

RESOLUTION NO. 2553

**A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA SELECTING AND AWARDING THE PROPOSAL OF HAMSA HAMSA, LLC D/B/A SURF-N-SIDES FOR FOOD AND BEVERAGE CONCESSION SERVICES AT THE SURFSIDE COMMUNITY CENTER; 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. 2018-003 seeking to competitively procure food and beverage concession services at the Surfside Community Center (“Services”); and

**WHEREAS**, Hamsa Hamsa, LLC D/B/A Surf-N-Sides (“Contractor”) submitted the sole proposal in response to the RFP, and after review of the proposal submitted and recommendation of award, the Town wishes to select the proposal of the Contractor and award the Services; and

**WHEREAS**, the Town Commission wishes to engage the Contractor to provide the Services and authorize the Town Manager to execute the Agreement for Food and Beverage Concession 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 Commission finds that the award of the Services to the Contractor and this Resolution are in the best interest and welfare of the Town.

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

**Section 1. Recitals Adopted.** Each of the above stated recitals are hereby adopted, confirmed and incorporated herein.

**Section 2. Selection of Contractor and Award of Agreement.** The Town Commission hereby selects the proposal of the Contractor, Hamsa Hamsa, LLC D/B/A Surf-N-Sides, 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 Contractor 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/or designee is authorized to take any and all necessary action to implement the Services, the Agreement and the purposes of this Resolution, including approving and authorizing any renewals of the Agreement.

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


PASSED AND ADOPTED this 13<sup>th</sup> day of November, 2018.

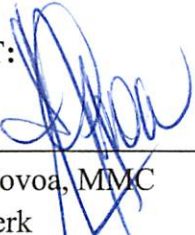
Motion By: Commissioner Karukin

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 LEGALITY FOR THE USE  
AND BENEFIT OF THE TOWN OF SURFSIDE ONLY:**



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

**AGREEMENT FOR FOOD AND BEVERAGE CONCESSION  
SERVICES  
SURFSIDE COMMUNITY CENTER**

**THIS AGREEMENT** is made and entered into this 15<sup>th</sup> day of November, 2018 (“Effective Date”) by and between the **TOWN OF SURFSIDE, FLORIDA**, a Florida municipal corporation (hereinafter referred to as “Town”) and **HAMSA HAMSA, LLC**, A Florida Limited Liability Company, **D/B/A SURF-N-SIDES** (hereinafter referred to as the “Contractor”).

**WHEREAS**, the Town wishes to engage the Contractor to operate and manage food and beverage concession services for the Surfside Community Center/Pool Facility pursuant to the specifications outlined in Request for Proposals (RFP) No. 2018-003 (“RFP”), which is incorporated herein and made a part hereof; and

**WHEREAS**, in response to the RFP, the Town received the proposal of the Contractor, and the Town wishes to select the Contractor to provide the services as qualified and in the best interests of the Town; and

**WHEREAS**, the Contractor is qualified, willing and able to provide the desired services on the terms and conditions set forth herein.

**NOW THEREFORE**, in consideration of the premises and the mutual covenants herein named, the parties hereto agree as set forth below:

1. **RECITALS**. The Recitals set forth above are hereby incorporated into this Agreement and made a part of hereof for reference.

2. **SERVICES TO BE PERFORMED**. Contractor shall perform the required services in compliance with the terms and conditions specified in the RFP. Contractor agrees to furnish all labor and materials in a good, workmanlike, and professional manner. The Services shall be performed by Contractor to the full satisfaction of the Town. Contractor agrees to immediately inform the Town via telephone and in writing of any problems that could cause damage to property and persons or to the concession area located at the Surfside Community Center/Pool located at 9301 Collins Avenue, Surfside, Florida 33154 (“Concession Area”).

3. **PAYMENTS TO THE TOWN**. In consideration of this Agreement, the Contractor shall pay the Town a monthly concession fee of \$500.00 commencing on the Commencement Date (as hereinafter defined), plus any applicable sales or use taxes imposed by any governmental entity, including resort taxes for food and beverage due the Town pursuant to Chapter 70, Article IV, of the Town of Surfside Code. Payment to the Town shall be sent to the Town no later than the tenth (10<sup>th</sup>) day of each month. Payments received after the tenth (10<sup>th</sup>) of each month through the twenty-fifth (25<sup>th</sup>) of each month shall be considered delinquent and shall be assessed a ten percent (10%) penalty. Payments received after the twenty-fifth (25<sup>th</sup>) of each month shall be assessed an additional ten percent (10%) penalty. Failure by the Contractor to tender payment to the Town within thirty (30) days of any payment due date shall be sufficient cause for the Town to terminate this Agreement. Contractor shall comply with all requirements of Chapter 70, Article IV, of the Town Code, in connection with the collection, filing

of returns, remittance and payment of all resort taxes due the Town for food and beverage sales.

4. **TERM.** This Agreement shall be for an initial term of one (1) year commencing on November 15, 2018 and ending on October 14, 2019 (hereinafter the "Term") unless sooner terminated pursuant to paragraph 12 of this Agreement. Services shall commence within sixty (60) days of the Effective Date of this Agreement (the "Commencement Date"), which date shall be documented in writing by the parties. In no event shall the Commencement Date, and Contractor's obligation to pay the Town a concession fee exceed beyond sixty (60) days from the Effective Date. Any change in fee, terms or conditions shall be accomplished by written amendment to this Agreement and approval by the Town. Provided Contractor is not in default of this Agreement and is performing satisfactorily as determined by the Town Manager, in his sole discretion, the Term of this Agreement shall automatically renew for a successive three (3) year term ("First Renewal Term") and a two (2) year term ("Second Renewal Term"). The Town Manager shall evaluate the performance of the Contractor sixty (60) days prior to the expiration of the Term, and sixty (60) days prior to the expiration of the First Renewal Term, as applicable, and the Town Manager shall have the authority to determine whether Contractor is performing satisfactorily and authorize the First Renewal Term and the Second Renewal Term. In determining whether Contractor is performing satisfactory, the Town Manager shall consider certain performance standards, including, but not limited to, legitimate complaints received from patrons or guests, food and beverage quality, and availability of menu or food and beverage items.

5. **NO SUBLEASE.** Contractor understands it is granted permission to use the Concession Area for the operation of a concession stand under the terms of this Agreement. It shall have no right to sublease, assign or otherwise convey any interest of any sort in the Concession Area granted by this Agreement to any person or persons whatsoever without the prior written consent and approval of the Town. This Agreement shall not be construed to grant Contractor any right or property interest in the Concession Area except to the extent of the obligations under this Agreement.

6. **RECORDS AND ACCOUNTS.** Contractor shall keep true and accurate books and records showing all of its business transactions in separate records of account for the concession operation, in a manner acceptable to the Town. The Town shall have the right, through its representatives, and at all reasonable times, to inspect such books and records, including State of Florida sales tax records. The Town may require Contractor, at his expense, to have his records and accounts audited by an auditor acceptable to the Town and shall present said audit to the Town Manager or his designee within thirty (30) days after the completion of the audit. If Contractor fails to provide the required audit, the Town shall contract to have an independent audit performed at the Contractor's expense.

7. **CONDITION OF PREMISES.** The taking of possession of the Concession Area by the Contractor shall be in "As Is" and existing condition and shall, in itself, constitute acknowledgment that the Concession Area is in good and tenantable condition, as shown on the photo attached hereto as Exhibit "A" and with the existing equipment and inventory as listed in Exhibit "B" attached hereto ("Inventory List"). Contractor agrees to accept the Concession Area as existing and constructed but may propose minor modifications or alterations to ensure efficient operations, subject to the prior written approval of the Town. Contractor shall not construct,

alter or modify the Concession Area without the prior written approval of the Town Manager and/or designee. Any plans for such construction, alteration or modification, if applicable, shall be submitted to the Town for approval. Such construction, alteration or modification shall be without cost to the Town and be performed in accordance with all permitting and building code requirements.

8. **SIGNS.** All signs, names, placards or signs shall be approved by the Town Manager and/or designee prior to installation. All signs must meet all requirements, specifications and permitting as set forth in the Town Code.

9. **DAMAGE TO/DESTRUCTION OF PREMISES.** Should the Concession Area or the building and other improvements in which the Concession Area is situated be totally or partially damaged or destroyed, the Town shall promptly repair the same, except that the Town shall have the option to terminate this Agreement if (a) the Concession Area or the building improvements in which the Concession Area is situated cannot reasonably be expected to be restored under existing law to substantially the same condition as existed prior to such damage or destruction within ninety (90) days from the date that the insurance proceeds, if any, become available to the Town; or (b) if the costs of such restoration would exceed one-half (1/2) of the full insured value of the building and other improvements in which the Concession Area is situated; or (c) if the damage or destruction results from a casualty not customarily insured against by a policy of standard fire and extended coverage insurance having vandalism and malicious mischief endorsements. Any notice of termination given here shall be given to Contractor within fifteen (15) days after Town determines the period of time required for and the estimated cost of such repair or restoration.

10. **OBLIGATIONS OF CONTRACTOR; SCOPE OF SERVICES.**

10.1 **MINIMUM AMOUNT OF SERVICE BY CONTRACTOR:**

a. Contractor agrees to devote the hours necessary to perform the services set forth in this Agreement in an efficient and effective manner. Contractor may represent, perform services for and be employed by additional individuals or entities, at Contractor's sole discretion, as long as the performance of these extra-contractual services does not interfere with or presents a conflict with Town's business.

b. **Catering Services.** The services provided by Contractor are not exclusive and certain special events may be catered or food and beverage service may be provided by other caterers or providers on a case by case basis. Notwithstanding, the foregoing, Contractor shall have the first right to cater any special event at the Facility. If Contractor is not able to cater the event or provide food and beverage services as requested, or in the event that patrons or residents are not satisfied with the food and beverage options available from Contractor, patrons and guests shall be able to purchase food and beverages from outside caterers or providers, with all orders or purchases to be made through the Contractor with a flat service fee of 10% on all orders or purchases. Contractor shall provide signage indicating that any orders or purchases of food and beverages from outside caterers or providers is not provided by Contractor.

c. Beach Service. Contractor may provide food and beverage service to the beach area of the Facility, subject to any and all approvals for such service as may be required by the State of Florida, Miami-Dade County, or any other applicable entity regulating beach service. The Town Manager may impose additional requirements for such beach services, in his discretion, including trash and debris removal, hours of operation or location of deliveries.

10.2 HOURS OF OPERATION. Contractor agrees to perform the services as set forth in this Agreement within the hours of operation established by the Town Manager and/or designee. The parties acknowledge and agree that as of the Effective Date of this Agreement the hours of operation shall be seven (7) days a week, from 11:00 a.m. to pool closing.

10.3 PERMITS. Contractor is required to provide Town, prior to commencement of operations of the concessions, a copy of all licenses, permits and/or certificates necessary to operate its business in the Town.

10.4 TAXES. Contractor agrees to pay all lawful taxes, assessments or charges which may be levied by any government entity.

10.5 EQUIPMENT. Contractor, at his or her own expense, shall completely equip the concession and keep all existing equipment in good repair and in safe operating condition to the satisfaction of the Town throughout the term of the Agreement. Any and all equipment to be installed or placed at the Concession Area by the Contractor shall require the prior approval of the Town Manager and/or designee and shall be added to the Inventory List. Daily inspections of the Contractor's equipment must be maintained and available for review upon request of the Town Manager and/or designee. Any request of the Contractor to use the Concession Area after hours must be made in writing to the Town Manager and/or designee.

10.6 QUALITY OF SERVICE/CONTROLLED RATES AND CHARGES. The Town shall be provided in advance with the menu, prices and rates of all food and beverages sold at the Concession Area by the Contractor, including any changes to such menu, prices and rates. The Town reserves the right to prohibit the sale of any item which it deems objectionable or beyond the scope of merchandise deemed necessary for proper service to the public. Contractor shall post menu, prices and rates of all items sold at the Concession Area in such places as designated by the Town. The Contractor is expressly prohibited from selling in the Concession Area or Facility (a) alcohol; (b) any goods which are not food and beverage related; and (c) other goods related to the pool and beach use, unless first approved by the Town Manager and/or his designee.

10.7 TOOLS AND EQUIPMENT. The Contractor shall provide all tools and equipment necessary to perform the services under this Agreement, and shall provide a list of any such equipment to the Town, which shall be added to the Inventory List.

10.8 INDEPENDENT CONTRACTOR RELATIONSHIP. The Contractor, including its agents and employees, 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 services as contemplated in 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. The Contractor shall furnish its own transportation, office and other supplies as it determines necessary in performing services pursuant to this agreement.

10.9 INDEMNIFICATION. The Contractor agrees to indemnify, defend 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 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 arisen from the negligent acts, errors, omissions or other wrongful conduct of the Contractor, agents or other personnel entity acting under Contractor's control in connection with the Contractor's performance of services under 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 aforesaid indemnification and hold-harmless agreement by Contractor shall apply to all damages and claims for damages of every kind suffered, or alleged to have been suffered, by reason of any of the aforesaid operations of Contractor or any agent or employee of Contractor regardless of whether or not such insurance policies shall have been determined to be applicable to any of such damages or claims for damages.

10.10 INSURANCE. Contractor shall, at its sole cost and expense, on the Effective Date of this Agreement and during the period of any services performed under this Agreement, procure and maintain the following minimum insurance coverage to protect the Town and Contractor against all loss, claims, damage and liabilities caused by Contractor, its agents, sub-contractors or employees, as indicated below:

a. *Comprehensive General Liability* ("CGL") insurance, with minimum limits of One Million Dollars (\$1,000,000) per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability, and Two Million Dollars (\$2,000,000) aggregate.

b. *Worker's Compensation*, as required by law, but with no less than \$1,000,000 for Employer's Liability.

c. *Business Automobile Liability* which shall include coverage for all owned, non-owned and hired vehicles for minimum limits of not less than One Million Dollars (\$1,000,000) per occurrence, One Million Dollars (\$1,000,000) per accident for bodily injury and Five Hundred Thousand Dollars (\$500,000) per accident for property damage.



d. *Restaurant/Food Operations Liability* insurance covering any damages caused by an error, omission or any negligent acts of Contractor, its sub-contractors, agents, officers, or employees under this Agreement with minimum limits of not less than One Million Dollars (\$1,000,000) per occurrence.

Insurance required of the Contractor shall be primary to, and not contribute with, any insurance or self-insurance maintained by the Town. Such insurance shall not diminish Contractor's indemnification and obligations hereunder. The insurance policy(ies) shall be issued by companies authorized to do business under the laws of the State of Florida and acceptable to the Town with a minimum A.M. Best rating of A-Excellent. **Before any services under this Agreement are performed, and at any time upon request, Contractor shall furnish to the Town certificates of insurance evidencing the minimum required coverage and shall be appropriately endorsed for contractual liability, with the Town named as additional insured.** All policies shall contain a waiver of subrogation endorsement. All policies and certificates shall be in forms and issued by insurance companies acceptable to the Town's Clerk. All insurance policies and certificates of insurance shall provide that the policies may not be canceled or altered without thirty (30) days prior written notice to the Town. The Town reserves the right from time to time to change the insurance coverage and limits of liability required to be maintained by Contractor hereunder.

Contractor shall also require and ensure that each of its subcontractors providing services hereunder (if any) procures and maintains, until the completion of the services, insurance of the types and to the limits specified herein.

**ANY EXCEPTIONS TO THE INSURANCE REQUIREMENTS IN THIS SECTION MUST BE APPROVED IN WRITING BY THE TOWN.**

10.11 CONTRACTOR'S MAINTENANCE. Except as otherwise provided in this Agreement, Contractor, at its own cost and expense agrees:

a. To maintain throughout this Agreement term in good clean, sanitary order, condition and repair, the Concession Area, including without limitation, any personal property or equipment of the Contractor situated in or upon the Concession Area. The Town shall repair and maintain all equipment owned by the Town and located in the Concession Area as existing on the Effective Date of this Agreement and as listed in the Inventory List attached hereto as Exhibit "B." Notwithstanding the foregoing, if repair or maintenance of existing equipment is caused or occasioned by actions or omissions of the Contractor or the negligence of the Contractor in using or operating the equipment, in such event, the Contractor shall be responsible for all repairs and maintenance of the equipment.

b. To notify the Town promptly of any damage to the Concession Area resulting from or attributed to the acts or omissions of the Contractor, its invitees or its authorized representatives, and thereafter promptly to repair all such damage. Any damage resulting from the negligent acts or omissions of the Contractor or its employees shall be repaired at Contractor's sole cost and expense.

10.12 PERFORMANCE AND PAYMENT BOND. Prior to the Commencement Date of Services, and for the Term of this Agreement, the Contractor shall furnish a Performance and Payment Bond in the amount of \$12,000.00, representing two (2) years of concession fees due pursuant to Section 3 of this Agreement, as security for the faithful performance of this Agreement and for the payment of all persons performing labor or furnishing materials in connection herewith. The bonds shall be with a surety company authorized to do business in the State of Florida and acceptable in form and substance to the Town Manager and Town Attorney. The Bond(s) shall not contain a provision allowing the Surety(ies) to cancel the Bonds prior to the completion of the Term of this Agreement. After the Term, the Town Manager shall determine whether the Performance and Payment Bonds shall be required for any First Renewal Term and Second Renewal Term.

11. OBLIGATIONS OF TOWN

11.1 UTILITIES. The Town shall pay the reasonable costs for the actual utilities, including water, gas, heat, light and power supplied to the subject premises. The suspension or interruption in utility service to the premises for reasons beyond the ability or control of the Town shall not constitute a default by Town or entitle Contractor to any reduction or abatement of the monthly payment due to the Town.

12. TERMINATION.

12.1 Termination for Default. If, through any cause within the 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 ten (10) days to cure such default. If the default remains uncured after ten (10) days the Town may terminate this agreement.

a. 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 Contractor shall compensate the Town in accordance with Section 3 of this Agreement.

b. 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 the agreement by Contractor.

c. After receipt of a Termination Notice and except as otherwise directed by the Town, the Contractor shall:

i. Stop work on the date and to the extent specified;

ii. Terminate and settle all orders and subcontracts relating to the performance of the terminated work;

iii. Transfer all work in process, completed work and other materials related to the terminated work to the Town; and

iv. Continue and complete all parts of that work that have not been terminated.

12.2 Termination for Convenience of Town. The Town may, for its convenience and without cause terminate the services then remaining to be performed provided that the Contractor is given ninety (90) days' notice. In such an event, the provisions of subparagraph 12.1. a.-c. above shall be applicable.

12.3 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.

### 13. OWNERSHIP OF DOCUMENTS AND EQUIPMENT.

13.1 All documents prepared by the Contractor pursuant to this Agreement and related services to this agreement are intended and represented for the ownership of the Town only. Any other use by Contractor or other parties shall be approved in writing by the Town. Contractor shall deliver to the Town for approval and acceptance, and before being eligible for final payment or any amounts due, all documents and materials prepared by, and for, the Town under this Agreement.

13.2 All oral and written information not in the public domain or not previously known, and all information and data obtained, developed or supplied by the Town, or at its expense, will be kept confidential by the Contractor and will not be disclosed to any other party, directly or indirectly, without the Town's prior written consent, unless required by a lawful order. All drawings, maps, sketches, programs, data base, reports and other data developed or purchased under this Agreement for, or at the Town's expense, shall be and remain the Town's property and may be reproduced and reused at the discretion of the Town.

13.3 The Town and Contractor shall comply with the provisions of Chapter 119, Florida Statutes (Public Records Law). All covenants, agreements, representations and warranties made herein, or otherwise made in writing by any party pursuant hereto, including, but not limited to, any representations made herein relating to disclosure or ownership of documents, shall survive the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby.

14. ASSIGNMENTS, TRANSFERS, SUBCONTRACTING. The Contractor shall not subcontract, assign or transfer any 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 be responsible for services, responsibilities and liabilities of any person or entity acting under Contractor.

15. **AUTHORITY TO PRACTICE; COMPLIANCE WITH LAWS.** Contractor hereby represents and warrants that it has and will continue to maintain all licenses, permits and approvals required to conduct its business and perform the services that it will at all times conduct its business activities in a reputable manner. Proof of such licenses, permits and approvals shall be submitted to the Town prior to the Commencement Date of services under this Agreement. The Consultant shall comply with all applicable laws, ordinances, rules, regulations, and lawful orders of public authorities in carrying out Services under this Agreement, and in particular shall obtain all required permits from all jurisdictional agencies to perform the Services under this Agreement. Contractor shall comply with all requirements of Chapter 70, Article IV, requiring collection, and filing of returns and remittance of resort taxes due the Town for food and beverage sales. Contractor's failure to comply with such resort tax requirements, may subject Contractor to penalties imposed by Chapter 70-117 of the Town Code and default under this terms of this Agreement.

16. **COORDINATION OF SERVICES.** The Town's representative/liaison during the performance of this Agreement shall be the Town Manager and/or designee, whose phone number is (305) 861-4863. The Contractor shall not respond to requests for services under this Agreement unless the request is received directly from the Town Manager and/or designee.

17. **TIME FOR PERFORMANCE.** Except as otherwise expressly provided for in this Agreement, should the performance of any required obligation in this Agreement by either party be prevented or delayed by reason by any act of God, strike, lockout, labor trouble, inability to secure materials, or any other cause except financial inability, not the fault of the party required to perform the act, the time for performance of the act will be extended for a period of time equivalent to the period of delay that will be excused; provided, however, that nothing contained in this section shall exclude the prompt payment by either party as required by this Agreement or the performance of any act rendered difficult or impossible solely because of the financial condition of the party required to perform the act.

18. **PREVAILING PARTY ATTORNEYS' FEES AND COSTS; WAIVER OF JURY TRIAL.**

18.1 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.

18.2 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.

19. **NOTICES.** Whenever either party desires to give notice unto the other, it must be given by written notice, sent by nationally recognized courier service or registered United States mail with return receipt requested, addressed to the party for whom it is intended, at the place last specified, and the place for giving of notice shall remain such until it shall have been

changed by written notice in compliance with the provisions of this paragraph. For the present, the parties designate the following as the respective places for giving of notice:

To Town:                   Guillermo Olmedillo, Town Manager  
Town of Surfside  
9293 Harding Avenue  
Surfside, FL 33154

with copy to:           Lillian Arango, Town Attorney  
Town of Surfside  
9293 Harding Avenue  
Surfside, FL 33154

To Contractor:           Hamsa Hamsa, LLC  
9516 Abbott Avenue  
Surfside, FL 33154  
Attn: Eliyahu (Eli) Ginsburg  
305-753-3333  
EliGinsburg1@gmail.com

20.    **GOVERNING LAW.** The validity of this Agreement and the interpretation and performance of all of its terms shall be construed and enforced in accordance with the laws of the State of Florida, without regard to principles of conflict of laws thereof. The location or venue of any action or proceeding commenced under or pursuant to this Agreement shall be in Miami- Dade County, in the State of Florida.

21.    **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.

22.    **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 I 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/family 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 non-discrimination clause. The Contractor agrees to comply with any Federal regulations issued pursuant to compliance with

Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 708), which prohibits discrimination against the handicapped in any Federally assisted program.

23. **ENTIRE AGREEMENT.** This Agreement shall constitute the entire agreement between the parties with respect to the subject matter hereof, and it shall supersede all previous and contemporaneous oral and written negotiations, commitments, agreements and understanding relating hereto. This Agreement may be executed in multiple identical counterparts, each of which shall be deemed an original for all purposes. The terms and conditions of this Agreement shall prevail over any contrary or inconsistent terms in any other documents, including any attachments hereto.

24. **AMENDMENT.** Any modification of this Agreement shall be effective only if in writing and signed by the parties to this Agreement. No waiver of any provision of this Agreement shall be valid or enforceable unless such waiver is in writing and signed by the party granting such waiver.

25. **MISCELLANEOUS.**

25.1 Contractor and its employees shall promptly observe and comply with applicable provisions of all published federal, state and local laws, rules and regulations which govern or apply to the services rendered by Contractor hereunder, or to the wages paid by Contractor to its employees.

25.2 Contractor shall obtain and keep in force during the term of this Agreement all necessary licenses, registrations, certificates, permits and other authorizations, as well as insurance coverage, as required by law in order for Contractor to render the Service required hereunder.

25.3 Except as expressly provided for in this Agreement, Contractor is not authorized to act as the Town's Agent hereunder and shall have no authority, expressed or implied, to act for or bind the Town hereunder, either in Contractor's relations with sub-Contractors, or in any other manner whatsoever.

26. **OWNERSHIP AND ACCESS TO RECORDS; PUBLIC RECORDS.**

26.1 Contractor acknowledges that all data and reports and all similar or related information (whether patentable or not) which relate to the 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).

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

26.3 Contractor agrees to keep and maintain public records in Contractor's possession or control in connection with Contractor's 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.

26.4 Upon request from the Town 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 seven (7) days' time at a cost that does not exceed the cost provided by Chapter 119, Florida Statutes, or as otherwise provided by law.

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

26.6 Upon completion of this Agreement or in the event of termination by either party, any and all public records relating to the Agreement in the possession of the Contractor shall be delivered by the Contractor to the Town Manager 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, the Contractor shall destroy any and all duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. Any compensation due to Contractor shall be withheld until all records are received as provided herein.

26.7 Contractor's failure or refusal to comply with the provisions of this section shall result in the immediate termination of this Agreement by the Town.

**Section 119.0701(2)(a), Florida Statutes**

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

**Custodian of Records:** SANDRA NOVOA  
**TOWN CLERK**  
**Mailing address:** 9293 Harding Avenue  
Surfside, Florida 33154  
**Telephone number:** (305) 861-4863 x226  
**Email:** [snovoa@townofsurfsidefl.gov](mailto:snovoa@townofsurfsidefl.gov)

**[Signature pages below]**



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

**WITNESSES:**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

**CONTRACTOR:**

**HAMSA HAMSA, LLC**, a Florida limited liability company,

D/B/A SURF-N-SIDES

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

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

Title: \_\_\_\_\_

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

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement in triplicate on the day and year written below their signatures.

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

By: \_\_\_\_\_  
Guillermo Olmedillo, Town Manager

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

**ATTEST:**

\_\_\_\_\_  
Sandra Novoa, MMC Town Clerk

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

\_\_\_\_\_  
Town Attorney