

RESOLUTION NO. 2542

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA SELECTING AND AWARDING THE PROPOSAL OF JACOBER & ASSOCIATES, INC. D/B/A JACOBER CREATIVE FOR MARKETING SERVICES TO THE TOWN'S TOURIST BUREAU; AUTHORIZING THE TOWN MANAGER TO EXECUTE AN AGREEMENT FOR THE SERVICES; PROVIDING FOR IMPLEMENTATION; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town of Surfside ("Town") issued Request for Proposals (RFP) No. 2018-004 seeking to competitively procure marketing services for the Town's Tourist Bureau in order to bring visitors to the Town to patronize hotels, restaurants, businesses and other recreational amenities ("Services"); and

WHEREAS, Jacober & Associates, Inc. D/B/A Jacober Creative ("Consultant") currently provides marketing services to the Tourist Bureau and submitted a proposal in response to the RFP; and

WHEREAS, multiple proposals were received by the Town in response to the RFP and evaluated by the Evaluation/Selection Committee and the Tourist Board, which recommended award of the Services to Consultant; and

WHEREAS, the Town wishes to select the proposal of the Consultant and award the Services to Consultant; and

WHEREAS, the Town Commission wishes to engage the Consultant to provide the Services and authorize the Town Manager to execute the Agreement for Marketing Services, substantially in the form attached hereto as Exhibit "A" ("Agreement"), subject to final approval as to form, content, and legal sufficiency by the Town Manager and Town Attorney; and

WHEREAS, the Town Council finds that the award of the Services to the Consultant 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 Adopted. Each of the above stated recitals are hereby adopted, confirmed and incorporated herein.

Section 2. Selection of Consultant and Award of Agreement. The Town Commission hereby selects the proposal of the Consultant, Jacober & Associates, Inc. D/B/A Jacober Creative, and awards the Agreement to perform the Services.

Section 3. Town Manager Authorized; Agreement Authorized. The Town Manager is hereby authorized to enter into the Agreement with the Consultant for the Services, substantially in the form attached hereto as Exhibit "A", subject to final approval as to form, content, and legal sufficiency by the Town Manager and Town Attorney.

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

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

PASSED AND ADOPTED this 9th day of October, 2018.

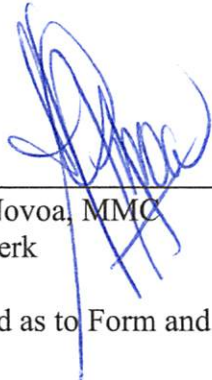
Motion By: Commissioner Paul
Second By: Vice Mayor Gielchinsky

FINAL VOTE ON ADOPTION

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

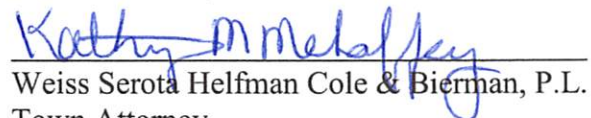
Absent
Absent
yes
yes
yes

Attest:



Sandra Novoa, MMC
Town Clerk

Approved as to Form and Legal Sufficiency:



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



Daniel Dietch, Mayor

**PROFESSIONAL SERVICES AGREEMENT FOR MARKETING SERVICES
BETWEEN
THE TOWN OF SURFSIDE
AND
JACOBBER & ASSOCIATES, INC.**

THIS PROFESSIONAL SERVICES AGREEMENT (this “Agreement”) is made effective as of the 10th day of October, 2018 (the “Effective Date”) by and between the **TOWN OF SURFSIDE, FLORIDA**, a Florida municipal corporation, whose principal address is 9293 Harding Avenue, Surfside, Florida 33154 (hereinafter the “Town”), and **JACOBBER & ASSOCIATES, INC.**, a Florida corporation **D/B/A JACOBBER CREATIVE** whose address is 690 Lincoln Road, Suite 201, Miami Beach, FL 33139 (hereinafter the “Consultant”).

WHEREAS, the Town issued Request for Proposals No. 2018-04 (“RFP”), soliciting marketing services for its Tourist Bureau, which RFP is incorporated herein and made a part hereof; and

WHEREAS, Consultant submitted a response or proposal to the RFP dated June 15, 2018 to provide the marketing services (“Proposal”), which Proposal is incorporated herein and made a part hereof, and the Proposal was selected and awarded by the Tourist Bureau and Town Commission; and

WHEREAS, the Consultant will provide professional marketing services to assist the Town with promoting the Town to bring visitors to the Town to enjoy and patronize its hotels, restaurants, and other recreational activities (“Services”); and

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

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

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

1. **Scope of Services.**

1.1 Consultant shall provide the Services set forth in the RFP and the Proposal incorporated herein, as well as the Services detailed in this Agreement.

1.2 Consultant shall perform all necessary tasks and services (hereinafter “Deliverables”) set forth in the RFP and the Proposal incorporated herein, including the following:

1.2.1 Design: Ongoing print and digital designs, as needed

- 1.2.2 Editorial: (i) Copywriting; (ii) Visitor Social, blog and email content creation
- 1.2.3 Marketing: (i) Email Marketing; (ii) Visitor Social Media Management; (iii) Media Strategy; (iv) Media Buying; (v) Digital Advertising
- 1.2.4 Website: (i) Website Maintenance; (ii) Blog Updating and Optimization
- 1.2.5 Client Services: (i) Dedicated Account Executive; (ii) Monthly Reports to Surfside Tourism Director; (iii) Quarterly Updates with Tourism Board; (iv) Reporting and Analytics

1.3 Upon the Town's request, in writing, for additional services the Consultant shall render additional services specified by the Town at rates to be mutually agreed upon ("Additional Services"). Additional services may include, but are not limited to, public relations, local media advertisements, social media advertisements, photo shoots, video production, and event planning.

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, the Town shall have the option to renew for three additional one (1) year terms; 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, in writing, by the Town Manager.

3. **Compensation and Payment.**

- 3.1 Town agrees to pay Consultant a total fee as described below for the Term to cover the Consultant's time to provide the Services as described in Consultant's Proposal. This fee is payable in monthly installments as described below. Consultant shall deliver an invoice to Town no more often than once per month detailing Services to be completed and the amount due to Consultant under this Agreement, in the amount of \$12,555 per month for the 1st year, in the amount of \$13,485 per month for the 2nd year, and in the amount of \$14,415 per month for the 3rd year, which shall not exceed the Monthly Retainer Maximum (hereinafter defined). For year 1 of the Term, the Maximum Monthly Retainer shall be 93 service hours at \$135.00 or \$12,555 per month or \$150,660 for the year. For year 2 of the Term, the Maximum Monthly Retainer shall be service 93 hours at \$145.00 or \$13,485 per month or \$161,820 for the year. For year 3 of the Term, the Maximum Monthly Retainer shall be 93 service hours at \$155.00 or \$14,415 per month or \$172,980 for the year. Unused service hours for any month shall be credited forward to the remainder of the

Term. Service hours in excess of the allotted retainer for the month (93 hours) are billed at the hourly rates as follows: \$135 per hour in year 1; \$145 per hour in year 2; \$155 per hour in year 3. The Town agrees to retain Consultant for a total of 1,116 hours for each year of the Term, with unused service hours rolled forward and credited to the remainder of the Term. When service hours for a single month come within 60%-80% of the total monthly allotted hours (or reach 55–75 hours), Consultant will notify Town in writing of such in order to avoid overages. This will allow the Town to review initiatives and time needs for the remainder of the month. If Consultant does not provide Town with such written notification, then any overages will be at the expense of Consultant. Should the Agreement be extended by the Town for up to three (3) additional one (1) year terms, the amount payable to Consultant by Town shall be based on an hourly rate of \$165.00 for the 1st extension year, \$175.00 for the 2nd extension year and \$185.00 for the 3rd extension year, and payable as described above for the original term of the Agreement. Town shall compensate Consultant for additional work and costs outside of the Services outlined above with prior written approval of additional work.

- 3.2 Fees shall be paid in advance each month, pursuant to Consultant’s invoice, which shall be based upon the hourly rates as stated in the Schedule of Rates. The Town shall pay the Consultant in accordance with the Florida Prompt Payment Act

4. **Subconsultants.**

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

5. **Town’s Responsibilities**

- 5.1 Town shall make available any staff and representatives, and provide criteria requested by Consultant to assist Consultant in providing the Services, Deliverables, and Additional 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. **Warranties; Compliance with Laws.**

- 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, and all work under this Agreement shall

be Consultant's original work and will not infringe, misappropriate, or violate any intellectual property or other right of any person or entity. If at any time during the term 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.

7. **Termination.**

7.1 Termination for Convenience. This Agreement may be terminated by Town for any reason or no reason upon thirty (30) calendar days written notice to Consultant, subject to one (1) month early termination fee of \$12,555 if terminated during the first year of the term, \$13,485 if terminated during the second year of the term, and \$14,415 if terminated during the third year of the term, payable in one lump sum to Consultant from Town and due upon the termination effective date. In the event of such termination, Consultant shall be entitled to receive compensation for Services performed pursuant to this Agreement through the date of termination. Except for the early termination fee as set forth hereinabove, the Town shall not be required to make payment for Services that have not been performed or rendered.

7.2 Termination with Cause. This Agreement may be terminated by either party upon fifteen (15) calendar days' written notice to the other should such other party fail substantially to perform in accordance with its material terms through no fault of the party initiating the termination. Town and Consultant shall each have the opportunity to cure any failure to perform in accordance with material terms during said fifteen (15) day cure period. In the event of such termination, Consultant shall be entitled to receive compensation for Services completed pursuant to this Agreement as stated herein through the date of termination.

7.3 The rights, duties and responsibilities of Consultant shall continue in full force during the period of notice, but Consultant's Services shall be limited to supervising and administering then existing already in progress brand, marketing or advertising programs and/or projects and the ordering and billing of approved media who's published closing dates, run dates or air dates fall within such period through the date of termination.

7.4 Upon termination of this Agreement, Consultant shall transfer all books, records, reports, documents and data, pertaining to the Services to the Town, in accordance with Florida Statute Ch. 119.0701 in electronic format within fifteen (15) days from the date of the written notice of termination or the date of expiration of this Agreement (or sooner if required by Chapter 119, Florida Statutes).

8. **Insurance.**

8.1 Consultant shall secure and maintain throughout the duration of this Agreement, if selected, 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.

- a. 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.
- b. 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.
- c. Business Automobile Liability with minimum limits of \$500,000 per Occurrence, combined single limit for Bodily Injury and Property Damage. for Consultant officers and employees owning, or leasing motor vehicle. 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.

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

8.2 **Certificate of Insurance.** Certificates of Insurance shall be provided to the Town, reflecting the Town as an Additional Insured (except with respect to Professional Liability Insurance and Worker's Compensation Insurance), no later than ten (10) days after award of this Agreement and prior to the execution of this Agreement by Town and prior to commencing Services. Each certificate shall include no less than (30) thirty-day advance written notice to Town prior to cancellation, termination, or material alteration of said policies or insurance. The 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.

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

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

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

9. **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

10. **Attorneys Fees and Waiver of Jury Trial.**

10.1 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.

10.2 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.

11. **Indemnification.**

11.1 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, arising from Consultant's 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 and for any judgment or damages arising from Consultant's performance or non-performance of this Agreement. Excluded from this indemnification are those claims, demands, and/or causes of action arising out of the gross negligence of the Town or the negligence of third party vendors engaged by Town.

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

12. **Notices/Authorized Representatives.**

12.1 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 following addresses:

For the Town: Guillermo Olmedillo
Town Manager
Town of Surfside
9293 Harding Avenue
Surfside, FL 33154
Email: golmedillo@townofsurfsidefl.com

With a copy to: Lillian Arango, Esq.
Town Attorney
Weiss Serota Helfman Cole & Bierman, P.A.
2525 Ponce de Leon Blvd., Suite 700
Coral Gables, FL 33134
Email: larango@townofsurfsidefl.com

For the Consultant: Paul Jacober
President
Jacober & Associates, Inc.
690 Lincoln Road, Suite 201
Miami Beach, FL 33139
(305) 672-3293
Email: paul@jacober.com

With a copy to: Robert Kahn, Esq.
4522 Sheridan Avenue
Miami Beach, Florida 33140
Email: roklaw@bellsouth.net

13. **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 in Miami-Dade County, Florida.

14. **Entire Agreement/Modification/Amendment.**

14.1 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.

14.2 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.

14.3 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.

15. **Ownership and Access to Records and Audits.**

15.1 Consultant acknowledges that all brand, marketing and advertising materials prepared by Consultant and accepted and paid for by Town for use in brand, marketing or advertising programs, and all similar or related information (whether patentable or not) which relate to the Services provided 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). Town agrees that the Consultant has the right to use these supplied materials in the development of Town’s work. Consultant may indefinitely use the Work Product developed for the Town in Consultant portfolio, case studies and promotional materials.

15.2 Consultant agrees to keep and maintain public records in Consultant’s possession or control in connection with Consultant’s performance under 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.

15.3 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.

- 15.4 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, excluding any items protected from disclosure by Section 119.0701, Florida Statutes, are and shall remain the property of the Town.
- 15.5 Upon completion of this Agreement or in the event of termination by either party, any and all public records relating to the Agreement, excluding any items protected from disclosure by Section 119.0701, Florida Statutes, in the possession of the Consultant shall be delivered by the Consultant to the Town Manager, at no cost to the Town, within ten (10) days, or kept and maintained by Consultant and made available to Town upon request. 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.
- 15.6 Upon Consultant's failure to timely reply to a request from the Town for any records required by Section 119.0701, Florida Statutes, any compensation due to Consultant shall be withheld until all required records are received as provided herein.
- 15.7 To the extent required by Section 119.0701, Florida Statutes, Consultant's failure or refusal to comply with the provisions of this section with ten (10) day notice from Town shall result in the immediate termination of this Agreement by the Town.

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 CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS:

Custodian of Records: Sandra Novoa, MMC
Mailing address: 9293 Harding Avenue,
Surfside, Florida 33154
Telephone number: 305-861-4863

Email:

snovoa@townofsurfsidefl.gov

16. **Non-Assignability.**

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.

17. **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.

18. **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.

19. **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.

20. **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.

21. **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.

22. **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.

23. **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.

24. **Background Checks.**

Consultant will be responsible for maintaining current background checks on all employees and subcontractor employees involved in the performance of the Services. Background checks must be performed prior to the performance of any Services by the employee under this Agreement. Written verification of any background checks must be provided to the Town at the request of the Town Manager.

25. **Termination Due To Lack of Funding.**

This Agreement is subject to the condition precedents that: (i) Town funds are available, appropriated and budgeted, for the Services annually for each year of the Term; (ii) the Town secures and obtains any necessary proceeds, grants or loans for the accomplishment of the Services pursuant to any borrowing legislation adopted by the Town Commission relative to the Services; and (iii) Town Commission enacts legislation or other necessary resolutions, which awards and authorizes the execution of this Agreement and the annual appropriation and budgeting for the Services. Town represents to Consultant that Town has adopted a resolution authorizing execution of this Agreement.

26. **Non-Exclusive Agreement.**

Consultant's Services shall be provided on a non-exclusive basis. The Town reserves the right to procure or acquire similar services from other providers while this Agreement is in effect.

27. **Most Favored Nation.**

Consultant agrees that if, after the Effective Date of this Agreement, it enters into an agreement for the same or substantially similar scope of services with another local government in Florida which contains a term or condition, including fees, charges or costs, that are substantially more favorable than the terms in the Agreement, the Town may provide Consultant with written notice explaining how the new agreement is for the same or substantially similar services and how the new agreement contains terms or conditions that are more favorable than the terms in this Agreement, and requesting to negotiate an amendment to this Agreement (a "New Agreement Notice"). The parties shall act in good faith to negotiate an amendment to this Agreement that addresses, in a manner that is fair and equitable to both parties, the matters raised by the Town in the New Agreement Notice. If the parties fail to reach agreement upon an amendment within ninety (90) days of the New Agreement Notice, then the Town may terminate this Agreement in accordance with the provisions of Section 7.

[REMAINDER OF PAGE LEFT BLANK; SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the date written below their signatures.

CONSULTANT:

**JACOBBER & ASSOCIATES, INC., A
Florida corporation, D/B/A JACOBBER
CREATIVE**

By: _____

Name: _____

Title: _____

Date Executed: _____

IN WITNESS WHEREOF the parties hereto have executed this Agreement on the day and date first above written.

TOWN:

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

By: _____
Guillermo Olmedillo, Town Manager

Date Executed: _____

Attest:

By: _____
Sandra Novoa, Town Clerk, MMC

Approved as to Form and Legal Sufficiency:

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