



**Town of Surfside
Special Town Commission Meeting
AGENDA
Tuesday, April 9, 2024
6:00 PM
Commission Chambers**

Rule 6.06 (a)3 Agenda. The good and welfare portion of the agenda is set for 8:15 p.m.

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

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

1. Opening

1.A Call to Order

1.B Roll Call of Members

1.C Pledge of Allegiance

2. Mayor, Commission and Staff Communication

2.A Resignation of Town Manager and Appointment of Interim Town Manager -
Mark Blumstein, Interim Town Attorney
[Resolution No. 2023-2996 Employment Agreement with Hector Gomez-Town
Manager.pdf](#)

**2.B Resolution of Town Commission Approving Agreement with Interim Town
Attorney -** Mark Blumstein, Interim Town Attorney

**A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE,
FLORIDA APPROVING THE EMPLOYMENT AGREEMENT OF MARK
BLUMSTEIN AS INTERIM TOWN ATTORNEY PURSUANT TO THE
EMPLOYMENT AGREEMENT ATTACHED HERETO AS EXHIBIT "A"; AND
PROVIDING FOR AN EFFECTIVE DATE.**

[Reso - Town Attorney - April 2024](#)
[Interim Town Attorney - Agreement](#)

3. Adjournment

Respectfully submitted,

Hector R. Gomez
Town Manager

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

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

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

TWO OR MORE MEMBERS OF THE TOWN COMMISSION AND/OR TOWN BOARDS MAY ATTEND THIS MEETING.

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



**Town of Surfside
Special Town Commission Meeting
April 9, 2024**

DISCUSSION ITEM MEMORANDUM

Agenda #: 2.A

Date: April 9, 2024

From: Mark Blumstein, Interim Town Attorney

Subject: Resignation of Town Manager and Appointment of Interim Town Manager

Suggested Action: – The Town Manager issued his resignation letter dated March 27, 2024, giving the Town two-weeks notice of his resignation from March 26, 2024. The Commission should consider action on his notice and determine how to proceed in filling his position, on an interim and/or permanent basis.

Background/Analysis: – Town Resolution 2023-2996, adopted on May 17, 2023 but effective April 17, 2023, sets forth the terms and conditions of the Town Manager's employment with the Town ("Agreement"). In light of the less than 60 days' notice of his resignation by the Town Manager, per Section 18.6 of said Agreement, the Town Commission may terminate the services of the Town Manager "immediately or allow the Town Manager to continue to serve until the date specified in the Town Manager's resignation." In any event, the Town Manager is not entitled to any severance, but is entitled to accrued unused vacation and sick leave.

RESOLUTION 2023 - 2996

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, APPROVING THE EMPLOYMENT AGREEMENT BETWEEN THE TOWN OF SURFSIDE AND HECTOR GOMEZ ATTACHED HERETO AS EXHIBIT “A”; AUTHORIZING THE MAYOR TO EXECUTE THE EMPLOYMENT AGREEMENT ON BEHALF OF THE TOWN; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Charter of the Town of Surfside (the “Town”) provides for a Town Manager to act as the chief executive officer and the head of the administrative branch of the Town government;

WHEREAS, the Town Commission desired to employ Hector Gomez as Town Manager effective April 17, 2023 in accordance with the Employment Agreement attached hereto as Exhibit “A;” and

WHEREAS, during his term as the Town Manager, the terms and conditions of employment of Hector Gomez will be in accordance with the Employment Agreement 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. The above recitals are true and correct and are incorporated herein by this reference.

Section 2. Town Manager Appointment. The Town Commission hereby appointed Hector Gomez as the Town Manager effective April 17, 2023.

Section 3. Approval of Employment Agreement. The Employment Agreement between Hector Gomez and the Town attached hereto as Exhibit “A” is hereby approved and shall be effective as of April 17, 2023.

Section 4. Effective Date. This resolution shall take effect immediately upon adoption.

PASSED and ADOPTED this 17th day of May, 2023.

Motion by Vice Mayor Rose , second by Mayor Danzinger

FINAL VOTE ON ADOPTION

Commissioner Fred Landsman	<u>Yes</u>
Commissioner Marianne Meisheid	<u>No</u>
Commissioner Nelly Velasquez	<u>No</u>
Vice Mayor Jeff Rose	<u>Yes</u>
Mayor Shlomo Danzinger	<u>Yes</u>



Shlomo Danzinger, Mayor

Attest:



Sandra McCready, 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

EMPLOYMENT AGREEMENT
TOWN MANAGER

This Employment Agreement (“Agreement”) is made and entered into this _____ day of May, 2023, between the Town of Surfside, a Florida municipal corporation (the “Town”) and Hector Gomez (“Gomez” or “Town Manager”).

RECITALS

WHEREAS, Section 34 of the Town Charter (the “Charter”) requires that there shall be a Town Manager who is the Chief Administrative Officer of the Town; and

WHEREAS, on December 13, 2022, Gomez was appointed as interim Town Manager and a comprehensive recruitment process and search to employ a Town Manager was conducted by the Town, resulting in 140 applicants, and the final selection of Gomez by the Town Commission as Town Manager at the April 17, 2023 Special Commission Meeting; and

WHEREAS, Gomez represents that he has the expertise and skills to serve as the Town Manager; and

WHEREAS, the Town desires to employ the services of Gomez as Town Manager and Gomez wishes to accept such employment; and

NOW, THEREFORE, in consideration of the premises and mutual covenants contained in this Agreement, the parties agree as follows:

Section 1. Recitals.

The above and foregoing recitals are true and correct and are incorporated herein by this reference.

Section 2. Duties.

2.1 The Town Manager shall have all powers and perform all duties and responsibilities required by this Agreement and prescribed in the Charter and applicable sections of the Town Code.

2.2. The Town Manager shall also perform such other duties and carry out such policy directives as determined by a majority of the Town Commission from time to time.

2.3. The Town Manager shall provide the Town Commission with a monthly report, which shall include a list of directives from the Town Commission and the status of achievement of the same. The report shall be included in the monthly Commission Agenda Package.

2.4 The Town Manager shall attend all Commission meetings unless excused by the Commission. He shall also attend the Town's Planning & Zoning Board meetings, Tourist Board meetings and Pension Board meetings. In addition, he shall attend other standing and ad hoc committee meetings and other meetings as appropriate to fulfill his duties as Town Manager unless he has schedule conflicts that preclude his attendance. The Town Manager may assign a designee to attend certain meetings, if he is unavailable.

2.5 The Town Manager shall be available to confer and/or meet with the Mayor and Commissioners, as requested and as needed.

Section 3. Salary.

3.1 The Town Manager shall receive an initial annual salary in the amount of \$220,000, retroactive to the appointment of the Town Manager on April 17, 2023, payable in equal installments in accordance with the Town's existing pay periods.

3.2 For purposes of this Agreement, the Town Manager's anniversary date for his first annual performance evaluation shall be December 13, 2022 (the "Performance Evaluation Anniversary Date").

Section 4. Performance Evaluations.

4.1 The Town agrees to conduct formal performance evaluations of the Town Manager in a format acceptable to a majority of the Town Commission after twelve (12) and twenty-four (24) months of service from the Town Manager's Performance Evaluation Anniversary Date. The Town Commission shall thereafter evaluate the performance of the Town Manager at least once annually on or before the Anniversary Date of each year. It is understood and agreed that if the Town Manager receives a positive

evaluation from the Commission, the Town Manager may receive a salary or benefit increase, but any such increase is solely within the discretion of the Commission, approved at a public meeting.

4.2 The evaluation specified in Sections 4.1 shall be based upon: (i) the Town Manager's performance of the duties specified in Section 2; (ii) the Town Manager's achievements of the Town Commission's policy directives; and (iii) the Town Manager's completion of appropriate professional development programs.

Section 5. Holidays.

The Town Manager shall be entitled to all holidays recognized by the Town.

Section 6. Annual (Vacation) Leave.

6.1 The Town Manager shall accrue 15 business days of annual leave per calendar-year on a pro rata basis equally per pay period. The Town Manager shall submit leave slips for annual leave usage in accordance with Town policy for all other Town employees. The Town Manager shall be permitted to roll over his current accrued vacation leave balance of 212.61 hours. The carryover and payout of accrued vacation leave will be governed by Town policy for non-union civilian employees unless such policy directly conflicts with this Agreement, in which case the conflicting provision of this Agreement shall control. After five (5) years of continuous employment as Town Manager, he shall accrue 20 business days of annual leave per calendar-year on a pro rata basis equally per pay period.

6.2 In all instances other than in the event of an emergency where prior verbal or written notice and approval is not feasible, the Town Manager shall not be absent or take leave more than five (5) consecutive business days without prior verbal or written notice to and approval of the Mayor or designee. Prior to such leave, the Town Manager shall notify the Commission of who the Acting Town Manager will be during that leave and how the Town Manager may be reached while on leave in case of an emergency.

Section 7. Sick Leave.

The Town Manager shall accrue 12 business days of sick leave per calendar-year on a pro rata basis equally per pay period. However, the Town Manager will be credited with four (4) of those 12 days of sick leave upon the commencement of his employment and will begin accruing the remaining 8 days of sick leave after he completes four months of Town employment. The Town Manager shall submit leave slips for sick leave usage in accordance with Town policy for all other Town employees. The Town Manager shall be permitted to roll over his current accrued sick leave balance of 264.66 hours. The carryover and payout of accrued sick leave will be governed by Town policy for non-union civilian employees unless such policy directly conflicts with this Agreement, in which case the conflicting provision of this Agreement shall control.

Section 8. Retirement Plan.

Within 14 business days of the effective date of this Agreement, the Town Manager shall elect either to (i) receive a 15% contribution of his base salary into an ICMA/Mission Square retirement plan (such contribution to be made on a pro rata basis equally per pay period) or (ii) he may choose to participate in the Town's Retirement Plan as codified in Chapter 2 of the Town Code, as may be amended from time to time. The Town Manager shall make such election in writing to the Town's Human Resource Director. If no such election is made, the Town Manager shall participate in the ICMA/Mission Square retirement plan as set forth above.

Section 9. Health Insurance.

The Town shall provide the Town Manager and his eligible dependents with health insurance coverage (i.e., medical, dental and vision), at the Town's cost, in the Town's health insurance plans available to all other Town employees, retroactive to the appointment of the Town Manager on April 17, 2023.

Section 10. Life Insurance.

The Town shall provide the Town Manager with term life insurance equal to his annual salary.

Section 11. Professional Dues and Expenses.

11.1 The Town shall pay for all customary professional dues and subscriptions necessary for the Town Manager's participation in the ICMA/Mission Square, FCCMA and AICP. In addition, the Town Manager's participation in other municipal and professional organizations shall be as approved in the Town's annual budget.

11.2 The Town shall pay for the Town Manager's participation in those local civic and non-profit job-affiliated organizations that the Town Manager is authorized to participate in by the Town Commission, as approved in the Town's annual budget.

11.3 The Town, through its Controller, shall pay reasonable non-personal job-related expenses incurred by the Town Manager as part of his duties. Such payments shall be made on a reimbursement basis, based upon the Town Manager's actual receipts and expense vouchers. A budget for such anticipated expenditures shall be approved in the Town's annual budget.

11.4 The Town shall provide the Town Manager with an automobile allowance of \$750 per month, retroactive to the appointment of the Town Manager on April 17, 2023.

Section 12. Cellular.

The Town shall provide the Town Manager with a cellular telephone or provide an allowance of \$100 per month.

Section 13. Travel.

The Town Manager is hereby approved to attend the annual FCCMA Conference or an equivalent conference at the Town's expense, provided that his attendance at this Conference does not interfere with the performance of his duties as Town Manager. In addition, the Town shall pay for the reasonable and customary registration and travel expenses of the Town Manager for meetings and professional development activities as directed or annually budgeted by the Town Commission.

Section 14. Days.

Unless otherwise specified, any reference to days in this Agreement shall mean calendar days.

Section 15. Bonds.

The Town shall pay for the cost of any bonds for the Town Manager required by Florida Law or the Town Charter.

Section 16. Indemnification.

The Town shall indemnify the Town Manager against any tort, professional liability claim, or other legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring during the performance of the Town Manager's duties. This provision shall not apply to acts or omissions of the Town Manager committed while acting outside the course and scope of his employment, committed in bad faith or with malicious purpose, or committed in a manner exhibiting wanton and willful disregard of human rights, safety, or property.

Section 17. Term.

The effective date of this Agreement shall be May 17, 2023, a date subsequent to the Town Commission adopting Resolution No. _____. approving this Agreement. The Town Manager shall serve at the pleasure of the Town Commission. Nothing in this Agreement shall prevent, limit, or otherwise interfere with the right of the Town Commission to terminate the services of the Town Manager at any time during a regular or special Town Commission meeting, subject to the provisions set forth in this Agreement.

Section 18. Termination.

18.1 In accordance with the Charter, the Town Manager shall serve at the pleasure of the Town Commission. Nothing in this Agreement shall prevent, limit, or otherwise interfere with the right of the Town Commission to terminate the services of the Town Manager at any time during a regular or Special Town Commission meeting.

18.2 In the event the Town Commission wishes to terminate the Town Manager without cause, the Town Manager shall receive a lump sum severance pay equal to 20 weeks of his regular base salary at the time of termination. The Town shall also continue to pay the premium for the Town Manager's health insurance for 20 weeks (calculated to the closest end of the month to the 20th week) after the effective date of his termination. The Town shall not provide the Town Manager with his automobile allowance, cellular telephone allowance, or any other benefit or reimbursement (except that specifically set forth in this paragraph) beyond the date of his termination. All severance payments (excluding the continuation of his health insurance benefits) shall be paid to the Town Manager in a lump sum upon his termination or within thirty (30) days thereafter at the Town Commission's option.

18.3 Notwithstanding the provisions of Section 18.2, in the event Town Manager is terminated for misconduct as defined in Section 443.036(29), Florida Statutes, the Town shall have no obligation to provide the Town Manager with any severance pay or payouts for unused vacation or sick leave. Misconduct includes, but is not limited to: (i) breach of any material term or condition of this Agreement; (ii) conviction of a felony; (iii) gross insubordination; (iv) willful neglect of duty; or (v) adjudicated violation of the Florida Code of Ethics for Public Officers and Employees, the Miami-Dade Conflict of Interest and Code of Ethics, the Town Charter, or the Town's Conflict of Interest Ordinance.

18.4 Upon payment of the severance payment specified in Section 18.2, upon resignation or retirement as provided for in Section 18.5, or resignation as provided for in Section 18.6, the Town shall have no further contractual financial obligations to the Town Manager. The severance payment shall constitute stipulated and liquidated damages and the maximum amount of financial liability for which the Town may be liable in the event of termination or breach of contract.

18.5 In the event that the Town Manager voluntarily resigns or retires during the Term of this Agreement, the Town Manager shall provide the Town with 60 days' advance written notice, unless the parties agree in writing to a different period of time. In the event of resignation by the Town Manager under this Section, the Town Manager shall not be entitled to receive the severance package specified in

Section 18.2, but the Town Manager shall receive payment for his accrued unused vacation and sick leave (if applicable) calculated at the Town Manager's rate of pay in effect upon the date of resignation in accordance with Town policy for non-union civilian employees.

18.6 In the event that the Town Manager voluntarily resigns with less than 60 days' advance written notice, the Town Commission may elect to terminate the Town Manager immediately or allow the Town Manager to continue to serve until the date specified in the Town Manager's resignation. In the event of a resignation or termination under this paragraph, notwithstanding any other provisions of this Section, the Town Manager shall not be entitled to receive severance payment but the Town Manager shall receive payment for his accrued unused vacation and sick leave (if applicable) calculated at the Town Manager's rate of pay in effect upon the date of resignation in accordance with Town policy for non-union civilian employees.

18.7 If the Town Manager is unable to perform his duties as specified in Section 2 of this Agreement for a period of 30 consecutive days or 60 non-consecutive days during any one-year period for any reason other than an approved Family Medical Leave Act ("FMLA") absence, the Town Commission may terminate this Agreement. If the Town Manager takes FMLA-approved leave and exceeds his statutorily-protected FMLA-approved leave in any one-year period, the Town Commission may terminate this Agreement. In the event of the Town Manager's death, this Agreement shall be terminated. If this Agreement is terminated under this Section, the Town Manager shall not be entitled to severance pay pursuant to Section 18.2 of this Agreement.

Section 19. Miscellaneous Provisions.

19.1 **Complete Agreement.** It is understood and agreed that this document incorporates and includes all prior negotiations, correspondence, conversations, agreements, or understandings applicable to the matters contained herein and that the parties agree that there are no commitments, agreement, or understandings concerning the subject matter of this Agreement that are not contained in this document.

Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.

19.2 **Amendment.** No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed with the same formality and with equal dignity herewith.

19.3 **No Waiver.** The waiver by either party of a breach of any provision of this Agreement by the other shall not operate or be construed as a waiver of any subsequent breach by that party.

19.4 **Severability.** If any provision, or any portion thereof, contained in this Agreement is held to be unconstitutional, illegal, invalid, or unenforceable, the remainder of this Agreement, or portions thereof, shall not be affected and shall remain in full force and effect.

19.5 **Non-Assignment.** The rights and obligations herein granted are personal in nature and cannot be transferred or assigned by the Town Manager.

19.6 **Governing Law.** Florida law shall govern this Agreement and any litigation which may arise from this Agreement shall be filed and litigated in the Circuit Court in and for Miami-Dade County, Florida, or, if in Federal Court, in the Southern District of Florida.

19.7 **Notice.** Notice to either party shall be deemed given if sent by certified mail, return receipt requested, by recognized public or private postal facilities, by hand delivery, or delivered at a Town Commission meeting. Notice shall be sent as follows:

For the Town: Shlomo Danzinger, Mayor
Town of Surfside
9293 Harding Avenue
Surfside, Florida 33154
(305) 861-4863 (Telephone)

With a copy to: Weiss Serota Helfman Cole + Bierman, P.L.
Town Attorney
Town of Surfside
9293 Harding Avenue
Surfside, Florida 33154
(305) 854-0800 (Telephone)

For the Town Manager:

Hector Gomez

[REDACTED]

Section 20. WAIVER OF JURY TRIAL.

BOTH THE TOWN AND THE TOWN MANAGER KNOWINGLY, VOLUNTARILY, AND IRREVOCABLY WAIVE THEIR RIGHT TO A TRIAL BY JURY IN ANY CIVIL PROCEEDINGS THAT MAY BE INITIATED BY EITHER PARTY WITH RESPECT TO ANY TERM OR CONDITION OF THIS AGREEMENT.

[THE REMAINDER OF THIS PAGE LEFT INTENTIONALLY BLANK]

IN WITNESS WHEREOF, the Town, by signature of the Mayor as authorized by the Town Commission in accordance with Resolution No. _____ passed on May 17, 2023, has executed this Agreement the day and year first above written.

TOWN OF SURFSIDE

By: _____
Shlomo Danzinger, Mayor

Date: _____

ATTEST:

Sandra N. McCready, MMC
Town Clerk

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

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

TOWN MANAGER

Hector Gomez

Date _____



MEMORANDUM

ITEM NO. 2.B

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

From: Mark Blumstein, Interim Town Attorney

Date: April 9, 2024

Subject: **Resolution of Town Commission Approving Agreement with Interim Town Attorney**

The Town Commission should consider formalizing the services of the Interim Town Attorney and the establishment of an in-house legal department within the Town, and empower the Interim Town Attorney to engage other professionals, as deemed necessary and within the budget authorized by the Commission.

The Town Commission accepted the resignation of the prior Town Attorney on March 25, 2024 and immediately appointed Mark Blumstein as the Town's Interim Town Attorney. His proposed Agreement now comes before you for your consideration.

[Reso - Town Attorney - April 2024](#)

[Interim Town Attorney - Agreement](#)

RESOLUTION NO. 2024-____

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA APPROVING THE EMPLOYMENT AGREEMENT OF MARK BLUMSTEIN AS INTERIM TOWN ATTORNEY PURSUANT TO THE EMPLOYMENT AGREEMENT ATTACHED HERETO AS EXHIBIT “A”; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town Commission of the Town of Surfside (Town”) appointed Mark Blumstein to the position of Interim Town Attorney on March 25, 2024 (“Effective Date”);

WHEREAS, the Town Commission now desires to formalize the terms and conditions of his employment as Interim Town Attorney in accordance with the Employment Agreement attached hereto as Exhibit “A”;

WHEREAS, the Employment Agreement attached hereto as Exhibit “A” has been executed by Mark Blumstein, demonstrating his acceptance of the terms and conditions by which he will serve the Town as Interim Town Attorney.

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

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

Section 2. Approval of Employment Agreement. The Employment Agreement between Mark Blumstein and the Town attached hereto as Exhibit “A” is hereby approved as of the Effective Date.

Section 3. Implementation of Contract. The Mayor is hereby authorized to take any and all necessary or further action to execute and implement said Employment Agreement.

Section 5. Effective Date. This Resolution shall be effective immediately upon adoption and the Employment Agreement as of the Effective Date.

PASSED AND ADOPTED this 9th day of April, 2024.

Motion by _____.

Second by _____.

FINAL VOTE ON ADOPTION

Commissioner Ruben Coto _____
Commissioner Nelly Velasquez _____
Commissioner Gerardo Vildostegui _____
Vice Mayor Tina Paul _____
Mayor Charles W. Burkett _____

Charles W. Burkett
Mayor

ATTEST:

Sandra McCready, MMC
Town Clerk

**APPROVED AS TO FORM AND LEGALITY FOR THE USE
AND BENEFIT OF THE TOWN OF SURFSIDE ONLY:**

Mark Blumstein
Interim Town Attorney

EMPLOYMENT AGREEMENT
INTERIM TOWN ATTORNEY

This Employment Agreement (“Agreement”) is made and entered into this 25th day of March, 2024, between the Town of Surfside, a Florida municipal corporation (the “Town”) and Mark Blumstein (“Blumstein” or “Town Attorney”).

RECITALS

WHEREAS, Section 28 of the Town Charter (the “Charter”) requires that there shall be a Town Attorney who shall act as the legal adviser to, and attorney and counsellor for, the Town and all of its officers in matters relating to their official duties; and

WHEREAS, on March 21, 2024, the Town received the resignation of its prior counsel, Weiss Serota Helfman Cole & Bierman, P.L., by and through its attorneys, Lillian M. Arango, Esq. and Tony Recio, Esq., which was accepted by the Town Commission at a duly noticed Special Meeting held on March 25, 2024;

WHEREAS, at said duly noticed Special Meeting of the Town Commission held on March 25, 2024, Blumstein was appointed as interim Town Attorney; and

WHEREAS, Blumstein represents that he has the qualifications, expertise and skills to serve as the Town Attorney; and

WHEREAS, the Town desires to employ the services of Blumstein as Town Attorney and Blumstein wishes to accept such employment.

NOW, THEREFORE, in consideration of the premises and mutual covenants contained in this Agreement, the parties agree as follows:

Section 1. Recitals.

The above and foregoing recitals are true and correct and are incorporated herein by this reference.

Section 2. Duties.

2.1 The Town Attorney shall have all powers and perform all duties and responsibilities required by this Agreement and prescribed in the Charter and applicable sections of the Town Code.

2.2. The Town Attorney shall also perform such other duties and carry out such policy directives, as determined by the majority of the Town Commission from time to time.

2.3. The Town Attorney shall provide the Town Commission with a monthly report, which shall include a list of directives from the Town Commission and the status of achievement of same. The report shall be included in the monthly Commission agenda package.

24 The Town Attorney shall attend all Commission meetings, unless excused by the Commission. He shall also attend the Town’s Planning & Zoning Board meetings, Tourist Board meetings and Pension Board meetings, as necessary. In addition, he shall attend other standing and ad hoc committee meetings and other meetings, as appropriate to fulfill his duties as Town Attorney, unless he has schedule conflicts that preclude his attendance. The Town Attorney may designate another person to attend certain meetings, if unavailable.

25 The Town Attorney shall be available to confer and/or meet with the Mayor and Commissioners, as necessary.

Section 3. Salary.

3.1 The Town Attorney shall receive an initial annual salary of **\$186,000.00**, retroactive to March 25, 2024, payable in equal installments, in accordance with the Town’s existing pay periods.

3.2 For purposes of this Agreement, the Town Attorney’s anniversary date for purposes of his first annual performance evaluation shall be March 25, 2024 (the “Performance Evaluation Anniversary Date”). However, the Town Commission shall first evaluate the Town Attorney’s performance by no later than September 9, 2024 to determine any adjustments to this Agreement, including annual salary and/or benefits.

Section 4. Performance Evaluations.

4.1 The Town agrees to conduct formal performance evaluations of the Town Attorney in a format acceptable to the majority of the Town Commission after twelve (12) and twenty-four (24) months of service from the Town Attorney's Performance Evaluation Anniversary Date. The Town Commission shall thereafter evaluate the performance of the Town Attorney at least annually, on or before the Performance Evaluation Anniversary Date of each subsequent year. It is understood and agreed that if the Town Attorney receives a positive evaluation from the Commission, the Town Attorney may receive a salary or benefit increase, but any such increase is solely within the discretion of the Commission, as approved at a public meeting.

4.2 The evaluation specified in Sections 4.1 shall be based upon: (i) the Town Attorney's performance of the duties specified in Section 2; (ii) the Town Attorney's achievements of the Town Commission's policy directives; and (iii) the Town Attorney's completion of appropriate professional development programs.

Section 5. Holidays.

The Town Attorney shall be entitled to all holidays recognized by the Town.

Section 6. Annual (Vacation) Leave.

6.1 The Town Attorney shall accrue 30 business days of annual leave per calendar year on a pro rata basis equally per pay period. The Town Attorney shall submit leave slips for annual leave usage in accordance with Town policy for all other Town employees. The Town Attorney shall be permitted to roll over any accrued or unused vacation leave balance. The carryover and payout of accrued vacation leave will be governed by Town policy for non-union civilian employees, unless such policy directly conflicts with this Agreement, in which case this Agreement shall govern.

6.2 In all instances other than in the event of an emergency, where prior verbal or written notice and approval is not feasible, the Town Attorney shall not be absent or take leave more than ten (10)

consecutive business days without prior verbal or written notice to and approval of the Mayor or designee. Prior to such leave, the Town Attorney shall notify the Commission of the Acting Town Attorney during that leave and how the Town Attorney may be reached while on leave in case of an emergency.

Section 7. Sick Leave.

The Town Attorney shall accrue 12 business days of sick leave per calendar year on a pro rata basis equally per pay period. However, the Town Attorney shall be credited with four (4) of those 12 days of sick leave immediately and begin accruing the remaining 8 days of sick leave upon completion of four months of Town employment from March 25, 2024. The Town Attorney shall submit leave slips for sick leave usage in accordance with Town policy for all other Town employees. The Town Attorney shall be permitted to roll over any accrued sick leave balance. The carryover and payout of accrued sick leave will be governed by Town policy for non-union civilian employees, unless such policy directly conflicts with this Agreement, in which case this Agreement shall govern.

Section 8. Retirement Plan.

By April 30, 2024, the Town Attorney shall elect either to (i) receive a 15% contribution of his base salary into an ICMA/Mission Square retirement plan (such contribution to be made on a pro rata basis equally per pay period) or (ii) he may choose to participate in the Town's Retirement Plan, as codified in Chapter 2 of the Town Code, as may be amended from time to time. The Town Attorney shall make such election in writing to the Town's Human Resource Director. If no such election is made, the Town Attorney shall participate in the ICMA/Mission Square retirement plan as set forth above.

Section 9. Health Insurance.

The Town shall provide the Town Attorney and his eligible dependents with health insurance coverage (i.e., medical, dental and vision), at the Town's cost, in the Town's health insurance plans available to all other Town employees, retroactive to March 25, 2024.

Section 10. Life/Disability Insurance.

The Town shall provide the Town Attorney with term life insurance equal to no less than five times his annual salary without charge. The Town shall also provide the Town Attorney with short-term and long-term disability policies without charge.

Section 11. Professional Dues and Expenses.

11.1 The Town shall pay for all customary professional expenses, dues, subscriptions, computerized legal research, travel and seminar fees, including those required by The Florida Bar, to remain in good standing and active status with any licensing authority, and to continue professional development or adequately pursue necessary official and other functions of the Town, including Local Government Lawyers' seminars and the Internation/Florida Municipal Attorneys Association Seminar or its equivalent. Also, the Town shall pay any dues and subscriptions necessary for the Town Attorney's participation in ICMA/Mission Square, FCCMA and AICP. In addition, the Town Attorney's participation in other municipal and professional organizations shall be as approved in the Town's annual budget.

11.2 The Town shall pay for the Town Attorney's participation in those local civic and non-profit job-affiliated organizations that the Town Attorney is authorized to participate in by the Town Commission, as approved in the Town's annual budget.

11.3 The Town, through its Controller, shall pay reasonable, non-personal job-related expenses incurred by the Town Attorney as part of his duties. Such payments shall be made on a reimbursement basis, based upon the Town Attorney's actual receipts and expense vouchers. A budget for such anticipated expenditures shall be approved in the Town's annual budget.

11.4 The Town shall provide the Town Attorney with an automobile allowance of \$750 per month, retroactive to the appointment of the Town Attorney on March 25, 2024.

Section 12. Cellular.

The Town shall provide the Town Attorney with a cellular telephone or provide an allowance of \$100 per month.

Section 13. Travel.

The Town Attorney is hereby approved to attend the annual FMAA Conference or an equivalent conference at the Town's expense, provided that his attendance at this Conference does not interfere with the performance of his duties as Town Attorney. In addition, the Town shall pay for the reasonable and customary registration and travel expenses of the Town Attorney for meetings and professional development activities, as directed or annually budgeted by the Town Commission.

Section 14. Days.

Unless otherwise specified, any reference to days in this Agreement shall mean calendar days.

Section 15. Bonds.

The Town shall pay for the cost of any bonds for the Town Attorney, as required by Florida Law or the Town Charter.

Section 16. Indemnification.

The Town shall indemnify the Town Attorney against any tort, professional liability claim, or other legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring during the performance of the Town Attorney's duties. This provision shall not apply to acts or omissions of the Town Attorney committed while acting outside the course and scope of his employment, committed in bad faith or with malicious purpose, or committed in a manner exhibiting wanton and willful disregard of human rights, safety, or property.

Section 17. Term.

The effective date of this Agreement shall be April 10, 2024, a date subsequent to the Town Commission adopting Resolution No._____. approving this Agreement. The Town Attorney shall serve at the pleasure of the Town Commission. Nothing in this Agreement shall prevent, limit, or otherwise interfere with the right of the Town Commission to terminate the services of the Town Attorney at any time during a regular or special Town Commission meeting, subject to the provisions set forth in this Agreement.

Section 18. Termination.

18.1 In accordance with the Charter, the Town Attorney shall serve at the pleasure of the Town Commission. Nothing in this Agreement shall prevent, limit, or otherwise interfere with the right of the Town Commission to terminate the services of the Town Attorney at any time during a regular or Special Town Commission meeting.

18.2 In the event the Town Commission terminates the Town Attorney without cause, the Town Attorney shall receive no severance. The Town shall continue to pay the premium for the Town Attorney's health insurance for 4 weeks (calculated to the closest end of the month to the 4th week) after the effective termination date. The Town shall not provide the Town Attorney with his automobile allowance, cellular telephone allowance, or any other benefit or reimbursement (except that specifically set forth in this paragraph) beyond his termination date. All severance payments (excluding the continuation of his health insurance benefits) shall be paid to the Town Attorney in a lump sum upon his termination or within thirty (30) days thereafter, at the Town Commission's discretion.

18.3 Notwithstanding the provisions of Section 18.2, in the event Town Attorney is terminated for misconduct as defined in Section 443.036(29), Florida Statutes, the Town shall have no obligation to provide the Town Attorney with any severance pay or payouts for unused vacation or sick leave. Misconduct includes, but is not limited to: (i) breach of any material term or condition of this Agreement;

(ii) conviction of a felony; (iii) gross insubordination; (iv) willful neglect of duty; or (v) adjudicated violation of the Florida Code of Ethics for Public Officers and Employees, the Miami-Dade Conflict of Interest and Code of Ethics, the Town Charter, or the Town's Conflict of Interest Ordinance.

18.4 Upon payment of the severance payment specified in Section 18.2, upon resignation or retirement as provided for in Section 18.5, or resignation as provided for in Section 18.6, the Town shall have no further contractual financial obligations to the Town Attorney. The severance payment shall constitute stipulated and liquidated damages and the maximum amount of financial liability for which the Town may be liable in the event of termination or breach of contract.

18.5 In the event that the Town Attorney voluntarily resigns or retires during the Term of this Agreement, the Town Attorney shall provide the Town with 60 days' advance written notice, unless the parties agree in writing to a different period of time. In the event of resignation by the Town Attorney under this Section, the Town Attorney shall not be entitled to receive the severance package specified in Section 18.2, but the Town Attorney shall receive payment for his accrued unused vacation and sick leave (if applicable) calculated at the Town Attorney's rate of pay in effect upon the date of resignation, in accordance with Town policy for non-union civilian employees.

18.6 In the event that the Town Attorney voluntarily resigns with less than 60 days' advance written notice, the Town Commission may elect to terminate the Town Attorney immediately or allow the Town Attorney to continue to serve until the date specified in the Town Attorney's resignation. In the event of a resignation or termination under this paragraph, notwithstanding any other provisions of this Section, the Town Attorney shall not be entitled to receive a severance payment but the Town Attorney shall receive payment for his accrued unused vacation and sick leave (if applicable) calculated at the Town Attorney's rate of pay in effect upon the date of resignation, in accordance with Town policy for non-union civilian employees.

18.7 If the Town Attorney is unable to perform his duties, as specified in Section 2 of this Agreement, for a period of 30 consecutive days or 60 non-consecutive days during any one-year period for any reason other than an approved Family Medical Leave Act (“FMLA”) absence, the Town Commission may terminate this Agreement. If the Town Attorney takes FMLA-approved leave and exceeds his statutorily protected, FMLA-approved leave in a one-year period, the Town Commission may terminate this Agreement. In the event of the Town Attorney’s death, this Agreement shall be terminated. If this Agreement is terminated under this Section, the Town Attorney shall not be entitled to severance pay pursuant to Section 18.2 of this Agreement.

Section 19. Miscellaneous Provisions.

19.1 **Complete Agreement.** It is understood and agreed that this document incorporates and includes all prior negotiations, correspondence, conversations, agreements, or understandings applicable to the matters contained herein and that the parties agree that there are no commitments, agreement, or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.

19.2 **Amendment.** No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed with the same formality and with equal dignity herewith.

19.3 **No Waiver.** The waiver by either party of a breach of any provision of this Agreement by the other shall not operate or be construed as a waiver of any subsequent breach by that party.

19.4 **Severability.** If any provision, or any portion thereof, contained in this Agreement is held to be to be unconstitutional, illegal, invalid, or unenforceable, the remainder of this Agreement, or portions thereof, shall not be affected and shall remain in full force and effect.

195 **Non-Assignment.** The rights and obligations herein granted are personal in nature and cannot be transferred or assigned by the Town Attorney, except that the Town Attorney is hereby authorized to engage outside professionals at Town expense, on an hourly basis and at customary rates, in his sole and absolute discretion, to assist and benefit the Town, its elected officials, officers and/or employees.

196 **Exclusivity.** The Town Attorney shall remain in the exclusive employment of the Town and neither accept other employment nor become employed by any other employer. “Employed” or “Employer” shall not be construed to include teaching, writing, other legal consulting or representation individually or through a firm so long as the representation is not a legal conflict of interest, does not impair the Town Attorney’s ability to fully undertake all obligation under this Agreement or is an ethical conflict of interest as an employee of the Town or in the performance of military service, unless waived by the Town. The Town Attorney’s membership in or relationship to any firm other than his own P.A. shall never obligate the Town in any way to do business with or work with said firm.

197 **Paralegal/Legal Assistant/Clerk.** The Town agrees to retain and employ, at the Town Attorney’s sole and absolute discretion, the services of a full-time paralegal, legal assistant and/or law clerk to provide services to the Town Attorney’s office, subject to the Town Charter and Town Code.

198 **Governing Law.** Florida law shall govern this Agreement and any litigation arising out of or from this Agreement shall be filed and litigated in the Circuit Court in and for Miami-Dade County, Florida, or, if in Federal Court, in the Southern District of Florida.

19.7 **Waiver of Conflict of Interest.** The Town hereby irrevocably and unconditionally waives any conflict of interest between the Town and Town Attorney as it pertains to the preparation, negotiation and/or approval of this Agreement as to form and/or for legal sufficiency.

199 **Notice.** Notice to either party shall be deemed given if sent by certified mail, return receipt requested, by recognized public or private postal facilities, by hand delivery, or delivered at a Town Commission meeting. Notice shall be sent as follows:

For the Town: Charles Burkett, Mayor
Town of Surfside
9293 Harding Avenue
Surfside, Florida 33154
(305) 861-4863 (Telephone)

With a copy to: Mark Blumstein, Esq.
Town Attorney
Town of Surfside
9293 Harding Avenue
Surfside, Florida 33154
(305) 861-4863 x 225 (Telephone)

For the Town Manager: Town Manager
Town of Surfside
9293 Harding Avenue
Surfside, Florida 33154
(305) 861-4863

Section 20. WAIVER OF JURY TRIAL.

BOTH THE TOWN AND THE TOWN ATTORNEY KNOWINGLY, VOLUNTARILY, AND IRREVOCABLY WAIVE THEIR RIGHT TO A TRIAL BY JURY IN ANY CIVIL PROCEEDINGS THAT MAY BE INITIATED BY EITHER PARTY WITH RESPECT TO ANY TERM OR CONDITION OF THIS AGREEMENT.

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IN WITNESS WHEREOF, the Town, by signature of the Mayor, as authorized by the Town Commission, in accordance with Resolution No. _____ passed on April 9, 2024, has executed this Agreement the day and year first above written.

TOWN OF SURFSIDE

By: _____
Charles Burkett, Mayor

Date: _____

ATTEST:

Sandra N. McCready, MMC
Town Clerk

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

Mark Blumstein
Town Attorney

TOWN ATTORNEY

Mark Blumstein

Date _____