

RESOLUTION NO. 2018- 2548

**A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA APPROVING AN AGENCY AGREEMENT WITH LEADSONLINE, LLC FOR AN ELECTRONIC REPORTING AND CRIMINAL INVESTIGATION DATA SYSTEM FOR LAW ENFORCEMENT; PROVIDING FOR AUTHORIZATION AND IMPLEMENTATION OF THE AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the Town of Surfside (“Town”) Police Department wishes to utilize the most efficient and effective electronic reporting and criminal investigation data system and software to obtain and analyze information critical to criminal investigations through the online software service provided by LeadsOnline, LLC (“Leads”); and

**WHEREAS**, Leads has agreed to provide the Town’s Police Department access to the online database, pursuant to the Agency Agreement attached hereto as Exhibit “A” (the “Agreement”); and

**WHEREAS**, the Town Commission finds that the use of the online database is necessary and in the best interest and welfare of the Town and law enforcement, and wishes to approve the Agreement, 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.** 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 Leads, substantially in the form attached hereto as Exhibit “A,” 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 Town Attorney for legal sufficiency.

**Section 3. Implementation.** The Town Manager and/or Police Chief 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 13<sup>th</sup> day of November, 2018.

Motion by Commissioner Karukin.

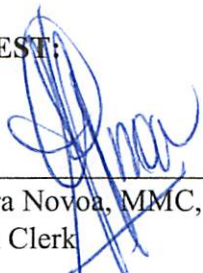
Second by Commissioner Paul.

**FINAL VOTE ON ADOPTION**

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

## AGENCY AGREEMENT

This LeadsOnline, LLC AGENCY AGREEMENT ("Agreement"), dated \_\_\_\_\_, 2018 is made between Town of Surfside, a Florida municipal corporation ("Town") and LeadsOnline LLC, a Texas company ("Leads").

### SCOPE OF AGREEMENT

Leads operates and maintains an electronic reporting and criminal investigation system for receiving Data for the use of Law Enforcement Officials in their official duties. Leads acts in the capacity of an agent for such Law Enforcement Agencies for the purpose of collecting, maintaining and disseminating Data.

Town desires to utilize Leads' System to support its investigations.

Subject to the terms of this Agreement and in consideration of the mutual covenants stated below, the parties agree as follows:

#### 1. Definitions

- 1.1 "Data" means all information provided by Reporting Businesses and Law Enforcement Agencies about transactions, including (but not limited to) the transaction number, item number, product UPC code, quantity and ingredients, make, model, property description, serial number, name, address, identification number, telephone number, date of birth and any images recorded during the course of a transaction according to official request, statutory requirement or otherwise.
- 1.2 "GLBA" means the Gramm-Leach-Bliley Act of 1999, together with the Privacy Rule and Safeguards Rule promulgated by the U.S. Federal financial institution regulators and the Federal Trade Commission.
- 1.3 "Law Enforcement Agency" means any agency duly authorized by Municipal, State, County or Federal government to enforce laws or investigate crimes.
- 1.4 "Law Enforcement Official" means a person employed and authorized by a Law Enforcement Agency to, in his/her official duties, access Data and/or submit Data for official use by Law Enforcement Agencies.
- 1.5 "Leads' System" is Leads' electronic reporting and criminal investigations system for receiving Data for access by Law Enforcement Officials.
- 1.6 "Reporting Business" shall mean any entity that records Data regarding (a) the receipt or sale of products regulated by law, including but not limited to the Combat Methamphetamine Act of 2005 and (b) the receipt or other disposition of merchandise or materials, and reports such Data for access by Law Enforcement Officials according to official request, statutory requirement or otherwise.

#### 2. Responsibilities of Town

- 2.1 Town agrees that the protection of usernames and passwords used to access Leads services and any Data accessed via Leads by its Law Enforcement Official is the

responsibility of the Town. Town agrees to maintain such information in a secure manner and to not provide usernames and passwords used to access Leads services to any unauthorized person, pursuant to Section 2.4 of this Agreement.

- 2.2 Town is responsible for the accuracy of information submitted by Town's Law Enforcement Officials in registration for Law Enforcement Agency's accounts.
- 2.3 Town agrees to not share its access to Leads' System with other Law Enforcement Agencies and to not share information retrieved from Leads' System with the exception of disclosure necessary for the purpose of prosecution of crimes within Town's jurisdiction investigated by Town, subject to, and in compliance with, Florida Public Records, Chapter 119, Florida Statutes. Town understands and acknowledges that according to Florida Statutes 539.003, all records relating to pawnbroker transactions delivered to appropriate law enforcement officials pursuant to s. 539.001 are confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution and may be used only for official law enforcement purposes. This section does not prohibit the disclosure by the appropriate law enforcement officials of the name and address of the pawnbroker, the name and address of the conveying customer, or a description of pawned property to the alleged owner of pawned property.
- 2.4 Town agrees that accounts will be: i) registered only to individual Law Enforcement Officials employed exclusively by Town; ii) will be used only by the specific Law Enforcement Official to whom the account is registered; and, iii) will not be used to access or otherwise provide information from Leads system to other Law Enforcement Agencies.
- 2.5 Town represents and warrants that it shall only access, use, and disclose Data for use in Town's official Law Enforcement Agency duties. Town maintains sole responsibility for activity taking place under its user accounts and is responsible for any use, misuse or disclosure of Data accessed by its users, which shall be in accordance with Chapter 119, Florida Statutes and any applicable exceptions including Florida Statutes 539.003.
- 2.6 Town is responsible for securing Data accessed from Leads' System, and agrees to comply with all applicable statutes, laws and regulations for use and disclosure of non- public personal information, including federal and state data security breach laws and the GLBA.
- 2.7 Town agrees to not search Leads' System for the purpose of creating a public record in order to respond to a public records request when no such public record existed at the time the public records request was received by Town. Town understands and acknowledges that information accessible via Leads' System may not be eligible for disclosure in response to a public records request according to applicable law including Florida Statutes 539.003. Upon receipt of a request for records accessible via Leads' System, Town may consider factors including but not limited to i) whether or not Town has actually accessed and/or retained the record, ii) whether or not the record(s) are related to an active criminal investigation iii) whether or not the Reporting Business supplying the information is specifically required by law to report to Town via Leads' System iv) whether or not the information contains non-public personal information protected by state and federal privacy law and breach notification law v) whether or not Town's response to such request would include the trade secrets of one or more Reporting Businesses vi) whether or not the Reporting Businesses or customers are to be notified and provided with the

opportunity to object to such disclosure, vii) whether or not computer programming or excessive labor would be required to redact exempted information from records prior to disclosure.

- 2.8 Town is responsible for using devices and browsers capable of connecting via an encrypted internet connection.
- 2.9 Town is responsible for promptly notifying Leads when a user is no longer employed by Town or is otherwise no longer authorized to access Leads' System.
- 2.10 Town agrees to promptly notify Leads of any conditions that Town believes may represent or result from a security incident or vulnerability, including the possible compromise of a user's password. Please send any notifications to [privacy@leadsonline.com](mailto:privacy@leadsonline.com).
- 2.11 Town will pay subscription fees according to the schedule set forth in Attachment 'A' which by this reference is incorporated herein. Fees shall be paid pursuant to Leads' invoice, which shall be based upon Leads' System being fully operation and accessible to the Town. The Town shall pay Leads in accordance with the Florida Prompt Payment Act after approval and acceptance of the Services by the Town

### **3. Responsibilities of Leads**

- 3.1 Leads agrees to operate and maintain the Leads' System for the purpose of receiving Data for access only by Law Enforcement Officials.
- 3.2 Leads agrees to secure Data using administrative, technical and physical safeguards as set forth in applicable federal and Florida state law, including the GLBA.
- 3.3 Leads agrees to provide use of Leads' System with the capabilities specified in Attachment 'A'.
- 3.4 Leads shall secure and maintain for the duration of this Agreement, the General Liability insurance in the amount of \$1,000,000.00 per occurrence and Cyber Liability Insurance in the amount of \$2,000,000.00 per occurrence, single limit.

### **4. Conditions for use of Leads' System**

- 4.1 Leads' System and website, including but not limited to written materials, text, graphics, logos, software, functionality, icons and images are the exclusive proprietary property of Leads and are protected under the United States Copyright Act (17 United States Code), as well as by all applicable state and international copyright laws, and by the Lanham Act (15 U.S.C. §§1051-1141n). Town Agrees to abide by any additional copyright notices, trademarks, information, or restrictions contained in any content on Leads' System and website. Leads' System and website may be used solely for the purposes expressly provided for herein, and no aspect of the Leads' System or website may be used for any other purpose whatsoever. Any other use is unauthorized and will constitute an infringement upon the proprietary rights of Leads. No authority to use any content on Leads' System, website, or any other intellectual or other property of Leads not expressly granted by this Agreement shall be implied.
- 4.2 Town agrees to not decompile or otherwise copy or use content on the Leads' System or website or other proprietary information of Leads for purposes of reverse-engineering or reconstruction, and to not remove, overprint or deface any notice of copyright,

trademark, logo, legend, or other notices from any materials Town obtains from Leads' System or website.

- 4.3 Town represents it has a Law Enforcement Agency, and that its Law Enforcement Agency will abide by the terms of this Agreement.
- 4.4 Leads may modify or upgrade any aspect of Leads' System at any time without notice. Leads agrees to make commercially reasonable efforts to perform such modifications in a manner that is not disruptive to Town. In the event, the Lead's System is no longer compatible with applicable elements of Town's technological infrastructure (i.e. web browsers), Leads shall, at the option of the Town, revert to the older, operational Leads' System until the updates become compatible with the Town's technology infrastructure. In the event the Leads' System is no longer compatible or operations with the Town's technology infrastructure, the Town shall have the option to terminate this Agreement immediately upon written notice of termination to Leads.
- 4.5 Subject to the terms of this Agreement, Town hereby appoints Leads as its non-exclusive agent for the sole purpose of collecting, maintaining and disseminating Data from Reporting Businesses. This agency appointment is effective as of the registration date of Town's initial user.
- 4.6 Leads uses a number of checks to identify inaccurate or incomplete Data, but cannot and does not represent or endorse the accuracy or reliability of Data or other information submitted by Reporting Business and Law Enforcement Agencies. Data is provided by Reporting Businesses and Law Enforcement Agencies according to the laws and practices enforced in Reporting Businesses' jurisdiction using their proprietary operational software.
- 4.7 Leads will provide reasonable instructions to Reporting Businesses regarding uploading Data to the Leads' System, but is not responsible for ensuring their compliance with their Data reporting obligations.
- 4.8 Town will not discourage Reporting Businesses from submitting Data via Leads.

## 5. Term

- 5.1 This Agreement will become effective as of the date first set forth above and remain in effect for three (3) years (the "Initial Term") or until termination by Leads or Town as described below.
- 5.2 Neither party is obligated to renew this Agreement. Upon expiration of the Initial Term and any renewal term, Town may renew this Agreement for an additional one-year term. Mutual agreement to be evidenced by Leads' submission of a valid invoice for the renewal year, and Town's payment of such invoice within 30 days of renewal.
- 5.3 Following written notice with at least thirty (30) day cure period, either party may without further notice, terminate this Agreement if the other party: (i) fails to perform any material obligation required under this Agreement; or (ii) violates any laws, rules or regulations pursuant to this Agreement.
- 5.4 Either party shall have the right to terminate this Agreement, with thirty (30) days' written notice, for any reason or for convenience. In the event of termination by Leads according to this paragraph, Leads will refund a prorated amount of the annual subscription fee paid by Town based on the remaining months of the Agreement year.
- 5.5 The parties agree that any continuation of this Agreement from a fiscal year to the next is

contingent upon annual fiscal appropriation and lawful approval by Town's governing entity. Town may terminate this Agreement by providing thirty (30) days' written notice to Leads prior to the next Agreement year if funding to make the next scheduled payment is not duly appropriated and authorized.

## 6. Disclaimer and Indemnification

**6.1 EXCEPT FOR THE REPRESENTATIONS SET FORTH IN SECTION 3 OF THIS AGREEMENT, LEADS SPECIFICALLY DISCLAIMS ALL REPRESENTATIONS, CONDITIONS, AND WARRANTIES, WHETHER EXPRESS OR IMPLIED, ARISING BY STATUTE, OPERATION OF LAW, USAGE OF TRADE, CUSTOM, COURSE OF DEALING, OR OTHERWISE, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTY OF MERCHANTABILITY, MERCHANTABILITY, SATISFACTORY QUALITY, THE IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, AND/OR ANY AND ALL OTHER IMPLIED WARRANTIES AND EXPRESS WARRANTIES (OTHER THAN THOSE SET FORTH HEREIN, IF ANY) WITH RESPECT TO LEADS' SYSTEM. LEADS' SYSTEM, INCLUDING ALL DATA, CONTENT, SOFTWARE, FUNCTIONS, MATERIALS AND INFORMATION MADE AVAILABLE ON OR ACCESSED THROUGH LEADS' WEBSITE IS PROVIDED, AND ACCEPTED AND/OR USED, "AS IS" WITH ALL FAULTS AND WITHOUT WARRANTY OF ANY KIND. LEADS DOES WARRANT THE OPERATION AND FUNCTIONALITY FOR THE PURPOSE IT IS INTENDED WITH THE TOWN'S WEB BROWSERS AS SPECIFIED IN TOWN'S TECHNOLOGICAL INFRASTRUCTURE.**

**IN NO EVENT SHALL LEADS BE LIABLE FOR OTHER DIRECT, INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES OR LOSSES, INCLUDING, WITHOUT LIMITATION, LOST PROFITS, DOWNTIME COSTS, LABOR COST, OVERHEAD COSTS OR CLAIMS OF THE REPORTING BUSINESS, ITS AFFILIATES OR ANY OTHER THIRD PARTY, EVEN IF LEADS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NOTWITHSTANDING THE FOREGOING, AT AN ABSOLUTE MAXIMUM, LEADS LIABILITY SHALL BE LIMITED TO THE AMOUNT OF MONEY IT IS PAID BY TOWN TO LEADS.**

6.2 Leads shall indemnify, hold harmless, protect and defend Town and its officials, officers, employees, agents and authorized volunteers (the "Indemnified Parties") from and against all losses, liabilities, judgments, costs, expenses, damages (including damages to the Leads' System), attorney's fees, and other costs, including all costs of defense, arising from all suits of law or actions of every nature for or on account of the infringement of any trade secrets, patents, trademarks, copyrights or other proprietary right of any other party by reason of the use or integration of any proprietary materials, equipment, devices or processes, originally incorporated, or provided and used, by Leads in the performance of the services provided under this Agreement. Notwithstanding the foregoing, if the foregoing described losses, liabilities, judgments, costs, expenses, damages and the like arise due to the misuse of the Data or any other breach of this Agreement by Town, Leads' liability under this paragraph shall be reduced proportionately by the amount of loss, liability, judgment, cost, expense, damage and the like arising due to such misuse or breach by Town.

## 7. Compliance with Public Records.

To the extent applicable to Leads and this Agreement, is considered a contractor as defined in Section 119.0701(1)(a), Florida Statutes, Leads shall:

- a) Keep and maintain public records required by the Agency to perform the service.
- b) Upon request of the Town's custodian of public records, provide the public agency 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 in Chapter 119, Florida Statutes or otherwise provided by the Laws of the State of Florida.

- c) 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 term and following completion of the Agreement if Leads does not transfer the records to the Agency.
- d) Upon completion of the Agreement, transfer, at no cost, to the Agency all public records in possession of Leads or keep and maintain public records required by the agency to perform the service. If Leads transfers all public records to the Agency upon completion of the Agreement, then Leads shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If Leads keeps and maintains public records upon completion of the Agreement, then Leads shall meet all applicable requirements for retaining public records. All records stores electronically must be provided to the Town, upon request from the Town's custodian of public records, in a format that is compatible with the information technology systems of the Town.
- e) IF LEADS 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: Sandra Nova Mailing address: 9293 Harding Avenue Surfside, FL 33154. Telephone: 305-365-5506 Email: [snova@townofsurfsidefl.gov](mailto:snova@townofsurfsidefl.gov)**
- f) Nothing contained in this Section shall be construed to require the making of a public record, when one does not exist or alter the status of any record which is classified as exempt or confidential and exempt, as determined by Florida law.

## 8. Miscellaneous

- 8.1 During the term of this Agreement, Leads 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.
- 8.2 Leads shall comply with all applicable laws, ordinances, rules, regulations, and lawful orders of public authorities in carrying out this Agreement, and in particular shall obtain all required certifications from all jurisdictional agencies to perform under this Agreement at its own expense.
- 8.3 Neither party will be liable for any failure or delay in performing an obligation under this Agreement that is due to causes beyond its reasonable control, including any act that would be considered force majeure.
- 8.4 If any provision of this Agreement is held to be unenforceable, in whole or in part, such holding will not affect the validity of the other provisions of this Agreement, unless Leads deems the unenforceable provision to be essential to this Agreement, in which case Leads may terminate this Agreement, effective immediately upon notice to Town.



- 8.5 Leads reserves the right to disclose any information in response to a written official government request or duly authorized subpoena, in accordance with all applicable laws.
- 8.6 Any waiver by Leads of a breach of any provision of this Agreement by Town or delay in enforcing any rights shall not operate or be construed as a waiver of any other or subsequent breach by Town.
- 8.7 This Agreement constitutes the entire agreement between the parties, and supersedes all prior agreements and understandings, written or oral, between the parties relating to the subject matter hereof. This Agreement may not be modified, changed or discharged, in whole or in part, except by an agreement in writing signed by both parties. The mere acceptance of any work order, purchase order or other document containing provisions purported to modify or enlarge the obligations or liabilities of either party shall not be construed as acceptance of such provisions.
- 8.8 Nothing in this Agreement, express or implied, is intended to confer upon any person, other than the parties hereto, any benefits, rights, or remedies under or by reason of this Agreement. There are no third-party beneficiaries to this Agreement. The only persons who may enforce or benefit from this Agreement and any rights under this Agreement are Town and Leads.
- 8.9 Leads 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.
- 8.10 This Agreement shall be governed by and construed in accordance with the laws of the State of Florida, without regard to conflicts of laws provisions. Sole and exclusive jurisdiction and venue for any action or proceeding arising out of or related to this Agreement shall be an appropriate state or federal court located in Miami-Dade, Florida.
- 8.11 Neither party will assign its rights or duties under this Agreement without first providing written notice to the other party with at least 30 days to object to such assignment and in doing so, immediately terminate the Agreement without penalty.
- 8.12 This Agreement may be executed in several counterparts, each of which shall be deemed an original and such counterpart shall constitute one and the same instrument.
- 8.13 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

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

For Leads:

LeadsOnline LLC  
6900 Dallas Parkway, Suite 825  
Plano, TX 75024  
Contact Person: \_\_\_\_\_

8.14 This agreement shall become effective November 15, 2018.

**LEADS**

LeadsOnline LLC

Signature: \_\_\_\_\_

Print Name: David K. Finley

Title: President & CEO

Date: \_\_\_\_\_

Address: 6900 Dallas Parkway, Suite 825  
Plano, Texas 75024

Tax ID: 42-1720332

**TOWN**

Town of Surfside, a Florida municipal  
corporation

Signature: \_\_\_\_\_

Print Name: Guillermo Olmedillo

Title: Town Manager

Date: \_\_\_\_\_

Address: 9293 Harding Ave.  
Surfside, FL 33154

## AGENCY AGREEMENT – Attachment ‘A’

### SCOPE OF WORK AND ANNUAL SUBSCRIPTION FEE

LeadsOnline System Capability	TotalTrack
Online reporting system for all pawn/secondhand stores	✓
Unlimited accounts/searches for your personnel working your cases	✓
Images of property, sellers, vehicles, thumbprints, etc. as reported	✓
Legacy data import (from existing in-house database)	✓
Updates, training and support for Town personnel and businesses	✓
Transaction Monitor – Audit system for reporting compliance	✓
ReportIt citizen property inventory system	✓
Automated NCIC/stolen property hits	✓
Message Inbox (alerts and communication to and from businesses)	✓
Daily Stats (hits and statistics for each investigator)	✓
Property Hold Management System	✓
Nationwide search access	✓
Saved (continuous) searches/Email hit alerts	✓ 50
eBay First Responder Service	✓
Persons of Interest inter-agency suspect information system	✓
Suspect variations and associations reports	✓
Statement Analyzer	✓
First year subscription fee due upon invoice. Annual subscription fee following the first year will be according to then-current pricing.	<b>\$2,238</b>