

RESOLUTION NO. 2018- 2495

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA APPROVING AN AGREEMENT WITH BLUE DIGITAL CORP. FOR DOCUMENT SCANNING SERVICES FOR THE BUILDING DEPARTMENT; PROVIDING FOR AUTHORIZATION AND IMPLEMENTATION OF THE AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town of Surfside (“Town”) wishes to engage Blue Digital Corp. (“Contractor”) for document scanning and imaging services for all records and plans of the Building Department; and

WHEREAS, pursuant to Section 3-13(3) of the Town’s Purchasing Code, the purchase of the services is exempt from competitive bidding or solicitation as the contract was previously competitively procured per Miami-Dade County Bid No. 8254-1/22 and City of Sunny Isles Beach Contract No. C1213-045, under which terms and pricing were solicited by other governmental agencies; and

WHEREAS, Contractor has agreed to provide the services based on the terms and pricing set forth in Miami-Dade County Bid No. 8254-1/22 and City of Sunny Isles Beach Contract No. C1213-045, including scanning and imaging of all existing Building Department records and plans in accordance with the estimate attached hereto as Exhibit “A”, and provide annual services thereafter in accordance with the estimate attached hereto as Exhibit “B”, all pursuant to the Agreement attached hereto as Exhibit “C” (“Agreement”); and

WHEREAS, the Town Commission finds that the Agreement is in the best interest and welfare of the Town and wishes to approve same in substantially the form attached hereto as Exhibit “C.”

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. Approval and Authorization. The Agreement between the Town and Contractor, substantially in the form attached hereto as Exhibit “C”, is hereby approved. The Town Commission authorizes the Town Manager to execute the Agreement on behalf of the Town, together with such non-substantive changes as may be approved by the Town Manager and Building Official, and Town Attorney for legal sufficiency.

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

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

PASSED AND ADOPTED this 13th day of March, 2018.

Motion by Commissioner Karukin.
Second by Commissioner Paul.


FINAL VOTE ON ADOPTION

Commissioner Daniel Gielchinsky	yes
Commissioner Michael Karukin	yes
Commissioner Tina Paul	yes
Vice Mayor Barry Cohen	Absent
Mayor Daniel Dietch	yes




Daniel Dietch, Mayor

ATTEST:



Sandra Novoa, MMC,
Town Clerk

**APPROVED AS TO FORM AND
LEGAL SUFFICIENCY FOR THE TOWN OF SURFSIDE ONLY:**



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

EXHIBIT "A"

Estimate

Blue Digital Corp.

7290 NW 7th Street - Unit 108
 Miami, FL 33126
 Ph: 305.262-4920
 Fax: 305.262-4922

Date	Estimate No.
9/20/2017	4109

Name/Address

Town of Surfside
 9293 Harding Avenue
 Surfside, Florida 33154
 ATTN: Ross Prieto

Description	Qty	U/M	Rate	Total
Scan to 300 DPI B/W Tiff , 8.5x11, 8.5x11, 11x17	161,721	ea.	0.025	4,043.03T
Scan to 300 DPI B/W Tiff 24x36, 30x42, 36x48	123,354	ea.	0.28	34,539.12T
Indexing per Indexing field	728,805	ea.	0.01	7,288.05T
OCR - Optical Character Recognition	285,075	ea.	0.025	7,126.88T
Document Preparation to include Staple & Clip Removal, taping, recopying, de-creasing, separating	1,000	hr	12.00	12,000.00T
Burn DVD and covert to Laserfich Breifcase Format	30	ea	12.50	375.00T
Shredding Services	462	ea	4.25	1,963.50T
Pickup Boxes at the City of Surf Side and deliver to Blue Digital	1	ea	45.00	45.00T
Note: There is no additional cost for storing the documents at our facility while the job is being scanned				
Exempt Sales			0.00%	0.00

SIGNATURE _____
 FED TAX ID#05-0528104

Total	\$67,380.58
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EXHIBIT "B"

Estimate

Blue Digital Corp.

7290 NW 7th Street - Unit 108

Miami, FL 33126

Ph: 305. 262-4920

Date	Estimate No.
2/16/2018	4194

Name/Address

Town of Surfside
 9293 Harding Avenue
 Surfside, Florida 33154
 ATTN: Ross Prieto

Description	Qty	U/M	Rate	Total
Boxes:25				
Scan to 300 DPI B/W Tiff , 8.5x11, 8.5x11, 11x17	55,000	ea.	0.025	1,375.00T
Scan to 300 DPI B/W Tiff 24x36, 30x42, 36x48	7,100	ea.	0.28	1,988.00T
Indexing per Indexing field	62,100	ea.	0.01	621.00T
OCR - Optical Character Recognition	62,100	ea.	0.025	1,552.50T
Document Preparation to include Staple & Clip Removal, taping, recopying, de-creasing, separating	265	hr	12.00	3,180.00T
Burn DVD and covert to Laserfich Breifcase Format	40	ea	12.50	500.00T
Shredding Services	179	ea	4.25	760.75T
Pickup Boxes at the City of Surf Side and deliver to Blue Digital	1	ea	20.00	20.00T
Note: There is no additional cost for storing the documents at our facility while the job is being scanned				
Exempt Sales			0.00%	0.00
			Total	\$9,997.25

SIGNATURE _____
 FED TAX ID#05-0528104

AGREEMENT FOR DOCUMENT SCANNING SERVICES BETWEEN THE TOWN OF SURFSIDE, FLORIDA AND BLUE DIGITAL CORP.

THIS AGREEMENT FOR DOCUMENT SCANNING SERVICES (hereinafter referred to as the "Agreement") is made this ____ day of _____, 2018, by and between the **TOWN OF SURFSIDE, FLORIDA**, a Florida Municipal Corporation (hereinafter referred to as "Town"), and **BLUE DIGITAL CORP.**, a Florida corporation authorized to do business in the State of Florida (hereinafter referred to as "Contractor"), with its principal place of business at 7290 N.W. 7 Street, Suite 107, Miami, Florida 33126 and whose Federal I.D. # is _____.

RECITALS

WHEREAS, the Town of Surfside, Florida ("Town") is in need of a Contractor to provide document scanning and imaging services for the scanning, storage and retrieval of existing archival, long term and permanent records for the Building Department, including existing building plans, permit records and Building Department documents ("Services"), as well as future and ongoing annual services for records (Annual Services"); and

WHEREAS, Contractor was previously selected as the successful bidder in response to Miami-Dade County Bid No. 8254-1/22 and was awarded a contract for reproduction and binding services; and

WHEREAS, Contractor was previously selected and entered into a contract with the City of Sunny Isles Beach, pursuant to the Miami-Dade County Bid No. 8254-1/22, for document scanning services; and

WHEREAS, the Town wishes to enter into this Agreement with Contractor utilizing the same terms, conditions and pricing as Miami-Dade County Bid No. 8254-1/22, and the City of Sunny Isles Beach Contract No. C1213-045 for document scanning services, and in accordance with Estimate No. 4109 for the Services attached hereto as Exhibit "A" and Estimate No. 4194 for the Annual Services attached hereto as Exhibit "B"; and

WHEREAS, pursuant to Section 3-13(3) of the Town's Procurement Code, purchases made under state, county or other governmental contracts, or competitive bids with other governmental agencies are exempt from the Town's competitive bidding procedures; and

WHEREAS, Contractor agrees to provide the Services to the Town utilizing the same terms, conditions and pricing as Miami-Dade County Bid No. 8254-1/22, and City of Sunny Isles Beach Contract No. C1213-045, for document scanning services, which are incorporated herein by reference; and

WHEREAS, the Town desires to enter into a contract with Contractor to provide the Services to the Town in an amount not to exceed \$67,380.58 for all existing documents, and an annual fee thereafter of \$9,997.25 for ongoing and future scanning of documents.

NOW THEREFORE, in consideration of the promises and the mutual covenants herein name, the parties agree as follows:

1. **RECITALS.** The Recitals set forth above are hereby incorporated into this Agreement and made a part hereof for reference.
2. **SERVICES.** Contractor agrees to provide the Services, and Annual Services, pursuant to the terms, conditions and pricing contained in Miami-Dade County Bid No. 8254-1/22, and the City of Sunny Isles Beach Contract No. C1213-045, which are incorporated herein by reference and made a part hereof.
3. **TERM.** Subject to the provisions relating to the termination of this Agreement as set forth in Section 10 hereunder, this Agreement shall commence on the date of execution of this Agreement by the Town subsequent to approval by the Town Commission and shall end one (1) year thereafter. The Services, including scanning, imaging and archival of all existing records, shall be completed within one (1) year of execution of this Agreement. Annual Services shall be provided bi-annually or every six (6) months, or as otherwise directed by the Town. The Town, at its option, may extend or renew the term of this Agreement for additional one-year terms for the provision of Annual Services.
4. **RENEWAL.** Prior to, or upon completion of the initial one year term, the Town shall have the option to renew this Agreement for three (3) additional one-year renewal terms for the Annual Services.
5. **COMPENSATION.** As the entire compensation for the Services under this Agreement during the initial one (1) year term, the Town shall pay Contractor an amount not to exceed \$67,380.58 for the performance of the Services. The above amount includes a one-time amount not to exceed \$67,380.58 for scanning of all existing plans, permitting files, and other documents and records of the Building Department. In addition to said amount, Town, at its election, shall pay Contractor an annual amount not to exceed \$9,997.25 for scanning of ongoing/current or future files and documents for FY 2018-2019 and subsequent fiscal years. Payment to Contractor for all charges and tasks under this Agreement shall be in accordance with this Agreement and the schedule of charges or unit prices set forth in the Estimates attached hereto as Exhibit "A" and Exhibit "B."

In the event the Town elects to renew this Agreement for subsequent fiscal years, the Town shall pay the Contractor an amount not to exceed \$9,997.25 per year during each one-year renewal term for all charges and tasks under this Agreement, in accordance with this Agreement and Estimate for Annual Services attached hereto as Exhibit "B". All charges under this Agreement shall be made under the following conditions:

- a. **Disbursements.** There are no reimbursable expenses payable to Contractor and associated with this Agreement.
- b. **Payment Schedule.** Contractor will bill Town monthly for all Services completed for the prior month. Invoices received from the Contractor pursuant to this Agreement will be

reviewed by the Town Building Department. If Services have been rendered in conformity with the Agreement, the invoice will be sent to the Town Manager for final approval and the Finance Department for payment. Invoices must reference the contract number assigned hereto. Invoices will be paid in accordance with the State of Florida Prompt Payment Act.

c. **Availability of Funds.** The Town's performance and obligation to pay under this Agreement is contingent upon an annual appropriation and budgeting of the Services and Annual Services by the Town Commission. In the event the Town Commission fails to appropriate and/or budget funds for the particular purpose of this Agreement during any year of the term hereof, then this Agreement shall be terminated upon ten (10) days written notice and the Contractor shall be compensated for the Services satisfactorily performed prior to the effective date of termination.

d. **Final Invoice.** In order for both parties herein to close their books and records, the Contractor will clearly state "final invoice" on the Contractor's final/last billing to the Town. This certifies that all services have been properly performed and all charges and costs have been invoiced to the Town. Since this account will thereupon be closed, any other additional charges, if not properly included on this final invoice, are waived by the Contractor.

Contractor shall make no other charges to the Town for supplies, labor, taxes, licenses, permits, overhead or any other expenses or costs unless any such expense or cost is incurred by Contractor with the prior written approval of the Town. If the Town disputes any charges on the invoices, it may make payment of the uncontested amounts and withhold payment on the contested amounts until they are resolved by agreement with Contractor. Contractor shall not pledge the Town's credit or make it a guarantor of payment or surety for any contract, debt, obligation, judgment, lien, or any form of indebtedness. The Contractor further warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms of this Agreement.

6. **ADDITIONAL SERVICES.** All payments to Contractor shall be based on invoices submitted to the Town. The Town shall only reimburse Contractor for services authorized pursuant to this Agreement. Any additional work or services performed by Contractor that is outside the scope of Services contained herein shall be required to be pre-authorized and approved in advance in writing by the Town Manager or his designee. In the event the Contractor performs work or services that it outside the scope of Services, and does not obtain the required pre-authorization and approval in writing from the Town Manager or his designee, then the Town shall not be under any legal obligation to reimburse Contractor for said additional services.

7. **INDEPENDENT CONTRACTOR RELATIONSHIP.** The Contractor is an independent contractor and shall be treated as such for all purposes. Nothing contained in this Agreement or any action of the parties shall be construed to constitute or to render the Contractor an employee, partner, agent, shareholder, officer or in any other capacity other than as an independent contractor other than those obligations which have been or shall have been undertaken by the Town. Contractor shall be responsible for any and all of its own expenses in performing its duties as contemplated under this Agreement. The Town shall not be responsible

for any expense incurred by the Contractor. The Town shall have no duty to withhold any federal income taxes or pay Social Security services and that such obligations shall be that of the Contractor, other than those set forth in this Agreement. Contractor shall furnish its own transportation, office and other supplies as it determines necessary in carrying out its duties under this Agreement.

8. OWNERSHIP AND ACCESS TO RECORDS; PUBLIC RECORDS

A. Contractor acknowledges and agrees that all data, information and materials prepared by Contractor and accepted and paid for by Town 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).

B. All records, books, documents, data, deliverables, papers and financial information (the “Records”) that result from Contractor providing the Services to the Town under this Agreement shall be the property of the Town.

C. Contractor agrees to keep and maintain public records in Contractor’s possession or control in connection with its performance under 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.

D. 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.

E. Unless otherwise provided by law, any and all records, including but not limited to reports and other data and documents provided or created in connection with this Agreement are and shall remain the property of the Town.

F. 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 Contractor to the Town Manager and/or his designee, 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, Contractor shall destroy any and all duplicate public records that are exempt or confidential and exempt from public records disclosure requirements.

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

H. 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.

Section 119.0701(2)(a), Florida Statutes

IF CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS.

Custodian of Records: SANDRA NOVOA
TOWN CLERK

Mailing address: 9293 Harding Avenue
Surfside, Florida 33154

Telephone number: (305) 861-4863 Ext. 226

Email: snova@townofsurfside.fl.gov

9. **INDEMNIFICATION.** Contractor agrees to indemnify and hold harmless, the Town, its officers, agents and employees from, and against any and all claims, actions, liabilities, losses and expenses including, but not limited to, attorney's fees and costs, for personal, economic or bodily injury, wrongful death, loss of or damage to property, at law or in equity, which may arise or may be alleged to have risen from the negligent acts, errors, omissions or other wrongful conduct of the Contractor, agents or other personal entity acting under Contractor's control in

connection with the Contractor's performance of Services pursuant to this Agreement and to that extent the Contractor shall pay such claims and losses and shall pay all such costs and judgments which may issue from any lawsuit arising from such claims and losses including wrongful termination or allegations of discrimination or harassment, and shall pay all costs and attorneys' fees expended by the Town in defense of such claims and losses, including appeals. The parties agree that ten percent (10%) of the total compensation is a specific consideration from the Town to the Contractor for this indemnity.

10. TERMINATION.

A. Termination of Cause. If, through any cause within its reasonable control the Contractor shall fail to fulfill in a timely manner or otherwise violate any of the covenants, agreements or stipulations material to this Agreement, the Town shall have the right to terminate the Services then remaining to be performed. Prior to the exercise of its option to terminate for cause, the Town shall notify the Contractor of its violation of the particular terms of the Agreement and grant Contractor thirty (30) days to cure such default. If the default remains uncured after thirty (30) days, the Town may terminate this Agreement.

(i) In the event of termination, all finished and unfinished documents, data and other work product prepared by Contractor (and sub-Contractor(s)) shall be delivered to the Town and the Town shall compensate the Contractor for all Services satisfactorily performed prior to the date of termination, as provided in Paragraph 5 herein.

(ii) Notwithstanding the foregoing, the Contractor shall not be relieved of liability to the Town for damages sustained by it by virtue of a breach of this Agreement by Contractor and the Town may reasonably withhold payments to Contractor for the purposes of set-off until such time as the exact amount of damages due the Town from the Contractor is determined.

B. Termination for Convenience of Town. The Town may, for its convenience and without cause terminate the Services then remaining to be performed at any time by giving written notice which shall become effective thirty (30) days following delivery of notice to Contractor. The terms of Paragraphs A (i) and (ii) above shall be applicable hereunder.

C. Termination for Insolvency. The Town also reserves the right to terminate the remaining Services to be performed in the event the Contractor is placed either in voluntary or involuntary bankruptcy or makes any assignment for the benefit of creditors.

11. ASSIGNMENTS, TRANSFERS, SUBCONTRACTING. The Contractor shall not subcontract, assign or transfer any work or Services under this Agreement without the prior written consent of the Town. Should the Contractor subcontract any services under this Agreement, it shall be done with continued liability for the Contractor. The Contractor shall remain responsible for services, responsibilities and liabilities of any person or entity acting under Contractor.

12. **ATTORNEYS' FEES; WAIVER OF JURY TRIAL.** 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. 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.

13. **ARBITRATION.** Intentionally Deleted.

14. **CONFIDENTIAL INFORMATION.** The Contractor shall not, either during the term of this Agreement or any time for a period of ten (10) years subsequent to that date upon which the Contractor shall stop providing services to the Town for any reason whatsoever, disclose to any person or entity, other than in the discharge of the duties of the Contractor under this Agreement, any information which the Town designates in writing as "confidential". As a violation by the Contractor of the provisions of this section could cause irreparable injury to the Town and there is no adequate remedy at law for such violation, the Town shall have the right, in addition to any other remedies available to it at law or in equity, to enjoin the Contractor in a court of equity for violating such provisions.

15. **NOTICES.** All notices and other communications required or permitted to be given under this Agreement by either party to the other shall be in writing and shall be sent (except as otherwise provided herein) (i) by certified or registered mail, first class postage prepaid, return receipt requested, (ii) by guaranteed overnight delivery by a nationally recognized courier service, or (iii) by facsimile with confirmation receipt (with a copy simultaneously sent by certified or registered mail, first class postage prepaid, return receipt requested or by overnight delivery by traditionally recognized courier service), addressed to such party as follows:

If to the Town: Town Manager
 Town of Surfside
 9293 Harding Avenue
 Surfside, Florida 33154
 Tel: (305) 792-1701

With a copy to: Town Attorney
 Town of Surfside
 9293 Harding Avenue
 Surfside, Florida 33154

If to the Contractor: Wayne O. Barclay, President
 Blue Digital Corp.
 7290 N.W. 7th Street, Suite 107
 Miami, FL 33126
 Tel: (305) 262-4920

16. **GOVERNING LAW.** This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. Venue for any litigation shall be in Miami-Dade County, Florida.

17. **AUDIT.** The Contractor shall make available to the Town or its representative all required financial records associated with the Agreement for a period of THREE (3) years after completion of this Agreement.

18. **NON-DISCRIMINATION.** The Contractor agrees to comply with all local and state civil rights ordinances and with Title VI of the Civil Rights Act of 1984 as amended, Title VIII of the Civil Rights Act of 1968 as amended, Title 1 of the Housing and Community Development Act of 1974 as amended, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, Executive Order 11063, and with Executive Order 11248 as amended by Executive Orders 11375 and 12086. The Contractor will not discriminate against any employee or applicant for employment because of race, color, creed, religion, ancestry, national origin, sex, disability or other handicap, age, marital/familial status, or status with regard to public assistance. The Contractor will take affirmative action to insure that all employment practices are free from such discrimination. Such employment practices include but are not limited to the following: hiring, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, 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 by the Town setting forth the provisions of this nondiscrimination clause. The Contractor agrees to comply with any Federal regulations issued pursuant to compliance with Section 504 of the Rehabilitation Act of 1973 (29 V.S.C. 708), which prohibits discrimination against the handicapped in any Federally assisted program.

19. **CONFLICT OF INTEREST.** The Contractor agrees to adhere to and be governed by the Miami-Dade County Conflict of Interest Ordinance Section 2-11.1, as amended; and by the Town of Surfside Code of Ordinances, which are incorporated by reference herein as if fully set forth herein, in connection with the Contractor's performance of Services pursuant to this Agreement. The Contractor covenants that it presently has no interest and shall not acquire any interest, direct or indirectly which should conflict in any manner or degree with the performance of the Services. The Contractor further covenants that in the performance of this Agreement, no person having any such interest shall knowingly be employed by the Contractor. No member of, or delegate to the Congress of the United States shall be admitted to any share or part of this agreement or to any benefits arising therefrom.

20. **ENTIRE AGREEMENT.** This Agreement, together with all terms, conditions and pricing contained in Miami-Dade County Bid No. 8254-1/22, and the City of Sunny Isles Beach Contract No.C1213-045, contain the entire agreement and understanding of the parties, and may be amended, waived, changed, modified, extended or rescinded only by a writing signed by the party against whom any such amendment, waiver, change, modification, extension and/or rescission is sought.

21. **CONFLICTING PROVISIONS.** In the event of a conflict, the terms and conditions in this Agreement supersede any other conflicting provisions that are contained in any other document, including but not limited to the terms and conditions of Miami-Dade County Bid No. 8254-1/22 and City of Sunny Isles Beach Contract No. C1213-045.

22. **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.

23. **WARRANTY; COMPLIANCE WITH LAWS.** Contractor warrants that: (i) the Services will be performed in a professional and workmanlike manner; (ii) all work or Services under this Agreement shall be Contractor's original work and will not infringe, misappropriate, or violate any intellectual property or other right of any person or entity; and (iii) Contractor has the full right to provide the Town with the assignments and rights provided for herein. Contractor shall exercise the same and good degree of care, skill and diligence in the performance of the Services as is ordinarily provided by a contractor under similar circumstances. If at any time during the term of this Agreement, it is determined that the Contractor's deliverables or Services are incorrect, not properly rendered, defective, or fail to conform to the Services as required by the Town and this Agreement, upon written notification from the Town Manager and/or his designee, the Contractor shall at Contractor's sole expense, immediately correct its deliverables or Services.

Contractor hereby warrants and represents that at all times during the term of this Agreement it shall comply with all applicable laws, ordinances, rules, regulations and lawful orders of public authorities and 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.

24. **SURVIVAL OF PROVISIONS.** Any terms or conditions of 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.

25. INSURANCE. Contractor shall secure and maintain throughout the duration of this Agreement insurance of such types and in such amounts not less than those specified below as satisfactory to Town, naming the Town as an Additional Insured, underwritten by a firm rated A-X or better by A.M. Best and qualified to do business in the State of Florida. The insurance coverage shall be primary insurance with respect to the Town, its officials, employees, agents and volunteers naming the Town as additional insured. Any insurance maintained by the Town shall be in excess of the Contractor's insurance and shall not contribute to the Contractor's insurance. The insurance coverages shall include at a minimum the amounts set forth in this Section 9 and may be increased by the Town, as it deems necessary or prudent.

25.1 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 coverage 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.

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

25.3 Automobile Liability with minimum limits of \$500,000.00 per Occurrence, combined single limit for Bodily Injury and Property Damage for Contractor officers and employees owning, or leasing motor vehicle. Coverage must be afforded on a form no more restrictive than the latest edition of the Automobile Liability policy, without restrictive endorsements, as filed by the Insurance Service Office, and must include Owned, Hired, and Non-Owned Vehicles.

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

25.5 Cyber Liability Insurance in an amount of not less than Two Million Dollars (\$2,000,000.00) per occurrence, single limit.

25.6 **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), 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 any Services. Each certificate shall include no less than (30) thirty-day advance written notice to Town prior to cancellation, termination, or material alteration of said policies or insurance. The Contractor shall be responsible for assuring that the insurance certificates required by this Section

remain in full force and effect for the duration of this Agreement, including any extensions or renewals that may be granted by the Town. The Certificates of Insurance shall not only name the types of policy(ies) provided, but also shall refer specifically to this Agreement and shall state that such insurance is as required by this Agreement. The Town reserves the right to inspect and return a certified copy of such policies, upon written request by the Town. If a policy is due to expire prior to the completion of the Services, renewal Certificates of Insurance shall be furnished thirty (30) calendar days prior to the date of their policy expiration. Each policy certificate shall be endorsed with a provision that not less than thirty (30) calendar days' written notice shall be provided to the Town before any policy or coverage is cancelled or restricted. Acceptance of the Certificate(s) is subject to approval of the Town.

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

25.8 **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.

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

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

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in counterpart on the day and year first written above.

WITNESSES

Print Name:

Print Name:

BLUE DIGITAL CORP., a Florida corporation authorized to do business in the State of Florida

By: _____

Name: _____

Title: _____

Date Executed: _____

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in counterpart on the day and year first written above.

**TOWN OF SURFSIDE, FLORIDA, a
Florida municipal corporation**

By: _____
Name: Guillermo Olmedillo
Title: Town Manager

Date Executed: _____

Attest:

Town Clerk

Approved as to Legal Form and
Leal Sufficiency:

Town Attorney