAMI-DADE COUNTY SCHOOL BOARD TO ESTABLISH A NEW HIGH SCHOOL FOR THE AREA; PROVIDING FOR TRANSMITTAL; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the Town of Surfside (the “Town”) strives to improve the quality of life of all of residents, including the youth and education of our community; and

**WHEREAS**, the Town Commission finds that there is a need for a public high school for use by the Town’s residents, as there is no public school located within the Town’s geographical boundaries or within the geographical boundaries of neighboring communities, including Golden Beach, Sunny Isles Beach, Bay Harbor Islands, Bal Harbour, and the Village of Indian Creek (the “Neighboring Communities”); and

**WHEREAS**, pursuant to Section 1001.42, Florida Statutes, the School Board of Miami-Dade County (the “School Board”) is authorized to adopt and provide for the execution of plans for the establishment, organization, and operation of the schools within Miami-Dade County, Florida; and

**WHEREAS**, the Town desires the establishment of a nearby public high school for use by the Town’s residents and Neighboring Communities; and

**WHEREAS**, the Town Commission desires to work with the Neighboring Communities in support of a new public high school in close proximity to the Town to service Town residents and Neighboring Communities; 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.** The above-stated recitals are true and correct and are incorporated herein by this reference.

**Section 2. Expressing Support.** That the Town expresses support for the establishment of a new public high school in close proximity to the Town to service Town residents and Neighboring Communities.

**Section 3. Authorization.** That the Town Manager and Town Officials are hereby authorized to take any and all actions in furtherance of this Resolution, including working with Neighboring Communities and the School Board to accomplish the purposes of this Resolution .

**Section 4. Transmittal.** The Town Clerk is directed to transmit this Resolution to the Neighboring Communities and the School Board. .

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

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

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

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

**FINAL VOTE ON ADOPTION:**

Commissioner Fred Landsman \_\_\_\_\_

Commissioner Marianne Meischeid \_\_\_\_\_

Commissioner Nelly Velasquez \_\_\_\_\_

Vice Mayor Jeffrey Rose \_\_\_\_\_

Mayor Shlomo Danzinger \_\_\_\_\_

\_\_\_\_\_  
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



## TOWN MANAGER'S REPORT

JUNE 14, 2022

### I. TOWN DEPARTMENTS

#### Building Department

**A.** The increase in commercial construction, with four new beachfront condominiums either under construction or filing for Site Plan review and approval, continues to keep the building department busy. Eden South, LLC, located across from Town Hall and occupying the entire half block up to 94<sup>th</sup> Street, is expected to receive its foundation only permit within the next 30 days to begin the previously approved Site Plan/construction in early fall of this year. Other commercial construction activity includes preparations to demolish the existing Hill Crest condominium. These significant commercial projects total over \$416,000,000.00 in combined construction value. When our brisk residential construction is added in, the total approaches nearly half a billion dollars of construction to be administered by the Building Department and built in the next two years.

**B.** Building Department Permit and Inspection numbers continue to show solid growth as follows: Building Permits issued: 120; Inspections performed: 217; Lien searches performed: 20 and TCO/COs issued: 2 (Downtown Commercial Businesses).

**C.** The Building Department is anticipating the second reading, in early June, and adoption into law by Miami-Dade County of the acceleration of the 40 Year Building Recertification. This landmark legislation accelerates the recertification period of multi-family and commercial buildings from 40 years to 30 years of age. Answering the Building Department's call for responsible change, this historic move will dramatically increase life safety in buildings throughout Miami-Dade County. This is the most significant change in building code safety in Florida since the consolidation of the Florida Building Codes 22 years ago in response to Hurricane Andrew which decimated South Florida. We anticipate this major change, not only at the county level to the Miami-Dade Code, but also a change at the state level amending the 2023 Florida Existing Building Code with the addition of a chapter entitled: "Buildings 30 Years or Older".

**D.** The Building Department completed staff software training during the first week in May to facilitate the commencement of our Town's Updated Tyler Software platform.

With this new software we will open a customer service/contractor online portal for online permitting, inspection requests and plans review. This will greatly increase speed and efficiency of permits issued, raise the levels of service and eliminate most lobby traffic which now takes up much of our staff's time.

### **Code Compliance Division**

**A. Code Compliance Cases:** As of June 1, 2022, the total number of active, open cases being managed is 201. Of these cases, 109 cases are still under investigation and are working towards compliance; 12 cases are on-hold; 16 cases are in the Special Master hearing queue; 5 cases are in post-hearing status; 18 code cases have been issued liens and remain unpaid; 41 code cases have service liens and remain unpaid. Properties with unpaid liens are sent reminder letters on a semi-annual basis. For the month of April, the Code Compliance staff has conducted an approximate of 228 inspections.

**B. Collected Civil Penalty Fines:** Unresolved code compliance cases accrue fines until the code violation is resolved. After the violation is corrected, the property owner is notified to remit the fine amount due. In many cases, the fine amount is either paid, resolved via a settlement agreement, or referred to the Town's Special Master for a hearing and potential mitigation on the fines due.

The following is a summary by fiscal year of the fine amounts collected by the Town:

- FY 22: As of June 1, 2022, 74 cases have paid/settle for a total monetary collection of \$35,324.38.
- FY 21: 86 cases paid/settled for a total collection of \$39,464.
- FY 20: 109 cases paid/settled for a total collection of \$115,851.

**C.** The Code Compliance Division has assisted the Finance Department by conducting 31 Code lien searches for the month of May.

**D.** The Code Compliance Division has continued to assist the Town Clerk's Office with public records requests.

**E.** The Division presented 7 Code Compliance cases to the Special Master.

**F.** At the beginning of the month, the division performed night inspections to identify lighting that was not in compliance with the Marine Turtle Lighting ordinance. As part of our education efforts, we installed a "Turtle lighting" display in the lobby of Town Hall. In addition, code staff distributed marine turtle nesting season information to all properties east of Collins Avenue.

### ***Community Services & Public Communications Department***

**A.** The new Tourist Board met for the first time this month and is eager to hit the ground running. New members are looking forward to budget recommendations to include additional special events and programming for FY 2023/24.

**B.** The Tourist Bureau unveiled the commemorative Ke turtle sculpture on the beach entrance at 95<sup>th</sup> Street through a unique historical tour event featuring Archeologist and Tequesta expert Robert Carr, HistoryMiami's Paul George, Elected Officials, Members of the Tourist Board, design partners at the University of Art and Design, as well as staff. The dedicated website, SurfsideKe.com, has also been launched to tell the full story behind the concept.

**C.** The Tourist Bureau held two important events to finish out May, Paddletopia on the 21<sup>st</sup> and 22<sup>nd</sup>, and the return of the Classic Car show on May 29. Both events were successful. Paddletopia counted with a strong number of paddleboarders and plenty of fitness and wellness activities for attendees.

**D.** The June Gazette includes important community reminders for the 2022 Hurricane Season. The information will continue to be circulated throughout the month.

**E.** CSPC continues to assist in the organization of the June 24 Surfside Remembrance Event working on graphics, layout logistics and vendor coordination. A dedicated mailer is also being mailed out to the community.

### ***Human Resources***

Human Resources continues to provide support and assistance to the Town Administration, departments and staff in relation to a variety of items/services to include:

**A. AFSCME Florida Council 79:** Reviewed AFSCME proposal with Town Administration. AFSCME and the Town held its fifth collective bargaining on May 12, 2022. Town Administration requested a shade session with the Town Commission. The date for the shade session is pending.

**B. Fraternal Order of Police (FOP):** Contract negotiations with the FOP will begin June 20<sup>th</sup>, 2022.

**C. EEOC Discrimination Complaints:** Awaiting on response with regards to EEOC complaints filed by Mr. Victor May.

**D. Classification and Compensation Study:** Reviewed and discussed the draft solution file with Evergreen and Town Management.

**E. FMLA and Workers Comp:** Provided assistance to staff regarding FMLA and workers comp matter.

**F. COVID-19 Health Pandemic:** Provided staff with COVID-19 information, support and assistance.

**G. Safety and Wellness Initiatives:** Provided staff with information regarding weekly webinars and classes for mental health support, nutrition, fitness, support groups, community health initiatives and exercise classes. Collaborated with the Town's insurance agent of record to schedule and organize the employee wellness fair.

**H. Employee Events:** Organized the Employee and Family Appreciation Day held May 22, 2022.

**I. Background/Offer/Orientation:** Conducted the background investigation, prepared offer letter and conducted initial employment orientation for the Refuse Collector, Lifeguard, and Recreation Leader I.

**J. Promotions:** Facilitated information and participated in discussions regarding internal opportunities for growth.

**K. Other Human Resources Functions to include:**

- Employee appreciation, recognition, and activities
- Pre-employment Background Check
- Conditional offer of employment offers (withdrawal – when applicable)
- New hire orientation
- New hire reporting – Florida Department of Revenue
- Labor statistics report – U.S. Department of Labor Statistics
- Workers' compensation
- Grievance
- Interviews
- Exit interviews
- Personnel counseling
- Retirement plan related assistance
- Recruitment / Advertising for vacancies
- Responding to candidates / acknowledge resumes received
- Verification of Employment Requests
- Personnel maintenance changes
- Insurance enrollment, changes and termination of coverage
- Public records requests related to personnel (active/inactive)
- Criminal records check – level 2 for all Parks and Recreation instructors/concession staff

### ***Finance Department***

Monthly Budget to Actual Summary as of April 30, 2022 – *Attachment "A"*

### ***Parks and Recreation Department***

Parks and Recreation continued to operate the following facilities: The 96th Street Park, the Beach Lifeguard Tower, Hawthorne Tot Lot and the Dog Park. The Tennis Center continues to operate with court reservations during prime hours. The pool continues to operate with lap swimming registrations during all hours of operation. Pool hours continue to be adjusted month to month to maximize day light hours. Current Pool hours are from 7:00 a.m. - 8:00 p.m. for the Summer of 2022.

The final Spring programing session be ending the last week of May. Tennis programing for Summer is being looked into by staff. Summer Camp hosted by PEAR Programs registration has begun and summer session's I and II are filled and have a waiting list.

P&R has contracted with Lifeguard Miami LLC to run a junior lifeguard program. This program will run for 3, 2-week sessions and will begin June 20<sup>th</sup>. Registration will begin the week of June 6. Staff is also working on an independent contract with LM, LLC to possibly use lifeguards from their agency when needed to help supplement hours of existing town lifeguards. This may help staffing issues during this time of Lifeguard shortages.

The 96th Street Park RFP has been released and will run for 60 days. This will be the step to start the selection of a construction company to begin the construction process. The RFP was released on May 27, 2022. The final day of the add will be July 26, 2022.

The annual Town Veteran's Day was held 5/30/22. Was a great home town event to honor all that have served over the years.

### ***Planning Department***

Development Application Process (2012 – Present) – *Attachment "B"*

Downtown Walkability and Design Study – Progress Report for April 2022 – *Attachment "C"*

### ***Police Department***

#### **A. Police Department Statistics (May 1 – May 24, 2022)**

- Traffic Citations – 294
- Parking Citations – 495



- Arrests – 4
- Dispatch Events – 1,011
- Incident/Crime Reports – 31

## **B. Champlain Towers South Memorial Police Department Operational Plan**

The Police Department is creating and implementing an action plan to provide the highest level of security for the memorial events in honor of the one-year anniversary of the Champlain Towers South building collapse. In the overnight hours of June 24, 2022, around 1:20 a.m., a candlelight vigil will be held onsite for invited guests only and at 10:00 a.m. a memorial ceremony open to the public will be held onsite. The operational plan will include security for both events as well as traffic mitigation. Security surveys will be conducted prior to the occasion by the Security Director from the Greater Miami Jewish Federation. Neighboring agencies will be providing additional personnel to assist with all aspects of the operation. Captain Antonio Marciante will oversee the operation and Chief Rogelio J. Torres Jr. and Captain John Healy will be supplemental sources of command and site security.

## **C. Click it Ticket Campaign**

Seat belts have been proven to be one of the best ways to save your life in a crash. Yet, many still don't buckle up. Worse still, not wearing a seat belt is a habit that will pass on to impressionable youth who, in turn, will think it is safe to not buckle up. The Click It or Ticket campaign focuses on safety education, strong laws, and law enforcement support to save lives. The Police Department is proudly participating once again in this significant event. The Click It or Ticket Enforcement Campaign began May 23<sup>rd</sup> and will conclude June 5<sup>th</sup>, 2022.

## **D. Police Events/Community Outreach**

- The Florida Department of Law Enforcement (FDLE) updated their Firearms Training Program for firearms instructors and ultimately police officers. As a member of the FDLE Firearms Committee, Chief Rogelio J. Torres Jr. participated in the Firearms Instruction class comprising of the new curriculum providing valuable feedback on the program. The class took place in Tallahassee, Florida from May 31 to June 2, 2022. The updated curriculum will be presented to all Firearms Instructors certified in the State of Florida.
- The Surfside Police Department will host a community blood drive on June 5, 2022, 11:00 a.m. – 4:30 p.m. in the Town Hall municipal parking lot.
- Officer Kemuel Gambirazio, Officer Ariol Lage, Officer Craig Lovellette and Officer Joseph Matthews will be recognized and honored at the Town Commission meeting on June 14, 2022 as the Officers of the Year for 2021 for their actions in the immediate aftermath of the Champlain Towers South collapse.

- The Surfside Police Department in conjunction with the Florida Department of Transportation (FDOT) District Six in conjunction will host a multi-agency traffic safety enforcement and educational detail on June 15, 2022 from 8:00 a.m. to 12:00 p.m. Law enforcement will be focusing primarily on aggressive driving (as part of the Drive Safe campaign), distracted driving, red-light running, speeding, seatbelt use, move-over law compliance, bike/pedestrian safety compliance and general traffic safety. Bal Harbour, Bay Harbor Islands, Golden Beach, Miami Beach and North Miami Police Departments will be participating in this event along with Surfside Police Sergeant Jay Matelis and Officers Loxley Arch and Jose Valino.
- The FLOW (Florida Licensing on Wheels) – June 21, 2022 from 10:00 a.m. to 2:00 p.m. in the Commission Chambers.
- The Surfside Police Department will host a community blood drive on June 29, 2022, 11:00 a.m. – 4:30 p.m. in the Town Hall municipal parking lot.
- The Bike with the Chief community initiative - June 29, 2022 at 5:00 p.m. at Town Hall.
- The monthly Coffee with the Cops – June 30, 2022 at 10:00 a.m. at Starbucks.

**II. SEE CLICK FIX REPORT**

Requests filtered by request category that have been created 05/01/2022 - 05/31/2022

Request Category	Created in period	Closed in period	Average days to close
Beach Issue	3	3	8.9
Code Compliance (Violation)	1	1	0.1
Drainage/Flooding (PW)	1	1	0.8
Other	4	4	2.5
Solid Waste (Commercial) (PW)	1	0	
Street lights (PW)	1	1	2.5
Surfside Dog Park (P & R)	1	1	1.7
Utilities (Water/Sewer) (PW)	1	1	0
Parking Issue	2	2	0.5

**III. TOWN PROJECTS**

**96<sup>th</sup> Street Park**

The Park Construction RFQ was issued on Friday, May 27th. A pre-submittal conference is scheduled for June 10th, questions are due June 24th and proposals are due July 27th. Park permitting is ongoing.

**Abbott Avenue Drainage Study**

Progress Status Report – Attachment “D”

***Byron/Bay Closure Study***

Miami-Dade County DTPW's reviewed the Traffic Study methodology for the traffic analysis related to potential road closure of Byron Avenue and Bay Drive at 96th Street and concluded that it cannot complete and render a final decision of the methodology review due to the current traffic conditions of the area. Various MOT (maintenance of traffic) are in place after the building collapse at 8777 Collins Avenue which will impact and affect the overall Town wide traffic circulation. The Town of Surfside can resubmit the methodology once traffic conditions are back to normal (pre-building collapse) which include all roadways being open to the public.

***Undergrounding of Utilities***

Recent activity occurring for the utility undergrounding project has focused primarily on confirming the scope of the project as presented by FPL with their Binding Cost Estimate and preparation of a Commission Resolution allowing the Town Manager to execute same. All conditions and areas of service as required for the project's scope are confirmed to be correct. Preliminary discussions have commenced regarding the commercial alley corridor between Collins and Harding Avenues to secure needed access for the conversion on all overhead utility services to underground including establishing Rights of Way and Easements as may be required.

Respectfully submitted by:



Andrew E. Hyatt, Town Manager

**TOWN OF SURFSIDE, FLORIDA**  
**MONTHLY BUDGET TO ACTUAL SUMMARY**  
**FISCAL YEAR 2022**  
**As of APRIL 30, 2022**  
**58% OF YEAR EXPIRED (BENCHMARK)**

Agenda Item #

Page

1 of 3

June 14, 2022

GOVERNMENTAL FUNDS	ACTUAL	ANNUAL BUDGET	% BUDGET
<b>GENERAL FUND - 001</b>			
REVENUE	\$ 14,252,302	\$17,533,069	81%
EXPENDITURES	8,864,899	\$17,533,069	51%
Net Change in Fund Balance	5,387,403		
Fund Balance-September 30, 2021 (Audited)	21,091,150		
Fund Balance-April 30, 2022 (Reserves)	<u>\$ 26,478,553</u>		
<b>TOURIST RESORT FUND - 102</b>			
REVENUE	\$ 3,733,153	\$3,538,626	105%
EXPENDITURES	1,761,119	\$3,538,626	50%
Net Change in Fund Balance	1,972,034		
Fund Balance-September 30, 2021 (Audited)	4,264,457		
Fund Balance-April 30, 2022 (Reserves)	<u>\$ 6,236,491</u>		
<b>POLICE FORFEITURE FUND - 105</b>			
REVENUE	\$ -	\$79,534	0%
EXPENDITURES	28,853	\$79,534	36%
Net Change in Fund Balance	\$ (28,853)		
Fund Balance-September 30, 2021 (Audited)	221,034		
Fund Balance-April 30, 2022 (Reserves)	<u>\$ 192,181</u>		
<b>TRANSPORTATION SURTAX FUND - 107</b>			
REVENUE	\$ 137,356	\$319,149	43%
EXPENDITURES	184,079	\$319,149	58%
Net Change in Fund Balance	(46,723)		
Fund Balance-September 30, 2021 (Audited)	569,453		
Fund Balance-April 30, 2022 (Reserves)	<u>\$ 522,730</u>		
<b>BUILDING FUND - 150</b>			
REVENUE	\$ 655,011	\$1,182,660	55%
EXPENDITURES	686,649	\$1,182,660	58%
Net Change in Fund Balance	(31,638)		
Fund Balance-September 30, 2021 (Audited)	1,904,548		
Fund Balance-April 30, 2022 (Reserves)	<u>\$ 1,872,910</u>		
<b>CAPITAL PROJECTS FUND - 301</b>			
REVENUE	\$ 619,586	\$4,721,404	13%
EXPENDITURES	604,852	\$4,721,404	13%
Net Change in Fund Balance	14,734		
Fund Balance-September 30, 2021 (Audited)	5,894,823		
Fund Balance-March 31, 2022 (Reserves)	<u>\$ 5,909,557</u>		


**NOTES:**

- 1) Many revenues for April 2022 are received in subsequent months (timing difference) and are recorded on a cash basis in the month received.
- 2) Expenditures include payments and encumbrances. An encumbrance is a reservation of a budget appropriation to ensure that there is sufficient funding available to pay for a specific obligation.
- A. Includes \$2,000,000 available for hurricane/emergencies. The audited balance of \$19,091,151 is unassigned fund balance (reserves).

PROPRIETARY FUNDS	ACTUAL	ANNUAL BUDGET	% BUDGET
<b>WATER &amp; SEWER FUND - 401</b>			
REVENUE	\$ 2,383,848	\$4,497,641	53%
EXPENDITURES	1,666,572	\$4,497,641	37%
Change in Net Position	717,276		
Unrestricted Net Position-September 30, 2021 (Audited)	(1,389,877)		
Unrestricted Net Position-April 30, 2022 (Reserves)	\$ (672,601)		
<b>MUNICIPAL PARKING FUND - 402</b>			
REVENUE	\$ 961,516	\$1,264,180	76%
EXPENDITURES	647,878	\$1,264,180	51%
Change in Net Position	313,638		
Unrestricted Net Position-September 30, 2021 (Audited)	1,657,883		
Unrestricted Net Position-April 30, 2022 (Reserves)	\$ 1,971,521		
<b>SOLID WASTE FUND - 403</b>			
REVENUE	\$ 1,123,494	\$1,811,003	62%
EXPENDITURES	1,053,586	\$1,811,003	58%
Change in Net Position	69,908		
Unrestricted Net Position-September 30, 2021 (Audited)	(271,836)		
Unrestricted Net Position-April 30, 2022 (Reserves)	\$ (201,928)		
<b>STORMWATER FUND - 404</b>			
REVENUE	\$ 507,270	\$1,327,284	38%
EXPENDITURES	705,780	\$1,327,284	53%
Change in Net Position	(198,510)		
Unrestricted Net Position-September 30, 2021 (Audited)	3,581,622		
Unrestricted Net Position-April 30, 2022 (Reserves)	\$ 3,383,112		
<b>FLEET MANAGEMENT FUND - 501</b>			
REVENUE	\$ 456,423	\$780,044	59%
EXPENDITURES	594,219	\$780,044	76%
Change in Net Position	(137,796)		
Unrestricted Net Position-September 30, 2021 (Audited)	1,091,020		
Unrestricted Net Position-April 30, 2022 (Reserves)	\$ 953,224		



Jason D. Greene, Assistant Town Manager/CFO



Andrew Hyatt, Town Manager

**Town of Surfside**  
**Net Funds Historical Balances**  
**Period 2018 - April 2022**

FUND	9/30/2018	9/30/2019	9/30/2020	9/30/2021	4/30/2022	CAGR <sup>(a)</sup>
General	\$ 10,902,050	\$ 14,984,105	\$ 18,286,748	\$ 21,091,150	\$ 26,478,553	24.6%
Tourist Resort	356,313	1,640,525	2,109,658	4,264,457	6,236,491	128.7%
Police Forfeiture	159,527	105,725	168,289	221,034	192,181	11.5%
Transportation Surtax	263,292	328,377	442,856	569,453	522,730	29.3%
Building	2,760,673	2,563,517	1,991,388	1,904,548	1,872,910	-2.2%
Capital Projects	2,158,902	3,048,582	4,899,128	5,894,823	5,909,557	39.8%
Water & Sewer	(2,546,398)	(2,367,098)	(1,733,610)	(1,389,877)	(672,601)	-18.3%
Municipal Parking	943,315	1,198,948	1,293,993	1,657,883	1,971,521	20.7%
Solid Waste	601,201	641,636	219,615	(271,836)	(201,928)	-176.8%
Stormwater	3,203,878	3,200,132	3,205,050	3,581,622	3,383,112	3.8%
Fleet Management	-	585,363	825,468	1,091,020	953,224	N/A
<b>Total</b>	<b>\$ 18,802,753</b>	<b>\$ 25,929,812</b>	<b>\$ 31,708,583</b>	<b>\$ 38,614,277</b>	<b>\$ 46,645,750</b>	<b>25.5%</b>

(a) - CAGR stands for Compound Average Growth Rate, and is a useful measure of growth over multiple time periods. It represents the growth rate of a Fund Balance from the initial time value to the ending balance if you assume that the fund has been compounding over a time period.

Last updated on 6/6/2022

DEVELOPMENT APPLICATION PROCESS (2012 - PRESENT)												
Application Date Location	Project Description	Zoning Process			Density/Intensity		Variances		Building Permit		Status	
		DRG	P&Z	TC	Approved	Requested	Received	Application No.	Status			
Original submittal: 7/13/2012 Site plan amendment: 4/16/16 9011 Collins Avenue	Surf Club - restoration of the famous surf club historic structure and for the construction of new improvements	DRG - 7/31/2012, 8/23/2012, site plan amendment: 5/16/2016, 8/4/2016, 3/9/2017, 5/11/2017 P&Z - 9/27/2012, site plan amendment: 8/31/2017 TC - Original site plan: 10/15/2012, site plan amendment: 10/10/2017 Site Plan Ext -			762 units	257 units	None	None	None	13-727	Issued	Fort Partners has indicated a desire to obtain a final CO and landscape approval needs to be resolved. A landscape inspection was performed and comments were provided by the Town Planner on November 5, 2021. Once the comments are addressed a final inspection will be required.
7/20/2012 9450 Collins Ave	The Shul - New multiuse glass atrium and joining learning center (3 stories)	DRG - 2/11/2013, 3/27/2013, 7/9/2013 P&Z - 2/27/2014 TC - 10/28/2014 Site Plan Ext -			3 story expansion of 8,588.9 square feet		None	None	None	14-509	Issued	A landscape inspection has been performed and the proposed landscape revisions have been reviewed. Preliminary building signage plans have been submitted and staff comments provided. Awaiting signage plan revisions.
8/12/2015 12/23/20 Site Plan Amendment 9133 Collins Ave & 9149 Collins Ave	Surf Club II - Redevelopment of property with a multi-family residential project and renovation of existing historic structure. Reduction of dwelling units and hotel rooms. Revisions to expand underground parking and revisions to balcony design	DRG - 9/4/2015, 3/9/2017, 9/17/2017, 2/9/2021 P&Z - 12/7/2017, 2/11/2021, 4/29/21 2/13/2018, 4/13/21, 6/8/21 Scheduled Site Plan Ext - Site Plan Extension of approved by TC on 7/28 TC Meeting. Applicant requested extension of site plan due to FL Declaration of Emergency. Additional Covid extension - New Permit Due Date December 26, 2021		TC -	199 units	Reduced to 31 condo units, 26 hotel rooms	None	None	None	20-536	Foundation Only Permit Issued	
Original submittal: 2/11/2016 Revised submittal: 5/31/18 9380, 9372, 9364, 9348, 9340, 9322, 9316 & 9300 Collins Ave	9300 Collins Ave - demolition of all existing improvements, construction of 3-story building	DRG - Original submittal: 3/10/2016, 4/27/2016 Revised submittal: 6/27/2018, 8/28/2018, 11/1/18 Original approval: 7/18/2016, Revised approval: 11/29/18 TC - Original approval: 11/10/2016, Approved February 26, 2019 Site Plan Ext - Request submitted to extend approval due to emergency declaration (Hurricane Dorian). Additional Covid and Tropical Storm Elsa extensions - New Permit Due Date February 4, 2024		P&Z -	250 units	Request is for 205 units	None	None	None	18-610	Has not applied for permit yet	Information supplied by the Eden Surfside LLC to Town Bldg Dept on 11/30/21 indicates desire to obtain a foundation permit. MDC receipts for impact fees of \$1,105,679.93 (Pd. 8/2/21) and 20% Water and Sewer fees (Pd. 10/26/21) have been received.
5/4/2016 8955 Collins Ave	Residential Condominiums	DRG - 6/20/2016, 7/27/2016 P&Z - 10/27/2016 11/10/2016 - 11/10/2016 Site Plan Ext -		TC	110 units	16 units	None	None	None	16-602	Issued	A final landscape inspection was performed on May 20, 2022. One issue still needs to be resolved in the area of the air-vents.
3/14/22 9309 - 9317 Collins Ave	93 Ocean - Demolition of 2 existing 3 story buildings and construction of 12 story condominium building with 27 dwelling units.	DRG - to be scheduled. P&Z - Applicant asked to be removed from May 26, 2022 P & Z Mtg. TC										The applicant pulled the application from the May 26, 2022 P & Z meeting. Awaiting re-submission for Site Plan Review.

DEVELOPMENT APPLICATION PROCESS (2012 - PRESENT), Cont.										
Application Date Location	Project Description	Zoning Process		Density/Intensity		Variances		Building Permit		Status
		Allowed	Approved	Requested	Received	Application No.	Status			
10/1/2016, 5/6/21 9116 Harding Ave	303 Surfside - 4 Townhouses (2018) 303 Surfside - 6 Townhouses (2021)	DRG - 11/2/2016, 2/7/2017, 5/18/2017, 6/21 TBD P&Z - 6/27/2018, 6/21 TBD TC - 4/14/2018 Approval Expired Site Plan Ext -	8 units	4 units	None	None	None	Site Plan approval has expired		
5/19/2017 4/1/22 8995 Collins Ave	Surf House - site plan approval for expansion to existing multi-family building deemed architecturally significant per Sec. 90-34(3) of the Town Code.	DRG - 6/19/2017, 8/24/2017, 9/28/2017, May 2022 P&Z - 2/22/2018, 4/26/2018, 5/31/2018, approved on 10/27/19 TC - 12/10/19 Site Plan Ext - 2 COVID Extensions New Permit Deadline 9/27/23 Plan Amendment - P & Z approval May 26, 2022 TC - Scheduled for 6/16/22	99 units	Resolution # 19-2661 approved by Town Commission on December 10, 2019 for 12 stories, 34 units and 72 parking spaces.	Original application requested 3 Variances. Final application did not include any Variances. Site Plan Amendment - Density Reduction from 34 to 19 Units Other interior, exterior and construction revisions.	None	Has not applied for permit yet	Planning and Zoning Board recommended approval of Site Plan Amendment with reduction to 19 units and interior and exterior revisions on May 26, 2022. Town Commission consideration scheduled for June 16, 2022		
Original Submittal: 1/06/2015 Revised submittals: 8/01/2016, 12/23/2016, 09/09/2018, 10/29/2018 9/25/2020 8851 Harding Avenue	18 multi-family units	DRG - 01/22/2015, 08/18/2016, 01/23/2017, 03/23/2018, 11/29/2018 Meeting Pending, 2/25/2021 P&Z - 01/31/19 P&Z recommended approval (Requires P&Z Reconsider) 2/25/2021 P&Z Denied Plan TC - Denied by the Commission (requires reconsideration by TC). TC Approval 5/26/21 Site Plan Ext -	33 units	Current request is for 18 units. Town Planner, DRG recommended approval, P&Z recommended denial	1 requested: Section 90-82, - Off-street loading requirements (Loading Space Size). Not Required in 2021 Plan	Not needed in 2021 request		Site Plan Approval 5/26/21		
7/3/2019 9580/Abbott Ave	Young Israel Variance Request to eliminate landscaping to provide for a handicapped accessible ramp	DRG - N/A P&Z - 8/29/2019 TC - 10/29/19 Site Plan Ext -			1 requested: eliminate landscaping along the north side of the building	None				
1/7/2020 8926 Collins Avenue	Arte request to have FPL vault encroach into landscape buffer.	DRG - N/A P&Z - 1/30/2020 TC - 2/11/2020 Site Plan Ext -			Landscape buffer	Approved		This parcel on the west side of Collins Avenue was also inspected along with the residential component on the east side of Collins Avenue. See discussion on first page spreadsheet.		
11/18/2021 9165 Collins Avenue	Site Plan approval to develop an 11 story, 14 unit MF Bldg with 33 parking spaces in the H120 Zoning District on the north side of the Seaway and south side of the Carrille.	DRG - 1/14/22 - Via Zoom - Approved Proceeding to P & Z P&Z - 1/27/22 - deferred to 2/24/22 P&Z Mtg TC - 2/24/22 - Recommended approval TC - Site Plan Approval received 4/12/22	58 units	Proposing 14 units	None			DRG recommended on January 14, 2022 proceeding to P&Z on January 27, 2022. After discussion, P&Z decided to continue the item to the February 24, 2022. P&Z recommended approval at the February 24, 2022 meeting.		
4/27/2022 8809 Harding Avenue	Site Plan Application for 4 Townhouse Units	DRG - July-August 2022 P&Z - July-August 2022 TC - to be scheduled	TBD	Proposing 4 units	Preliminary review comments are being prepared at the request of the Applicant. Actual Site Plan submission delayed to the July-August P & Z.			Site Plan Application received 4/27/22 is under review for completeness and scheduling.		



## Town of Surfside Downtown Walkability and Design Study

Progress Report for April 2022

Marlin Engineering, Inc.

This project is a Sidewalk Walkability Feasibility Study for 2 blocks of Harding Avenue between 94th Street and 96th Street including the municipal lot on the south side of 94<sup>th</sup> Street. Parking occupancy counts and commercial floor area inventories of the area will be utilized to establish current parking usage and characteristics along Harding Avenue. The findings of existing studies will also be included in the written report. Efforts will be initiated to solicit input from resident, tourist and business stakeholders. Two (2) public presentations will be made to the Town Commission to present the draft and final results of the study.

### Task 1 – Kick off Meeting and Project Management

Discussions have been held with key Town staff on the activities of the Study. This Task also provides for on-going project management and communication with the Town Manager and Town Commission. Work on this Task is on-going.

### Task 2 - Data Collection

Real time parking data was provided by the Town's Parking Operation Manager for Harding Avenue (72 parking spaces), the Abbott Lot (205 parking spaces) and the 94<sup>th</sup> Street Lot (99 parking spaces). This data coincided with the February 24 - 27, 2022 video camera data collection period. Parking occupancy counts will be collected during peak mid-day and evening time frames. An inventory of downtown store fronts has been tabulated from the Miami Dade County Property Appraiser files. FDOT traffic count information and information from local traffic studies has been summarized. Work on this Task is continuing.

### Task 3 – Existing Conditions Analysis

The Harding Avenue and 95<sup>th</sup> Street video camera data was processed to produce a Friday February 25, 2022 daily/hourly traffic count to compare to the FDOT traffic count station. Additional analysis of video data will be performed. Work is underway to summarize the existing conditions analysis. Work on this Task is continuing.

### Task 4 – Stakeholder Outreach

The draft questionnaire is being finalized. With final staff refinements, the questionnaire will be reviewed with Town Staff. Interviews are tentatively scheduled for May. Work on this Task is continuing.

### Task 5 – Study Findings and Recommendations

Work is continuing to develop 3 alternatives for improving the sidewalk walkability in the downtown area. Two existing cross section graphics have been prepared to document typical cross sections with and without parking and or landscape. Major work efforts are underway on the Study's presentation to the Town Commission in June.

June 2, 2022

Jason D. Greene, CGFO, CFE, CPFIM  
Assistant Town Manager / Chief Financial Officer  
Town of Surfside  
9293 Harding Avenue  
Surfside, Florida 33154  
Phone (305) 861-4863 Ext. 225

**RE: KEITH Progress Report – April 30, 2022**  
Project Name: Abbott Avenue Drainage Improvements – Phase 2  
Project Location: Town of Surfside  
Our Project/Proposal Number: 11494.01

Dear Jason:

For the past month KEITH & Associates has been developing the construction documents for the Abbott Avenue Drainage Improvements Project. The following is a summary of the project progress for the month of May 2022.

- The design team has been working on completing the 60% Construction Documents, so the project can progress towards permitting to be completed by June 30, 2022.
- The geotechnical exploration and report in being performed by UES and should be completed by June 15, 2022.
- The location services (test holes) are being performed and should be completed by June 17, 2022.
- MEP & Structural are working on their design and should be completed by June 30, 2022.

After the task are completed and submitted to the Town, KEITH will start the permitting process through the county to be able to meet the deadline of August 2022 to complete the phase 2 of the project.

KEITH & ASSOCIATES, INC.  
Consulting Engineers



Carlos Morales  
Project Manager



**TOWN OF SURFSIDE**  
**Office of the Town Attorney**  
MUNICIPAL BUILDING  
9293 HARDING AVENUE  
SURFSIDE, FLORIDA 33154-3009  
Telephone (305) 993-1065

**TO: Mayor and Town Commission**

**FROM: Lillian M. Arango and Tony Recio, Town Attorney**  
**Weiss Serota Helfman Cole & Bierman, P.L.**

**CC: Andrew Hyatt, Town Manager**  
**Jason Greene, Assistant Town Manager**

**DATE: June 7, 2022**

**SUBJECT: Office of the Town Attorney Report for June 14, 2022 Regular Commission Meeting**

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**This Firm attended/prepared and/or rendered advice for the following Commission meetings and workshops, public meetings and workshops, and Board and Committee meetings during the past month:**

May 2, 2022 - Tourist Board Meeting

May 10, 2022 - Regular Town Commission Meeting

May 16, 2022 Special Town Commission Meeting

May 16, 2022 – Executive Session with Town Commission – Beach House Hotel LLC Litigation

May 26, 2022 - Planning and Zoning Board Meeting

Members of the firm assisted with the agendas and drafted the resolutions and ordinances where necessary for the above noted meetings, in addition to drafting or assisting with the preparation of a number of the communications and reviewing, revising and, as appropriate, negotiating the legal requirements of the relative agreements and supporting documents.

Various members of the Firm have and continue to assist the Town with the response and emergency actions needed in the aftermath of the CTS Collapse, including public records and media requests, contracts and agreements for services necessitated by the CTS Collapse, address and respond to legal demands and questions, subpoenas and deposition requests received, and status hearings before the Court, in connection with *In re: Champlain Towers South Collapse Litigation*, Case No. 2021-015089-CA-01 and related cases, and interaction with KCE Engineering (Allyn Kilsheimer), Miami-Dade County, FEMA and NIST representatives. Most recently, this office has participated in settlement discussions and hearings, including review of a Settlement Agreement among all parties and the Town contributing Town insurance proceeds towards the victims' settlement fund. Our efforts are ongoing in responding to various demands arising from the CTS Building Collapse, including attending status and settlement hearings before Judge Hanzman and addressing numerous questions and issues from the Court and appointed Receiver, Michael Goldberg, as well as continued efforts to investigate the cause of the CTS collapse.

**Commission Support:**

Attorneys of the firm have worked with the Mayor and members of the newly elected Town Commission to provide orientation sessions and required Ethics training, including Sunshine Law and Public Records, and address concerns and research specific issues, and are always available, either in the office or by phone or email. We appreciate your support as we continue our fifth year of service and work in implementing the newly elected Mayor and Town Commission's policy directives.

**Staff Support:**

Members of the Firm continue to provide support to Town administration and staff during the COVID-19 health pandemic, and continue to work with Town administration and staff responding to various needs arising from the CTS Building Collapse.

As typical, members of the Firm continue to assist the Town administration and staff, as well as assist boards and committees, with application review, contract and agreement review; preparation of ordinances as directed by the Commission; procurement and purchasing, various solicitations for Town services and providers (RFQs and RFPs) and agreements; IT related agreements; Parks & Recreation Department contracts and services; Code enforcement and interpretation, and attendance at Special Master Hearings upon request; beach furniture operator permits and administration; ethics issues and requirements; police and forfeiture funding related issues and matters; building permit and enforcement issues; public records and media requests; litigation representation and support, subpoenas, oversight and case management; Town Code interpretation and application; labor, employment and pension matters; assistance with and negotiations with the AFSCME Florida Council 79 for Town civilian employees; EEOC complaints, and employee complaints of discrimination; various procurements and service provider contracts for Town Departments, including Service Agreement with GRM for Building Department digitization and storage of documents, Contract for Construction for Town Hall front office remodeling, Agreement with Kimley Horn for engineering services CDBG Town-wide drainage improvements and flood hazard mitigation, RFP and resulting award of an Agreement for Disaster Debris Monitoring Services, contracts associated with design and construction at 96<sup>th</sup> Street Park, and contracts and agreements necessitated by the CTS Building Collapse; public records and media requests due to the CTS Building Collapse, address permit and operational, and settlement issues on the CTS Site; Zoning Code issues and ordinances; implementation of Charter Amendment Referendums and Referendum for undergrounding of utilities.

**Key Issues:**

The workload has been diverse and has included specific issue support to every department. Key issues over the past year have included:

- Contract Review Related to COVID-19 health pandemic.
- Ch. 90 Zoning Code and Adoption of Amendments thereto.
- Assistance and Response to AFSCME Florida Council 79 Union Representation Certification Petition for Civilian Town Employees
- Resolution in Support of Closing Byron Avenue at 96 Street and/or Other Traffic Mitigation Measures

- Resolution Approving Agreement with Savino Miller for Design of 96<sup>th</sup> Street Park, and corresponding Professional Services Agreement
- Resolution Approving Agreement with HPF Associates for Project Management Support Services for Undergrounding of FPL and Utilities Project, and corresponding Professional Services Agreement
- Resolution in Support of Closing Bay Drive at 96 Street and/or Other Traffic Mitigation Measures
- Resolution Approving an Agreement with Keith and Associates for Study and Design of Abbott Avenue Drainage Improvements
- Resolution Approving Project Agreement with KCI Technologies, Inc. for Utility Undergrounding Services for Phase I Preparation of Utility Coordination Plans Pursuant to Continuing Services Agreement for Professional Engineering Services; Preparation of Project Agreement
- Resolution Approving Project Agreement with Nova Consulting, Inc. for Utilities Engineering Retainer Services Pursuant to Continuing Services Agreement for Professional Engineering Services; Preparation of Project Agreement
- Resolution Approving Project Agreement with Keith and Associates, Inc. for Stormwater Engineering Retainer Services Pursuant to the Continuing Services Agreement for Professional Engineering Services; Preparation of Project Agreement
- Resolution Approving First Amendment to the Agreement with Zambelli Fireworks Manufacturing Co. for 2021 Fourth of July Fireworks Show Services; Preparation of First Amendment to Agreement
- Resolution for Quasi-Judicial Hearing Regarding Amended Site Plan Application for the Property Located at 9133-0149 Collins Avenue (Seaway)
- Resolution for Quasi-Judicial Hearing Approving and Accepting Waiver of Plat for 8712 Byron Avenue
- Resolution for Quasi-Judicial Hearing Approving/Denying Site Plan Application for 8851 Harding Avenue
- Contract for Construction for Biscaya Subaqueous Water Main Crossing
- Resolution Approving Project Agreement with Alvarez Engineers, Inc. for Structural Plan Review Services Pursuant to Continuing Services Agreement for Professional Engineering Services; Authorizing Expenditure of Funds

- Resolution Approving Renewal of Term of Agreement for Food and Beverage Concession Services with Hamsa, LLC D/B/A Surf-N-Sides for the Surfside Community Center; Authorizing the Town Manager To Execute a Second Amendment to the Agreement; Preparation of Second Amendment to Concession Agreement
- Resolution Approving Emergency Repair Work for the Town Hall Air Conditioning System’s Chiller and Coils Replacement from Smart Air Systems, Inc.
- Resolution Ratifying an Amendment to the Off-Street Variable Parking Rate and Time Limitation Schedule for Municipal Parking Lots
- Resolution Approving an Engagement Letter with Marcum LLP for Financial Auditing Services for Fiscal Year Ending September 30, 2021
- Resolution Approving a Memorandum of Understanding Between the Town and The Florida Department of Law Enforcement Relating to Investigations of Incidents Involving the Use of Deadly Force by Law Enforcement Officers
- Resolution for Quasi-Judicial Hearing – Waiver of Plat for 8712 Byron Avenue
- Resolution for Quasi-Judicial Hearing – Site Plan Approval for 8851 Harding Avenue
- Resolution for Quasi-Judicial Hearing – Site Plan Amendment for Seaway Condominium 9133-9149 Collins Avenue (2019 Historical Certificate of Appropriateness)
- Temporary Revocable License Agreement with Curative for Covid-19 Testing at Town Hall, and Corresponding Resolution Approving Same
- Debris Monitoring Procurement and Contract
- Resolution Approving Project Agreement with Alvarez Engineers, Inc. for Structural Plan Review Services
- Resolution Approving Declaration of State of Emergency for CTS Building Collapse
- PSA Agreement with Haggerty Consulting (FEMA compliance)
- PSA Agreement with KCE Structural Engineers for Structural Engineering Consultation CTS Building Collapse
- PSA Agreement with The News Directors (Communications and Media Response)
- Agreement with the Italian Space Agency Re Images on the CTS Building Collapse
- Annual Solid Waste Assessment FY 2021/22

- Resolution Urging Biden Administration to Condemn Cuban Government’s Handling of Pro-Democracy Protests and Support of the Cuban People
- Resolution Approving Keith Engineering for Design Phase of Abbott Avenue Drainage Improvements
- Resolution Awarding Star Cleaning USA for Street Sweeping Services and Agreement
- Agreement with BOOST Media for Emergency Response Website CTS Building Collapse
- Agreement with JUST FOIA for Public Records Request Software
- Resolution Approving a Purchase Order to The Corradino Group, Inc. to Perform Traffic Engineering Services for 88<sup>th</sup> Street Corridor Multiway Stop Warrant Study
- Resolution Approving Pelican Harbor Donation
- Resolution Accepting a \$107,500 Community Development Block Grant – Mitigation Program (CDBG-MIT) from the Florida Department of Economic Opportunity (DEO) to Develop a Drainage Improvement Plan for the Town’s Stormwater System
- MOU and Resolution Approving the Memorandum of Understanding (MOU) Between the Town, the Village of Bal Harbour, and the Town of Bay Harbor Islands to Fund the Cost of a School Resource Officer for Ruth K. Broad K-8 Center School
- Resolution Approving the Final Design Development Plans for 96<sup>th</sup> Street Park Project Prepared by Savino & Miller Design Studio, P.A.
- Resolution Approving Employee Health Benefits Contracts for Fiscal Year 2021/2022
- Resolution Accepting an Allocation of \$2,830,324 in Coronavirus State and Local Fiscal Recovery Funds from the U.S. Department of Treasury Under the American Rescue Plan Act; Review of American Rescue Plan Act Coronavirus Local Fiscal Recovery Fund Agreement
- Ordinance Side Setbacks for H120 District
- Resolutions Approving Tentative Millage Rate and Budget for FY 2022 (1<sup>st</sup> Budget Hearing)
- Resolutions Approving Final Millage Rate and Budget for FY 2022 (2<sup>nd</sup> Budget Hearing)
- Resolution Authoring Expenditure of Funds to KCE Structural Engineers for Task 2 Engineering Analysis and Destructive Testing



- Resolution Approving Project Agreement with 300 Engineering Group, P.A. for Sanitation Sewer Evaluation Survey and Smoke Testing Services for the Town's Sanitary Sewer System
- Resolution Approving a Federally Funded Subaward and Grant Agreement with Florida Department of Emergency Management (FDEM) for Public Assistance Grant Program Eligibility in Connection with Federal Emergency Management Agency (FEMA) Disaster Declaration No. 2560-EM-FL Relating Champlain Towers Building Collapse.
- Resolution Approving the Submission of Grant Applications For Town Projects Between October 1, 2021 and September 30, 2022; Subject to and Pending Final Acceptance of Awarded Funds and Approval of Grant Agreements by Town Commission
- Resolution Expressing Support for the Sister Bays Program and Urging Coastal Communities Throughout the County to Support the Program; Encouraging the Miami-Dade County Board of County Commissioners to Develop a Memorandum Of Understanding for The Sister Bays Program
- Resolution Approving a Voluntary Cooperation and Operational Assistance Mutual Aid Agreement with the City of North Miami
- Resolution Approving Fiscal Year 2021/2022 Police Forfeiture Fund Expenditures
- Resolution Approving Budget Amendment No. 11 for Fiscal Year 2020/2021 Budget
- Resolution Approving Purchase of Services from Kofile Technologies, Inc. for Preservation. Archival and Digitization of Historical Town Documents
- Resolution Approving the Purchase of a Town Hall Fire Alarm System Upgrade from Sciens Building Solutions, LLC c/o Empire Fire Safety
- Resolution Urging the Florida Public Service Commission (PSC) to Reject Florida Power & Light's (FPL) Request for a Base Rate Increase and Rate Unification, and to Reject the Proposed \$25 Per Month Minimum Charge
- Resolution Approving Budget Amendment No. 1 for Fiscal Year 2022 Budget
- Resolution Approving the Renewal of Agreement with Thomson Reuters West Publishing Corporation for Clear Investigative Tool for Fiscal Years 2022-2024
- Resolution Calling for a Town Of Surfside Special Election to be Held on March 15, 2022 for a Bond Referendum Issuance of General Obligation Bonds for the Purpose of Undergrounding of Utilities

- Resolution Calling for a Town of Surfside Special Election on March 15, 2022 for the Purpose of Submitting to the Electorate a Proposed Amendment to the Town Charter Regarding Lot Area, Building Height For Beachfront Properties, and Increasing Minimum Required Electoral Vote to 60% to Repeal or Amend Section 4 of the Charter
- Resolution Calling for a Town of Surfside Special Election on March 15, 2022 for Proposed Amendments to the Town Charter at Article IX. – “Miscellaneous Provisions,” Adding Section 149 - “Hedges In Single-Family Residential Lots”, to Provide That Six (6) Foot Hedges Shall be Permitted on Single-Family Lots
- Resolution Calling for a Town of Surfside Special Election on March 15, 2022 for Proposed Amendments to the Town Charter at Article IX. – “Miscellaneous Provisions,” Adding Section 150 - “Prohibition on Storage of Privately-Owned Property Overnight on Beach” to Provide for a Prohibition on the Storage of Privately-Owned Property overnight on the Beach
- Resolution Calling for a Town of Surfside Special Election on March 15, 2022 for Proposed Amendments to the Town Charter Section 7 - “Salary”, to Provide for Payment of an Annual Salary for Mayor and Commissioners and Single Health Insurance Benefit
- Resolution Approving an Agreement with Alves Sports Group, LLC for the Town’s Youth Soccer Program and with GM Sports Tennis, LLC for the Town’s Youth Tennis Program
- Resolution Approving Purchase of Four (4) 2022 Ford Police Interceptor Utility Vehicles, Together With Emergency Lighting Equipment, Graphics, and Radio Equipment for Each Police Vehicle
- Resolution Approving Purchase of New Cellular Encoders Together with Cloud-Based Hosting Services from Badger Meter, Inc. to Replace Existing Encoders Used to Transmit Water Meter Information to Town Hall
- Ordinance Securing Construction Sites, Safety and Other Requirements
- Ordinance Creating Section 14-3, “Recertification of Existing Buildings”, in Article I. – “In General”, of Chapter 14 - Buildings and Building Regulations”, to Adopt and Incorporate Section 8-11. – “Existing Buildings” of the Miami-Dade County Code of Ordinances with Modifications in Furtherance of the “Don’t Wait, Accelerate” Plan to Improve Building Safety.

- Resolution Authorizing and Approving Additional Expenditure of Funds to Special Counsel, Leech Tishman Fuscaldo & Lampl, regarding the Appeal of the Federal Aviation Administration's (FAA's) South Central Florida Metroplex Project (Metroplex), for Legal Fees and Consultant's Services
- Resolution Approving a First Amendment to the Revocable, Non-Exclusive License Agreement with Curative Inc. to Extend the Term of the Agreement; Approving the Extension of the Temporary Use Permit Issued to Curative Inc. Beyond the Initial Ninety (90) Day Term to Allow the Continued Utilization of a Covid-19 Testing Kiosk Pursuant to Section 90-36.1 of the Town Code
- Resolution Approving and Authorizing the Expenditure of Budgeted Funds in an amount not to exceed \$145,000 to Implement the 89<sup>th</sup> Street Beach End Capital Improvement Project (CIP)
- Resolution Approving and Authorizing the Expenditure of Funds in an amount not to exceed \$50,000 to Engage Marlin Engineering, Inc. for a Downtown Walkability and Design Study
- Resolution Approving the Opioid Settlement Interlocal Agreement with Miami-Dade County Governing the Use of Opioid Settlement Funds Allocated to the Miami-Dade County Regional Fund.
- Resolution Approving Budget Amendment No. 2 for Fiscal Year 2022 Budget
- Resolution Approving an Amendment to Resolution No. 13-Z-06 for the Surf Club Property Located at 9011 Collins Avenue to Amend Condition No. 19, of Section IV., Requiring Design and Construction of a Lifeguard Stand and Payment of Operational Costs, and Providing for a One-Time Payment to the Town In Lieu Thereof for 96<sup>th</sup> Street Park Renovations
- Resolution Directing the Manager to Pursue the Closure of 88<sup>th</sup> Street East of Collins Avenue to Vehicular Traffic for the Purpose of Providing a Memorial Park and Pedestrian Plaza Honoring the Victims of the Champlain Towers South Collapse
- Resolution Approving Budget Amendment No. 3 for Fiscal Year 2022 Budget
- Resolution Urging the Florida Legislature to Oppose Senate Bill 280, Which Would Allow Individuals and Entities to Delay Enactment of Local Ordinances by Filing Lawsuits that Allege an Ordinance is Arbitrary or Unreasonable

- Resolution Reaffirming Town’s Commitment to Condemn Anti-Semitic, Hateful And Hurtful Messages And Behavior, Including Reaffirmation of the Provisions of Section 54-2 of Town’s Code, “Consideration Of Anti-Semitism And Hate Crimes In Enforcing Laws” and Supporting an Amendment to Section 54-2 to Broaden the Definition of Anti-Semitism as Outlined Herein
- Ordinance Amending the Town Code of Ordinances by Amending Section 90-57. - “Marine Structures”, to Provide for Regulations for Construction of Docks, Piers and Moorings on Waterfront Lots;
- Ordinance Implementing “Accelerate, Don’t Wait”, Approach for 30-year Recertification of Threshold Buildings
- Ordinance Amending Section 90-2. “Definitions”, to Delete the Definition for “Gross Acre” and to Revise Definitions for “Height,” “Lot Area,” And “Lot Coverage”
- Ordinance Creating Article V – “Construction Sites”, Consisting of Section 14-104 “Securing of Construction Sites, Safety, and Other Requirements”, of Chapter 14 - “Buildings and Building Regulations”
- Ordinance Amending Section 54-2. - “Consideration of Anti-Semitism and Hate Crimes In Enforcing Laws”, to Strengthen and Amend the Definition and Examples of Anti-Semitism, Including Examples of Anti-Semitism Related to Israel
- Resolution Expressing Opposition to Proposed Florida Senate Bill 1024 and House Bill 741, “Net Metering,” Revising Legislative Findings Relating to Redesign of Net Metering to Avoid Cross-Subsidization of Electric Service Costs Between Classes of Ratepayers
- Resolution Urging the Court to Consider Disbursing a Portion of Funds Already Collected to Living Former Residents of The Champlain Towers South and to Consider Disbursing New Funds to Victims as Collected
- Resolution Approving Budget Amendment No. 4 for the Fiscal Year 2022 Budget
- Resolution Authorizing Additional Expenditure of Funds to Special Counsel, Leech Tishman Fuscaldo & Lampl, for Legal Fees and Costs, in Connection with the Appeal of the Federal Aviation Administration’s (FAA’s) South Central Florida Metroplex Project
- Resolution Approving Purchase of Laserfiche Cloud Hosting Services from MCCI, LLC to Make Public Records Readily Accessible Through the Cloud

- Resolution Certifying and Declaring Results of the Surfside General and Special Municipal Elections Held On March 15, 2022 for Election of Mayor and Four (4) Town Commissioners and Five Referendum/Ballot Questions
- Resolution Selecting and Approving the Quote from CDW Government, LLLC for the Purchase of Thirty-Seven (37) Fully-Integrated Police Mobile Laptop Computers In an Amount Not to Exceed \$113,309.17
- Ordinance Amending Section 90-47. - “Yards, Generally Allowable Projections”, Specifically Sub-Section 90-47.1 to Restrict Projections for Certain Architectural Elements and to Prohibit Combining Allowed Encroachments
- Resolution Approving Purchase and Installation of Video Surveillance and Recording Camera System Equipment for Town Hall from Streamline Voice & Data Inc.
- Resolution Amending Resolution No. 2021-2827 to Revise the Fiscal Year 2022 Police Forfeiture Fund Expenditures
- Resolution Amending Resolution No. 2021-2827 to Revise the Fiscal Year 2022 Police Forfeiture Fund Expenditures
- Resolution Approving the Fifth Amendment to the Agreement with Limousines of South Florida, Inc. for Municipal Bus Services
- Resolution Adopting Proclamation Honoring the Importance of Trees for Surfside’s Community Environment and Encouraging the Planting of Trees; Proclaiming April 29, 2022, in Surfside As “Arbor Day”
- Resolution Approving an Appeal of Application of Zoning In Progress to Rooftop Amenities; Approving a Site Plan Application to Permit the Development of Property Located at 9165 Collins Avenue, Surfside, Florida, for a Multifamily Residential Development Consisting of 14 Dwelling Units and 32 Parking Spaces Subject to Conditions
- Resolution Approving a First Amendment to Employment Agreement between Town of Surfside and Town Manager, Andrew Hyatt; First Amendment to Employment Agreement
- Resolution Approving a First Amendment to Professional Services Agreement with HPF Associates, Inc. for Project Management Support Services for Phase II of the Undergrounding of Utilities Project; First Amendment to Professional Services Agreement
- Resolution Approving Budget Amendment No. 5 for the Fiscal Year 2022 Budget

- Resolution Approving a Project Agreement with KCI Technologies, Inc. for Undergrounding of Utilities - Phase II Pursuant to the Continuing Services Agreement for Professional Engineering Services
- Resolution Abolishing the Downtown Vision Advisory Committee; Establishing a Downtown Visioning Taskforce; Adopting a Charter and Organizational Structure for the Taskforce
- Resolution Approving Amendment No. 5 to the Memorandum of Understanding Between the Town of Surfside, City of Miami Beach, North Bay Village, Town of Bay Harbor Islands, Bal Harbour Village, and Miami Beach Chamber Education Foundation, Inc. to Fund a Nurse Enhancement Initiative for School Year 2022/2023 for Ruth K. Broad Bay Harbor K-8 Center
- Resolution Abolishing the Town of Surfside Budget Advisory Committee
- Resolution Approving an Engagement Letter with Marcum LLP for Financial Auditing Services for Fiscal Year Ending September 30, 2022
- Resolution Approving an Interlocal Agreement Between Miami-Dade County and Co-Permittees Named in the National Pollutant Discharge Elimination System Permit No.FIs000003 for Pollution Identification and Control Services in Municipal Separate Storm Sewer Systems (MS4S)
- Ordinance Amending the Town Code by Amending Section 90-2. - “Definitions” to Amend the Definition of “Story” and to Create A Definition of “Nonhabitable Understory;” Creating a New Section 90-49.5. – “Nonhabitable Understory” to Regulate Nonhabitable Understories in Low-Rise Residential
- Contract for Construction – Building Department/First Floor Interior Remodeling
- RFP Disaster Debris Removal and Agreement
- Contract with Badger Meter for Water Encoder Meters
- Agreement with AA Musicians LLC for Jazz Events
- Resolution and Contract of Construction for Town Hall first floor renovations
- Resolution and Title VI Program Plan for the Town Regarding Town’s Transit Services Funding
- Resolution Adopting the Town’s Fund Balance Policy

- Resolution Approving Binding Costs Estimates with Florida Power & Light Company and Underground Facilities Conversion Agreements for undergrounding electric facilities conversion
- Resolution and Agreement with GRM Information Management for document storage, handling, scanning and digitization services for the Building Department
- Resolution and Revised Surfside Social Media Policy
- Resolution Authorizing Award and Agreement for Engineering Services to Kimley-Horn & Associates for Engineering Services Related to the CDBG-MIT Town-wide Drainage Improvements and Flood Hazard Mitigation Plan
- Resolution Authorizing Award and Agreement for Disaster Debris Monitoring Services to Whitt O'Brien per RFP No. 2022-01
- Resolution and Second Amendment to Limited Revocable License Agreement with Wavey Acai Bowls LLC for Surfside; s Farmer's Market
- Resolution Approving Budget Amendment No. 6 for FY 2022 Budget
- Ordinance Amending Section 54-78 of Town Code "Prohibited Noises" relating to Permitted Hours of Operation for Personal and Resident Landscaping Equipment
- Ordinance Amending Section 90-57 of the Town Code "Marine Structures" to Amend Regulations for Construction of Docks, Piers and Moorings on Waterfront Lots to Modify Allowable Dock Projections into Waterways
- Ordinance Amending Section 90-47 of the Town Code "Yards, Generally Allowable Projections" to Clarify Allowances for Projections into Required Setbacks
- Resolution Commemorating and Humoring Victims, Family and Friends, First Responders and Search and Rescue Teams to the Champlain Towers South Collapse, and Declaring June 24<sup>th</sup> "Surfside Champlain Towers South Remembrance Day"
- Resolution in Support of the Establishment of a New High School to Service Surfside and Neighboring Communities

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**Litigation:** New or supplemental information is provided for the following case:

*Beach House Hotel, LLC vs. Town of Surfside*, Case No. 2020-025405-CA-06 in the Circuit Court 11<sup>th</sup> Judicial Circuit, Miami-Dade County, Florida. On December 7, 2020, the Town was served with a Complaint for Declaratory Relief, Preliminary and Permanent Injunction in connection with the Town's Beach Furniture Ordinance. On December 23, 2020, the Town filed a Motion for Extension of Time to Respond to the Complaint for 30 days. An Executive Session

pursuant to Section 286.011(8), F.S., was held with the Town Commission on January 22, 2021. The Town filed its Answer and Affirmative Defenses on February 4, 2021. On May 4, 2021, the Plaintiff filed its initial discovery requests, including “First Set of Interrogatories to Defendant” and “First Request for Production of Documents to Defendant”, both due within 30 days of the filing. The Town responded to the Interrogatories and Request for Documents. The Town and the Plaintiff have engaged in written discovery, which is mostly complete. On May 16, 2022, the Town Commission held an executive session per FS 286.011(8) to discuss the pending litigation and possible settlement. The Town anticipates seeking summary judgment against the claims in the event that the matter cannot be settled.

*Solimar Condominium Association, Inc. v. Town of Surfside*, Case No. 2019-025481-CA-01 in the Circuit Court 11<sup>th</sup> Judicial Circuit, Miami-Dade County, Florida. On September 18, 2019, the Town was served with a Complaint for Declaratory Judgment, Injunctive Relief, and Restitution in connection with the Town’s implementation of its 1998 stormwater fee ordinance. The plaintiff contends that the method of calculating stormwater fees is not fair to condominium unit owners, who are charged 1.0 equivalent residential units (“ERU”), the same as a single family home. The Town moved for dismissal of the Complaint on March 12, 2020, which was denied. The Town then moved for summary judgment on October 27, 2020, which remains pending. The summary judgment motion has been delayed due to court availability for a hearing and the plaintiff’s desire to conduct expert witness discovery. The Town has engaged its own expert witness to rebut the opinions of the plaintiff’s expert. Expert discovery is completed, except for expert depositions, which are anticipated in January 2022. Mediation of the dispute occurred on December 6, 2021 with Retired Judge Joseph Farina. The parties jointly moved to continue the trial, and the Court granted the motion and placed deadlines for a trial in June, 2022 and complete expert discovery by February 17, 2022. An Executive Session with the Town Commission occurred on January 6, 2022 as part of the mediation process. A hearing date for the motion for summary judgment has been delayed several times, but is expected in the near future and once the Plaintiff’s submit a response and cross motion to the Town’s summary judgment motion. The parties have engaged in expert discovery, which has concluded. At this point, there is an agreement that the issues are matters of legal interpretation for the Court.

*Village of Indian Creek, Florida, Town of Surfside, Florida and Charles Burkett, Petitioners, v. Federal Aviation Administration and Stephen M. Dickson, in his official capacity as Administrator, Federal Aviation Administration, Respondents.*

On December 14, 2020, Town, together with the Village of Indian Creek, filed a Petition for Review of Agency Order appealing the FAA’s Finding of No Significant Impact and Record of Decision in connection with the proposed South-Central Florida Metroplex. The FAA announced that it implemented Phase 2 of the Metroplex project on August 12, 2021. On October 26, 2021, the Town’s Special Counsel filed the consolidated Opening Brief. The Opening Brief which, among other matters, contends that aircraft noise jeopardizes public health and welfare and that the FAA is not accurately evaluating aircraft noise or its impact to persons on the ground; that the South-Central Florida Metroplex Project is in violation of the National Environmental Policy Act; and that as such the FAA is violating the constitutional rights of the citizens of the affected communities. On February 9, 2022, the FAA filed its response brief to the Town’s consolidated Opening Brief. The FAA argues in its response that the FAA satisfied all the requirements of law in adopting the Metroplex, and other procedural/standing arguments against petitioners’ claims. The Town’s Reply Brief was filed on March 9, 2022. Oral arguments



before the 11<sup>th</sup> Circuit Court occurred in Miami on June 6, 2022, at which hearing the Town's Special Counsel, Steve Taber, was present as well as our office. We await a decision by the 11<sup>th</sup> Circuit Court on this matter.

Information on other pending litigation matters has or will be provided individually to members of the Town Commission, as needed or requested.

- **Special Matters:** Continued monitoring of new case law and legislation from Federal, State and County, challenging local home rule authority and analysis legislation adopted in the last Florida Legislative Session. Matters which we will continue to work on and anticipate in the upcoming months include: continued public records and media requests regarding the CTS Building Collapse; continue working with the Court Appointed Receiver regarding issues pertaining to the CTS Building Collapse Site, including an anniversary event and memorial site, addressing operational and permitting requests, and settlement of the litigation; respond to legal demands and lawsuits, and requests for production of records, continued efforts to access and inspect the CTS Site and Off-Site Facilities for Investigations as to the cause of the collapse, all in connection with the CTS Building Collapse; public records requests and ethics inquiries and opinions; implementation of various policy directives from the Mayor and Town Commissioners; review and analysis of Resort Tax and Tourist Board legislation; procurement of professional services and contracts; appeal of FAA South-Central Florida Metroplex Finding of No Significant Impact and Record of Decision; continued review and monitoring of all Development Orders and approvals; police and forfeiture matters and agreements; implementation of agreements resulting from Abbott Avenue Drainage project, shuttle and transportation, and undergrounding of utilities plan design; various procurements and service or provider agreements for Town improvements, facilities and programs, implementation of undergrounding of utilities and engagement of consultants to implement the utilities undergrounding project; continued assistance with and negotiations with AFSCME Florida Council 79 Union for Town civilian employees; application to Miami-Dade County for the closure and/or other traffic mitigation measures for Byron Avenue and Bay Drive; implementation of construction contract for 96<sup>th</sup> Street Park; implementation of procurement and construction phase for Abbott Avenue Drainage Improvements; RFP and agreement for disaster debris monitoring services, Service Agreement with GRM for digitization and scanning of Building Department records, contract for construction for the Town Hall first floor remodeling

project, RFQ and resulting award and agreement with Kimley-Horn for CDBG-MIT town-wide drainage improvement and flood hazard mitigation plan; ongoing public records and media requests, Court and CTS Receiver requests, including settlement regarding *In re: Champlain Towers South Collapse Litigation*, Case No. 2021-015089-CA-01 and related cases; implementation of Charter Referendum Amendments as approved by the electorate, Bond Referendum resolution and legal work needed in connection with the approval and issuance of General Obligation Bonds for undergrounding of utilities; undergrounding of utilities project, including approval of FPL electrical conversion agreements and implementation; CTS Collapse anniversary event and implementation of a memorial site, and closure of vehicular access on 88<sup>th</sup> Street; and upcoming Charter review.

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**Town of Surfside  
Regular Town Commission Meeting  
June 14, 2022**

**DISCUSSION ITEM MEMORANDUM**

**Agenda #:** 9A.

**Date:** June 14, 2022

**From:** Commissioner Marianne Meisheid

**Subject: Dogs on the Beach**

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**Suggested Action:** – Have the Town Manager develop a better strategy, including: better signs, a sensible fines fee structure, and a policy for compliance.

**Background/Analysis:** – We have a policy of no dogs on the beach, yet dogs are routinely brought out to the beach and ocean. We need a better policy.

- Signage is unclear, and poorly located.
- Enforcement is insufficient.
- Low compliance leads to less compliance.
- Bal Harbour has clear signage and good compliance

# KINDNESS IS CONTAGIOUS!



## DOGS

Permitted only on the Beach Service Road (hard packed sand) and not on the Jogging (soft sand) Path or Beach

Must be leashed at all times

Leashes must be non-retractable and no longer than 6 feet long

Dog excrement must be cleaned-up and removed



## PROHIBITED ITEMS

### SINGLE-USE PLASTICS

Forks, spoons, knives, straws, bags, packaging and similar articles are not allowed on the Jetty

### POLYSTYRENE "STYROFOAM" CONTAINERS

Plates, bowls, cups, containers, lids, trays, coolers, ice chests, and all similar articles are not permitted on the Beach



## BICYCLES

Permitted only on the Beach Service Road (hard packed sand) and not on the Jogging (soft sand) Path or Beach

Please be considerate of, and careful with Pedestrians







**Town of Surfside  
Regular Town Commission Meeting  
June 14, 2022**

**DISCUSSION ITEM MEMORANDUM**

**Agenda #:** 9B.

**Date:** June 14, 2022

**From:** Vice Mayor Jeff Rose

**Subject: Special Meetings before Regularly Scheduled Monthly Meetings**

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**Suggested Action:** – For the commission to have special meetings before the regularly scheduled meetings for the remainder of 2022 from 5:00 p.m.-6:30 p.m.

**Background/Analysis:** – Regularly scheduled commission meetings start at 7:00 p.m. and end at 11:00 p.m. Many meetings over the last few years have gone on late into the evening sometimes until 1:00 a.m. which usually is not as productive this late in the evening. For the town commission to have special meetings starting at 5:00 p.m. for the remainder of 2022 so that residents and town staff don't have to stay late into the evening.



**Town of Surfside  
Regular Town Commission Meeting  
June 14, 2022**

**DISCUSSION ITEM MEMORANDUM**

**Agenda #:** 9C.

**Date:** June 14, 2022

**From:** Vice Mayor Jeff Rose

**Subject:** Beach Chairs and Umbrellas at the Community Center

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**Suggested Action:** – For the town commission to move forward as discussed during the budget workshop with beach chairs and umbrellas at the community center.

**Background/Analysis:** – During the April 12th Budget Vision workshop this commission discussed some of our initiatives one being luxury beach chairs and umbrellas for residents behind the Surfside community center. For the town commission to move forward with the beach chair and umbrellas initiative for residents.





**Town of Surfside  
Regular Town Commission Meeting  
June 14, 2022**

**DISCUSSION ITEM MEMORANDUM**

**Agenda #:** 9D.

**Date:** June 14, 2022

**From:** Vice Mayor Jeff Rose

**Subject:** New Tennis Center, Resident Gym, Rooftop Pickle Ball Court

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**Suggested Action:** – For the town commission to move forward with the new tennis center and resident gym as discussed during the budget workshop

**Background/Analysis:** – Residents of the town of Surfside deserve great things. For the town commission to move forward with the new tennis center, gym and roof top picket ball court as discussed during the budget workshop



**Town of Surfside  
Regular Town Commission Meeting  
June 14, 2022**

**DISCUSSION ITEM MEMORANDUM**

**Agenda #:** 9E.

**Date:** June 14, 2022

**From:** Jeff Rose, Vice Mayor

**Subject:** Tot Lot Upgrades

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**Suggested Action:** – For the Town Commission to move forward with the tot lot upgrades as discussed during the budget workshop.

**Background/Analysis:** – During the April 12, 2022 Budget Vision Workshop, this Commission discussed some of our initiatives. One of those initiatives being upgrades to the Tot Lot Park. Request for the Town Commission to move forward with the upgrades to the Tot Lot Park.



**Town of Surfside  
Regular Town Commission Meeting  
June 14, 2022**

**DISCUSSION ITEM MEMORANDUM**

**Agenda #:** 9F.

**Date:** June 14, 2022

**From:** Shlomo Danzinger, Mayor

**Subject:** 50% Lot Coverage for 1-Story Homes

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**Suggested Action:** – To modify the Town Code to allow for 50% lot coverage for 1-story homes (not to exceed any existing setbacks), and to stipulate in the code; if a homeowner who has built above the 40% lot coverage wishes to build a second floor, the homeowner must remove the excess square footage from the first floor, bringing the total lot coverage to a maximum of 40%, when building a second floor (to be limited to the standard 80% of the 40%).

**Background/Analysis:** – The Town's Planning and Zoning Board has previously recommended allowing homeowners to build up to 50% of the lot coverage (not to exceed any existing setbacks) to:

1. Encourage homeowners to preserve existing homes when looking to expand, instead of complete demolition; and
2. Incentivize homeowners building new homes to build cheaper and more modest 1-story homes instead of larger, more expensive 2-story homes.

**Budget Impact:** – No budget impact expected.



**Town of Surfside  
Regular Town Commission Meeting  
June 14, 2022**

**DISCUSSION ITEM MEMORANDUM**

**Agenda #:** 9G.

**Date:** June 14, 2022

**From:** Shlomo Danzinger, Mayor

**Subject: Residential Safety: Turtle-Friendly Lighting on the Beach**

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**Suggested Action:** – To direct the Town Manager to install lighting on the beach path for pedestrian safety. Lighting will have to comply with turtle friendly requirements.

**Background/Analysis:** – Currently, the Surfside pedestrian beach path does not provide lighting at night for pedestrians. Surfside's beach path is completely dark in the late evening and night hours. This causes an unsafe and uninviting environment for pedestrians who wish to walk on the beach in the evenings.

**Budget Impact:** – Cost of lighting and installation.



**Town of Surfside  
Regular Town Commission Meeting  
June 14, 2022**

**DISCUSSION ITEM MEMORANDUM**

**Agenda #:** 9H.

**Date:** June 14, 2022

**From:** Fred Landsman, Commissioner

**Subject: Planning and Zoning Board Recommendations to Town Commission; May 26, 2022 PZB Meeting.**

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**Suggested Action:** – Consider direction to the Town Planner and Town Attorney to bring back an ordinance to implement these recommendations.

**Background/Analysis:** – Consideration: The Town Commission should discuss and consider the following proposals:

1. Increase the minimum percentage of Florida Friendly landscaping required to 40%. The minimum percentage is currently 20%, but the Zoning in Progress increased that figure to 40%. Florida Friendly is a set of standards promulgated by the University of Florida to encourage sustainability, minimize storm water runoff, and support wildlife. The increase provided in the Zoning in Progress was complied with by all design review applicants over the last 18 months and does not appear to be a significant burden on property owners.
2. Reduce the required setback for mechanical equipment located on the ground level of homes provided noise mitigating barriers are used. Section 90-47.3 of the Town Code currently requires mechanical equipment be placed not closer than 15 feet from any other residence, and Section 90-44 allows placement on rooftops, but in neither case requires visual screening or sound barriers. The proposal is to reduce the setback on the ground level and clarify that mechanical equipment is required to be visually screened and include sound barriers.
3. Require similar visual screening and sound mitigation barriers for rooftop mechanical equipment.

For discussion purposes, the regulations governing rooftop installations from the last Zoning in Progress notice that expires on June 7, 2022 are as follows:

Mechanical equipment shall be permitted on any roof in the H30A and H30B districts, subject to the following requirements:

- A. Setback from roof perimeter. All equipment and enclosures shall be set back from the roof perimeter so that it is not visible from eye-level view from grade at a distance of 75

feet from any property line of the subject lot. This shall be demonstrated by line-of-sight drawings submitted as part of a zoning approval or design review package.

- B. Screening. All equipment shall be screened by an enclosure of sufficient height which adequately hides the equipment from view from all angles (including from above) and matches closely to its immediate surroundings in texture, color, and appearance, or is set into the roof structure itself without changing the visible contour of the roof as seen from the street. In either instance, neither equipment nor screening shall be visible from eye-level from grade at any property line, nor discernible from eye-level from grade at any distance outside of the property lines. Additionally, the equipment shall be acoustically screened to reduce noise to no more than 55 DBA when measured from any property line of the subject lot.
- C. The footprint area of the equipment, as defined by the perimeter of the decorative and acoustic screen enclosure, shall not exceed 7.5% of the total area of the roof upon which it is placed.
- D. Rooftop equipment and all screening elements shall not exceed six (6) feet above the roof slab for a flat roof or above the truss for a pitched roof.
- E. Any rooftop mechanical equipment installed prior to the effective date of this ordinance shall meet the requirements of this section for any replacement of equipment.



**Town of Surfside  
Regular Town Commission Meeting  
June 14, 2022**

**DISCUSSION ITEM MEMORANDUM**

**Agenda #:** 9I.

**Date:** June 14, 2022

**From:** Vice Mayor Jeff Rose

**Subject:** Discussion Re Beach Furniture Ordinance

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**Suggested Action:** – The operational limits imposed by the Ordinance should be reviewed to ensure they better balance the need for public access and enjoyment of the beach with the operational requirements of oceanfront property owners or beach furniture operators that cater to visitors and residents alike.

Specifically, the following areas of the Ordinance should be considered:

1. Address the number of pre-set beach furniture each morning to ensure access to beachgoers from oceanfront properties. Currently, the Ordinance permits five (5) chairs to be pre-set per beach furniture operator, regardless of size of the beachfront property. Consideration may be given to increasing the number of pre-set beach furniture based on lineal footage or each beach furniture operator's beach frontage.
2. Address the operational realities of beach furniture staging, including numbers, worker safety, and daily transport of beach furniture. Currently, the Ordinance permits a beach furniture operator a staging area of 8' by 8' located 15 feet seaward of the vegetation line of the dune for as-needed on-demand distribution to beach users, limited to 10 chairs. Consideration may be given to increasing the size of the staging areas for beach furniture, as well as the permitted number of beach furniture that may be staged and ready for location on the beach. Also, to be addressed is the storage and transportation of beach furniture and towels by beach furniture operators, including consideration of a tent-like storage structure or table for shade for employees and storage and distribution of towels, to be removed at the end of each day. Consideration should also be given to allowing beach furniture operators to use a battery operated cart or similar vehicle for transportation of beach furniture.
3. Improve efficiency of code compliance efforts, by limiting total beach furniture for each beach furniture operator based on area of beach frontage rather than strict formulas.
4. Clarify or revise those areas where beach furniture can be placed in front of a beach operator's property to better ensure accessibility, compliance and improve monitoring.
5. Since compliance will be easier to monitor, increase fines for non-compliance and provide for suspension of permit for repeated noncompliance.
6. Consider beach furniture permit timeframes of 3-5 years, subject to compliance with applicable regulations and the Ordinance.

Balancing public and private needs in addressing the above issues should go a long way towards ensuring Surfside remains a top-notch tourist destination while providing all residents safe and convenient access to the beach. In addition, a better balance of measures is expected to moot the pending lawsuit or at least reduce the incentive for the Grand Beach Hotel to continue with it.

**Background/Analysis:** – The Beach Furniture Ordinance (Ordinance No. 2020-1714 adopted September 10, 2020), codified as Sections 86-26 through 86-41 of the Town Code, provides for strict limits on beach furniture, such as beach chairs and umbrellas. While portions of the Ordinance apply to all beachgoers, the Ordinance imposes specific limitations on oceanfront property owners that make up the hotels and condominium associations (“beach furniture operators”) which provide the Town with significant revenue in the form of tourist tax money and property taxes. These properties include some of Surfside’s signature developments and comprise some of the most valuable in Surfside that are crucial to the Town’s tourism and perception from the outside. They result in visitors flocking to Surfside to enjoy the best beach in Miami-Dade County as well as Surfside’s restaurants and businesses, providing an economic boost to the area. These visitors expect first class service, but the current Ordinance severely limits the operators and property owners from providing this level of service through its strict constraints on number of chairs, pre-setting of chairs, staging and other operational impediments. These limits have in turn exposed the Town to challenges and lawsuits, including litigation brought on by the Grand Beach Hotel, a case currently pending in the Miami-Dade County court system.





**Town of Surfside  
Regular Town Commission Meeting  
June 14, 2022**

**DISCUSSION ITEM MEMORANDUM**

**Agenda #:** 9J.

**Date:** June 14, 2022

**From:** Shlomo Danzinger, Mayor

**Subject:** Parking Rates in Surfside Municipal Parking Lots

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**Suggested Action:** – For the town to adjust and raise the parking rates within town to be competitive with Bal Harbour.

**Background/Analysis:** – Currently, Surfside parking rates are very low. The result is the employees and construction workers from the Bal Harbour shops are using our parking lots instead, which is creating a parking shortage for our residents. Additionally, more visitors tend to frequent Surfside's beaches since parking is much cheaper than that of nearby beach-towns.



**Town of Surfside  
Regular Town Commission Meeting  
June 14, 2022**

**DISCUSSION ITEM MEMORANDUM**

**Agenda #:** 9K.

**Date:** June 14, 2022

**From:** Andrew Hyatt, Town Manager

**Subject:** Update on Improving Walkability and Pedestrian Safety within Residential Area

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**Background/Analysis:** – In order to improve walkability and pedestrian safety within the Town, and based on Town Commission direction to report back with an implementation time frame and associated costs, the following status update is being provided:

- Sidewalk project on Abbott Avenue and 95th Street has been completed in order to make the intersection safer by designating walking areas for pedestrians. Town used FY 2022 budgeted funds for sidewalk improvements.
- Administration is currently coordinating with the Corradino Group (pool engineering firm) for a scope of services for a Town-wide Traffic Study in order to assess current traffic conditions and engineer viable traffic calming solutions. The traffic study will also review and outline potential mitigation efforts towards pedestrian safety projects. The task will have a Public Outreach component. A scope of services with request to expend will be brought forth in the July 2022 General Commission meeting.
- The Town held a meeting with Miami Dade County Transportation and Public Works (DTPW) to explore potential County assistance. The County welcomed the opportunity to enter into a Interlocal Agreement in order to assess possible solutions with County resources and support.
- New street signage for pedestrian safety "Shared roads" have been ordered and are currently in production. Purchase was within Town Manager spending authority.
- Town administration is evaluating Multi-use Bike Lanes based on existing conditions of residential streets and avenues.