



**Town of Surfside
Town Commission Meeting
MINUTES
April 12, 2011
7 p.m.**

Town Hall Commission Chambers - 9293 Harding Ave, 2nd Floor
Surfside, FL 33154

1. Opening

A. Call to Order: Mayor Daniel Dietch called the meeting to order at 7:00 pm.

B. Roll Call of Members: Town Clerk Debra Eastman called the roll and the following members of the Commission were present upon roll call: Commissioner Michael Karukin, Commissioner Edward Kopelman, Commissioner Marta Olchyk, Vice Mayor Joe Graubart and Mayor Daniel Dietch.

C. Pledge of Allegiance: Chief Dave Allen led the Pledge of Allegiance.

D. Mayor and Commission Remarks – Mayor Daniel Dietch

Mayor Dietch noted that he is deferring his discussion on the State of the Town due to the lengthy agenda. He also recognized past Commission members who were present at the meeting – Mr. Ruben Coto and Mr. Charles Burkett.

Mayor Dietch expressed concern about the 2004 Charter Amendment and commented that there is a disconnect between the wording and the intent. He opined that the Commission needs to fix it, as well as anything that is not right with the Town's codes, and create something that truly applies to the residents' wishes.

Vice Mayor Joseph Graubart commented about the amount of important material that is given to the Commission to decide upon in the agendas. He spoke about his critical views of prior administration that might not have taken the time to fully analyze the materials before them, which led to decisions that did not always benefit the Town. The Vice Mayor expressed that he does not want history to repeat itself and suggested that they slow down with the big city-like agendas. Commissioner Michael Karukin expressed agreement with the Vice Mayor's comments. He spoke about his "SSDI" – Surfside Slow Down Initiative. He also noted that the agenda packet is 398 pages long. He also mentioned that he has ideas to rectify the situation that involve charter amendments. Commissioner Marta Olchyk also noted that she has been advocating for this same issue since she became a Commissioner. She further stated that she

feels that many of the items have already been approved by the Town Manager, the Mayor and the Town Attorney before they reach the Commission. She added that there is no way that the Commission can admit to studying every single issue that comes before them. She added that she has not seen any improvements since she became a Commissioner. Commissioner Kopelman stated that the Town now has a Town Manager that gets things done. He added that the Town Manager, the Town Attorney and the Town Clerk are accessible and are available to answer questions.

E. Agenda and Order of Business Additions, deletions and linkages

Vice Mayor Graubart asked to pull the “Projects Report”, p. 66 & 68; Maranon Update, p. 36; Town Manager’s Report, 9450 Collins Ave parking lot. Commissioner Olchyk asked to pull Points of Light Item 3C; Item 17, p. 40; Item 21, p.41; Item 28, p.42; Item 35, p.43; Item 29, p.45; p. 42; Item 3I, p.74; Item 9B, p. 342; Item 9G, p.346 Commissioner Karukin asked to pull from the Points of Light p. 40, Item 15 and p. 67, Item 5.

Town Attorney Lynn Dannheisser added Item 1G, Call for Executive Session, a statement that she needs to make, and a report on the red light camera litigation.

Commissioner Olchyk moved to approve the changes to the consent agenda. Commissioner Kopelman seconded the motion, which carried unanimously.

F. Community Notes – Mayor Daniel Dietch

Baynanza Saturday, April 16, 2011

Mayor Dietch spoke about the Town’s upcoming events:

Community Garden Meeting, April 14th at 6:00 in the Commission Chambers,
Downtown Vision Committee Meetings, April 14th and April 27th at 7:00 in the
Commission Chambers,

Senior Trip-Festival Flea Market and Butterfly World, April 14th at 9:00,
Baynanza, April 16th,

Senior trip to Holocaust Documentation and Education Center, April 21 at 9:00,
Summer camp registration is under way, and hello to kids doing great work on
FCAT’s.

Mayor Dietch brought to the attention of the Commission a Proclamation that is not on the agenda regarding Childhood Cancer Awareness week, April 24th and 30th, Eye on Surfside public safety meeting, April 19th at 6:00, and notified all residents of the Mayoral Candidates’ Forum for new County Mayor hosted by Mayors of NE Communities. The Mayor invited the residents to hear from the candidates and be sure their voice is heard April 28 at 7 pm at Aventura Turnberry Center.

Vice Mayor Graubart, who is a Tourist Board liaison, reminded residents about the musical event on the last 3rd Thursday of the month, April 21st from 7 pm to 10 pm. The event will consist of Top 40s music and mariachis.

G. National Moment of Remembrance – Eliot Pearlson, Rabbi of Temple Menorah
Commissioner Olchyk introduced Rabbi Pearlson and mentioned that the Rabbi is not only a scholar, but also a very active person in the Community. Rabbi Pearlson spoke about the significance of Memorial Day and noted how it has diminished through the years. The Rabbi explained the history of the National Moment of Remembrance. He called upon the Town of Surfside and its employees to observe a moment of silence at 3pm on Memorial Day.

Commissioner Olchyk made a motion of support of observing the National Moment of Remembrance and directs the Town Manager to take action to support the initiative. Commissioner Karukin seconded the motion, which carried unanimously.

H. Recognition of Library Volunteers – Roger M. Carlton, Town Manager and Duncan Tavares, Tourism, Economic Development and Community Services Director

Mr. Tavares introduced Conrad Danzer and spoke about his enthusiasm for books. Mr. Tavares also introduced Dr. Mercy McDowell, who is a teacher at the Ruth K. Broad K-8 Center, who was thankful for the book donations and spoke about how the books are being utilized throughout the school.

Mr. Tavares also thanked all the library volunteers, who were recognized with a plaque.

I. Special Presentation to Town Commission and Town Employees – Stan Bershad, North Shore Kiwanis

Mr. Stan Bershad of the North Shore Kiwanis spoke about the work done by the Kiwanis organization. He presented the Town of Surfside staff with a plaque of recognition for their help in their fundraisers. He thanked Chief Allen for the carwash and Tim Millian for the Dog Show.

Vice Mayor Graubart asked to move Item 9K, Film and Photo, to be heard immediately following good and welfare. He made a motion for his request. Commissioner Olchyk seconded the motion, which carried unanimously.

J. Employee of the Quarter – Bobby Gabriel, Parks and Recreation presented by Tim Milian, Parks and Recreation Director

Mr. Milian presented Mr. Bobby Gabriel with the Employee of the Quarter Award. He noted that Mr. Gabriel has been a part-time employee in the Parks and Recreation Department since 2008. Mr. Gabriel thanked all the departments for allowing him to get this award.

K. Police Officer of the Month – January and February – January –Diana Dulaney and

Craig Lovellette; February, Diana Dulaney

Chief Allen introduced Officer Diana Delany. Chief Allen stated that Officer Delany was involved in a case where a child was reported missing. He stated that Officer Craig Lovellette recalled seeing the child in the Surfside Business District and contacted the school where he was informed that another child was also missing. He added that Officer Delany received information that 2 children were seeing leaving in a cab. Chief Allen mentioned that a Bal Harbor police officer stopped the cab and the children were returned home within one hour of the police call. Chief Allen also recognized Officer Delany for saving the life of a child who was choking.

- L. Lynn Dannheisser Executive Session – Ms. Dannheisser stated that she needs to call an Executive Session to seek advice concerning litigation strategy and possible settlement strategy in accordance with Florida Statute to discuss the Young Israel case. She asked to schedule the session for Thursday, April 28, 2011 at 5:30pm.
- M. Lynn Dannheisser read a statement directed at the people who controls the “Save Surfside” website and the “Who Controls Surfside” blog. Ms. Dannheisser stated that a group of people who are purposely and dishonestly misinformed are creating lies to promote distrust in the government. She also spoke about free speech, but noted that there is lack of truth in the comments being made. Ms. Dannheisser noted that eventually good and honest people will turn away from serving in government for fear of having to subject themselves and their families to such treatment. Ms. Dannheisser spoke also about the important roles that experts, consultants, the Town Manager and Town Attorney have in the guidance and decision making of the Town. She added that she was hired in order to save the Town legal fees and she has performed beyond expectations.
- N. Trial date on the John Davis v Town of Surfside – Ms. Dannheisser informed the Commission that the trial date for the John Davis vs Surfside case is set for June 6, 2011.
- O. Challenge to Red Light Camera System – Ms. Dannheisser informed the Commission that there was a challenge against the Red Light Camera System where the judge ruled against the plaintiff and found that the statute is not unconstitutional and does not create a quota system.

2. Quasi-Judicial Hearings (None)

3. Consent Agenda

Commissioner Kopelman made a motion to approve the consent agenda, minus the items that were pulled. Vice Mayor Graubart seconded the motion, which carried unanimously.

- A. **Minutes** – January 18, 2011 Town Commission Meeting
February 8, 2011 Town Commission Meeting
- B. **Budget to Actual Summary as of January 31, 2011** – Martin Sherwood, Finance Director
- *C. **Town Manager’s Report (Points of Light)** – Roger M. Carlton, Town Manager

Commissioner Olchyk inquired about the Atkins property and the actual cost. She noted that the report indicates that the closing was \$320,000 and closing cost was \$3,722. Mr. Carlton noted that the total cost was \$323,722. He added that \$80,000 was paid up-front plus \$80,000 for the next 3 years at no interest. Commissioner Olchyk inquired about the immediate function of this property. Mr. Carlton stated that the Police vehicles have been parking there for years since the Town rented the property for that purpose. He added that the future of the area still has to be discussed when a master plan is designed. Commissioner Olchyk asked if any additional funds will be spent on the property. Mr. Carlson stated that there will be no change at this time.

Vice Mayor Graubart asked for an update on the Maranon property. Mr. Carlson noted that the buyer was authorized a 45 day extension by the Commission to be able to close by May 2nd. He added that if the buyer cannot close by that time, they will forfeit their deposit and the Town will seek a new bidder.

Item 17, pg. 40 – Feral cats and dog feces – Commissioner Olchyk asked the Town Manager to discuss the outcome of the meeting he had with residents about this issue. Mr. Carlton noted that the meeting has not yet occurred. He stated that he will hold the meeting prior to the next Commission meeting.

Pg 41 – Tourist Resort Tax Auditor – Commissioner Olchyk inquired about the outcome of the audit and the audit position. Mr. Carlton noted that there is an Ordinance for first reading on this agenda that deals with a variety of issues of the resort tax. He added that the Town’s current ordinance is 59 years old. Mr. Carlton noted that the ordinance defines the fact that there will be audits, expresses the types of documentations the businesses have to provide, and the appeals process.

Pg 42, Item 28 – Meet the Town Manager Meeting – Commissioner Olchyk asked about how many people attended this function. Mayor Dietch noted that initially no one was there, but later residents attended. He also spoke favorably of hosting these events in the future.

Commissioner Kopelman suggested that the Commissioners attend the pre-agenda meeting with the Town Manager. Commissioner Olchyk commented that the Commission should not have so many items to discuss. Mayor Dietch explained the purpose of the Points of Light. Mr. Carlton spoke about the importance of the agenda briefings and added that he has made himself available during the weekends and nights to answer any questions to better prepare the Commissioners. Commissioner Olchyk noted that she received her agenda one day after everyone else and added that she has other commitments in addition to being a Commissioner and commented that

she cannot be expected to read almost 400 pages in 24 hours. Commissioner Kopelman stated that he received his agenda packet today and met with the Town Manager to discuss his questions because that is his job.

Item 29, pg 45 – Solid Waste – Commissioner Olchyk inquired about the new vehicle. Mr. Carlton noted that this vehicle is a replacement.

Pg 40, Item 15 – Farmers’ Market – Commissioner Karukin asked Duncan Tavares about the cost of the new Farmers’ Market since the last one had been so expensive. Mr. Tavares noted that the new Market will be handled by a different vendor and the cost will be shared between the three municipalities.

Pg 67 – Neighborhood Improvements – Commissioner Karukin noted that this paragraph seems to address additional manicureism of the Town. He noted that he is not in favor of this and prefers the eclectic look of the Town. Mr. Carlton noted that the water and sewer bond contains additive alternatives as part of the bid process. He added that depending on the base cost of the project, there might be extra money to pay for these things. Mr. Carlton stated that the ultimate call comes from the Commission. He added that the bid process opens April 28th.

New Parking lot on Collins Ave – Mr. Carlton noted that the new parking lot is under construction. He added that they ran into problems with the retaining wall, which will be repaired. He added that a foot path will also be built to get to the alley. He noted that the project should be complete in 60 days.

Commissioner Kopelman made a motion to adopt the points of light. Commissioner Karukin seconded the motion, which carried unanimously.

- D. Town Attorney’s Report** – Lynn M. Dannheisser, Town Attorney
- E. Projects Progress Report** – Calvin, Giordano and Associates, Inc.
- F. Earth Day Resolution** – Duncan Tavares, Tourism, Economic Development and Community Services Director
**A RESOLUTION OF THE TOWN OF SURFSIDE, FLORIDA
PROCLAIMING EARTH DAY APRIL 22, 2011 TO RAISE PUBLIC
AWARENESS ABOUT ENVIRONMENTAL PROTECTION AND
SUSTAINABILITY.**
- G. Census Data** – Roger Carlton, Town Manager
- H. Code Enforcement Ad Hoc Committee Appointment** – Commissioner Michael Karukin (**Note – appointment can be rescinded if Code Enforcement Committee is Sunset*)
- I. Professional Lobbying Services Agreement Extension** - Roger M. Carlton, Town Manager
- J. Parks and Recreation Committee Appointment** – Commissioner Michael Karukin

4. Ordinances

A. Second Readings (Ordinances and Public Hearing)

***1. Ordinance – Joint Meeting Recommendations Ordinance** – Roger M. Carlton, Town Manager, Lynn M. Dannheisser, Town Attorney, Sarah Sinatra Gould, Town Planner

AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA AMENDING SECTION 90-2 “DEFINITIONS”, AMENDING SECTION 90-20. “DEVELOPMENT REVIEW REQUIREMENTS” TO ESTABLISH A DEVELOPMENTAL IMPACT COMMITTEE; AMENDING SECTION 90-23 “CONDITIONAL USES”; 90-41 “REGULATED USES”; 90-45. “SETBACKS.”; 90-45.1 “AGGREGATION OF LOTS”; SECTION 90-44 THROUGH SECTION 90-67 RELATING TO DESIGN REVIEW GUIDELINES; SECTION 90-73 “PROHIBITED SIGNS.”; SECTION 90-87 INSTALLATION OF LANDSCAPING AND IRRIGATION; REPEALING ALL ORDINANCES IN CONFLICT; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR AN EFFECTIVE DATE.

Town Clerk Debra Eastman read the Ordinance by title into the record.

Commissioner Kopelman made a motion to accept the ordinance. Commissioner Karukin seconded the motion.

Town Planner, Sarah Sinatra, presented a PowerPoint presentation and gave a brief history of the ordinance. Ms. Sinatra discussed the proposed changes in the ordinance, which include: Development Impact Committee, Conditional Uses, Lot Aggregation, and Mandatory Design Guidelines. Ms. Sinatra also spoke about the changes to the ordinance from the first reading. Ms. Sinatra read an additional change into the record from Section 90-23.2, under Standards of Review, Subsection 4 – Adequate provisions shall be included for safe traffic movement, both vehicular and pedestrian, both internal to the use and in the area where the use will serve. She indicated that this should also include parking. She noted that it should now read: Adequate provisions shall be included for safe parking and traffic movement, both vehicular and pedestrian, both internal to the use and in the area where the use will serve.

Mayor Dietch opened the public hearing.

David Steinfeld spoke in favor of the ordinance.

The Mayor closed the public hearing.

Commissioner Karukin inquired as to how this relates to the Design Review Board. Ms. Sinatra noted that this ordinance gives them more power since previously they only had guidelines, and not an actual Code, to go by. Commissioner Karukin noted that the ordinance passed the Planning and Zoning Board on a 3 to 2 vote and inquired what were the reasons for 2 members to dissent. Ms. Sinatra stated that

there were concerns about the aggregation of the properties and how those were determined. She also stated that the new addition of the Development Impact Committee was also a concern.

Commissioner Karukin expressed concern that the ordinance might violate the single topic rule. Ms. Dannheisser stated that it does not and added that it all falls under the topic of the zoning code.

Commissioner Karukin also expressed concern about the word “etc” on page 107. Commissioner Kopelman agreed to amend the motion to strike “etc” and add “other similar facilities” in its place.

Ms. Dannheisser also noted the change made to the ordinance in Section 90-23.2, section 4 to include “parking and the traffic movement”.

Commissioner Kopelman re-stated his motion to include approval of the ordinance as amended.

Vice Mayor Graubart noted that he is voting against the ordinance because it makes government bigger and more costly for a small Town and is unaware of the statistics of a town the size of Surfside having a DIC. Commissioner Karukin noted that he had the same concerns, but added that there is a cost recovery process.

Mayor Dietch commented that making DIC part of the Code makes it formal and enforceable. He noted that the DIC adds a layer of protection that the Town has never had.

The amended motion carried 4 to 1 on roll call with Vice Mayor Graubart dissenting.

***2. Master Utility Bond Ordinance – Roger M. Carlton, Town Manager**

AN ORDINANCE OF THE TOWN OF SURFSIDE, FLORIDA AUTHORIZING THE ISSUANCE OF NOT TO EXCEED \$16,000,000 UTILITY SYSTEM REVENUE BONDS, SERIES 2011, TO FINANCE THE COSTS OF WATER, SEWER, STORMWATER AND RELATED CAPITAL IMPROVEMENTS; PLEDGING CERTAIN NET REVENUES OF THE UTILITY SYSTEM FOR THE PAYMENT OF SUCH BONDS; PROVIDING FOR THE RIGHTS OF HOLDERS OF SUCH BONDS; MAKING OTHER COVENANTS AND AGREEMENTS IN CONNECTION THEREWITH; AND PROVIDING FOR AN EFFECTIVE DATE.

Town Clerk Debra Eastman read the Ordinance by title into the record.

Mr. Carlton spoke about the need and the process for the utility project. He cited the sewage incident that occurred in the neighboring city the prior week. Mr. Carlton noted that the Town does not have the funds needed to start the projects in sections.

He stressed that there is no ad valorem tax pledge on this project. He added that the only revenues pledged are those of the water, sewer and storm drainage system. He also noted that it is not practical to tear up the Town for 6 to 8 years as the project is under way by doing it in sections.

Mr. Carlton explained that the Resolution sets the details of the borrowing while the Ordinance sets the long-term rules. He noted that the competitive selection process was handled by Mr. Sergio Masvidal, the financial advisor. He noted that 6 proposals were received. He added that the proposals were reviewed by the consultants and recommendations were made to the Citizens Review Committee and Regions Bank was recommended.

Commissioner Kopelman spoke against proceeding with the project step-by-step.

Commissioner Kopelman made a motion to adopt the ordinance. Commissioner Karukin seconded the motion.

Commissioner Olchyk agreed that the project is necessary, but expressed concern that this project will run over budget as all the other projects have. She also expressed concern that the rates will be raised. Mr. Carlton spoke about the value engineering conducted by Calvin, Giordano and Associates and added that Public Works Director Bill Evans brought in an independent consultant to review the plans in order to determine the most cost effective way to complete the project. Mr. Carlton added that he feels that the project will not go over budget, but noted that if it does, there is still the possibility of negotiating costs.

Vice Mayor Graubart inquired about the Tischeler Bise rate study, Table 14 regarding rate adjustments. He noted that no one can predict where the rates will go. He also expressed concern about the additional capital improvements. He questioned how they will be paid back based on the tiered water charges. He opined that it should be a separate bond issue. Mr. Carlton clarified that the chart the Vice Mayor is referring to ties back to the rate increases presented by Tischeler Bise that the Commission had agreed upon last fall.

Commissioner Karukin inquired why the grants are not listed in the table. Finance Director Martin Sherwood noted that they left out the grants to be conservative and leave out any additional funding that was not assured.

Mayor Dietch recognized the members of the Oversight Committee that were present at the meeting: Bertha Goldenberg, Marty Oppenheimer and Jared Chenevert.

Mayor Dietch opened the public hearing.

Jared Chenevert stated that he really liked being on the Committee and found it to be very useful. He noted that there is a very big problem with the aging water and sewer system. He spoke in favor of the revenue bond.

David Steinfeld spoke about the importance of looking into the future and fixing the infrastructure. He stated that it is time to take this bold step and noted that he is in favor of the project. Mr. Steinfeld also recommended that the Commission allow the Town Manager to use the alternative additives to improve the Town's appearance.

Dorie Lurie addressed Commissioner Olchyk and asked her not to vote in favor of the project if she has doubts. She added that she would like to keep Surfside a debt free community. She suggested fixing things little by little.

Martin Oppenheimer spoke in favor of the project. He noted that no one likes debt, but added that the advantages outweigh the waiting. Mr. Oppenheimer stated that he prefers to go with debt that is prepared and calculated than gamble with the Community and then have a catastrophe occur.

John Paupe expressed concern about the logic that the sewage problem is an emergency. He stated that with that thinking many other things also need fixing. He inquired if the pipes have been examined. Commissioner Kopelman said that there are pictures. Mayor Dietch noted that the pictures are on the website. Mr. Carlton noted that the Town has spent over \$250,000 due to rain and seawater infiltration coming into the pipes.

Tony Blate asked about the force main. Mr. Carlton noted that the repairs will be done to the service lines to homes and the pump stations that take the sewer to the force main. He added that all the water pipes will be moved from the back yards to the streets. Mr. Carlton mentioned that that force main has never been inspected. He added that part of the project is to create interconnects over to Collins where Bal Harbor wants to build a new force main so if something happens we would move over to their new force main. He noted that it would allow for the force main to be shut off and see the condition.

Mayor Dietch closed the public hearing.

Vice Mayor Graubart mentioned that he met the contractor who was present at the sewage break. He noted that the city of Miami Beach contracts with them in the event that something like this happens. He suggested contracting with them. Mr. Carlton mentioned that the Town has been in contact with them.

The ordinance passed 4 to 1 on roll call with Vice Mayor Graubart dissenting.

3. Ordinance Calling for a Temporary Moratorium, Memo of Law and Report by Town Attorney – Lynn M. Dannheisser, Town Attorney
AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, ESTABLISHING A TEMPORARY MORATORIUM ON THE PROCESSING OF SITE PLANS, BUILDING PERMITS, AND THE ISSUANCE OF CERTIFICATES OF USE OR OCCUPANCY FOR NON-RETAIL, NON-RESTAURANT USES FOR THE PROPERTIES GENERALLY LOCATED BETWEEN 96TH AND 94TH STREET AND HARDING AVENUE,

MORE PARTICULARLY DEPICTED ON THE DOWNTOWN BUSINESS DISTRICT AREA ZONING MAP ON EXHIBIT “A’ ATTACHED HERETO; PROVIDING FOR A STUDY; PROVIDING FOR A WAIVER; VESTED RIGHTS, APPEAL; EXHAUSTION OF ADMINISTRATIVE REMEDIES AND TERM; PROVIDING FOR DIRECTIONS TO THE TOWN MANAGER; PROVIDING FOR EXCEPTIONS; PROVIDING FOR ADOPTION OF PRESENTATIONS; REPEALING ALL ORDINANCES IN CONFLICT; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR INCLUSION IN CODE; PROVIDING AN EFFECTIVE DATE.

[This ordinance imposes a temporary moratorium on the issuance of Certificates of Use and Certificates of Occupancy for non-retail, non-restaurant uses]

Town Clerk Debra Eastman read the Ordinance by title into the record.

Commissioner Kopelman made a motion to defer the item to the Downtown Committee Group. Commissioner Olchyk seconded the motion.

Mayor Dietch noted that this came to the Commission with a unanimous recommendation. He spoke about the purpose of this ordinance and indicated that it also provides some flexibility to the Town Manager. He further opined that this ordinance will help the Town with their vision of the business district.

Mr. Carlton noted that the item is on the agenda for the next Downtown Vision Committee. He noted that if the Commission defers, there is no basis to deny applications for types of uses that the Town might not want.

The motion to defer failed 2 to 3 with Commissioners Kopelman and Olchyk voting in favor.

Commissioner Karukin made a motion to approve the ordinance. Vice Mayor Graubart seconded the motion.

The Mayor opened the public hearing.

Lou Cohen stated that he is on the Downtown Vision Committee. He spoke in favor of the moratorium and about the benefits to the Community.

Barbara McLaughlin spoke in favor of the moratorium.

Commissioner Karukin made a motion to continue the meeting for one more hour. Commissioner Kopelman seconded the motion. All were in favor.

Ms. Dannheisser informed that she has spoken with property owners downtown that have problems with tenants that are neither restaurants nor retail. She noted that there is a reasonable compromise as recommended by the Planning and Zoning Board. She added that they requested that the Commission enact legislation within 90 days on the uses to include encouraged uses as well as limitation of uses and imposition of

location and distancing requirements. Ms. Dannheisser recommended that the Commission adopt with the proviso that with regard to the issue of location, distancing and permissible uses, that the legislation be accomplished within 90 days.

Commissioner Karukin accepted the amendment as stated by the Town Attorney. Vice Mayor Graubart second it.

Commissioner Karukin stated that not passing the ordinance does not interfere with the Downtown Vision Committee. He added that he does not see the urgency. He further noted that other committees have interest in this.

The motion carried unanimously on roll call.

B. First Readings Ordinances

1. Short Term Rentals – Lynn Dannheisser, Town Attorney

AN ORDINANCE OF THE TOWN OF SURFSIDE, FLORIDA AMENDING ARTICLE IV “DISTRICT REGULATIONS” SECTION 90.41 “REGULATED USES” ADDING A NEW SECTION 90.41.1.5 ENTITLED “SHORT TERM RENTAL OF SINGLE FAMILY DWELLINGS, TWO-FAMILY DWELLINGS, MULTI-FAMILY DWELLINGS, AND TOWNHOMES” REQUIRING REGISTRATION OF SHORT TERM RENTALS IN RESIDENTIAL NEIGHBORHOODS; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEALER; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR AN EFFECTIVE DATE.

[This ordinance requires registration of short term rentals for compliance with resort and other taxes. It also limits short term rentals to no more than three per year.]

Town Clerk Debra Eastman read the Ordinance by title.

Commissioner Karukin made a motion to defer. Commissioner Kopelman seconded the motion. Commissioner Kopelman then withdrew his second.

Mr. Carlton noted that he received a call from Lobbyist Fausto Gomez regarding this. He noted that the state of Florida legislature is attempting to preempt a Towns’ ability to regulate short-term rentals. He recommends that the Commission approve the ordinance on first reading so that we can protect ourselves from preemption because there appears to be a grandfather clause.

Commissioner Karukin withdrew his motion to defer.

Commissioner Kopelman made a motion to approve the ordinance on first reading. Vice Mayor Graubart seconded the motion.

Vice Mayor Graubart expressed concern. Commissioner Karukin stated that there are many things in the ordinance he does not agree with.

The motion carried unanimously on roll call.

- 2. Resort Tax** – Roger M. Carlton, Town Manager and Duncan Tavares, Tourism, Economic Development and Community Services Director
AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA AMENDING CHAPTER 70 AND SPECIFICALLY ARTICLE IV “RESORT TAX” DIVISION 1 “RESORT TAX” AND DIVISION 2 “RESORT TAX BOARD” SPECIFICALLY AMENDING SECTIONS 70-106 THROUGH 70-111; AND CREATING SECTIONS 70-112 THROUGH 70-127, OF THE TOWN OF SURFSIDE CODE OF ORDINANCES PROVIDING FOR INCLUSION IN THE CODE; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; AND PROVIDING FOR AN EFFECTIVE DATE.

[Updates resort tax imposition and adds an appeal process]

Mayor Dietch asked that the item be deferred to next month and all were in favor.

5. Resolutions and Proclamations

- A. Reappropriation of Resort Tax Reserves** – Duncan Tavares, Tourism, Economic Development and Community Services Director **Page 224-240**
A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, AUTHORIZING THE REAPPROPRIATION OF RESORT TAX FUND BALANCE (RESERVES) TO THE TOURISM, ECONOMIC DEVELOPMENT & COMMUNITY SERVICES DIRECTOR FOR THE COMMUNITY CENTER CONSTRUCTION; AMENDING THE TOWN’S BUDGET FOR FISCAL YEAR 2010-2011; AND PROVIDING FOR AN EFFECTIVE DATE.

Mr. Carlton mentioned that this resolution allows the Tourist Board to transfer the funds allocation of design funds for the addition because of their use of the building.

Commissioner Kopelman made a motion to approve the resolution. Commissioner Karukin seconded the motion, which carried unanimously.

- B. VOIP Phone System Replacement** – Roger M. Carlton, Town Manager and Debra Eastman, Town Clerk and Director of Administrative Services and Eric Wells and Hector Perez, CGA
A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA SELECTING INTERACTIVE SERVICES

NETWORK, INC., TO PERFORM PHONE REPLACEMENT SERVICES IN RESPONSE TO RFP NO. 11-01; AUTHORIZING THE TOWN MANAGER OR HIS/HER DESIGNEE TO ENTER INTO A CONTRACT CONTAINED IN EXHIBIT "A" WITH SAID TELEPHONE SERVICE COMPANY PROVIDED SAID CONTRACT IS APPROVED AS TO FORM AND LEGAL SUFFICIENCY BY THE TOWN ATTORNEY; FURTHER AUTHORIZING THE TOWN MANAGER TO DO ALL THINGS NECESSARY TO EFFECTUATE THIS RESOLUTION; AND PROVIDING FOR AN EFFECTIVE DATE.

Mr. Carlton stated that the decision was made to re-do the telephone system with VOIP (Voice Over Internet Protocol) and that the best price that came in was to outsource the service. He stressed that there is an urgency because the need to install phone service at the Community Center.

Commissioner Karukin made a motion to approve the resolution. Commissioner Kopelman seconded the motion.

Commissioner Karukin inquired about the question that was made if the system provides alarm notifications in the form of text messages or e-mails. He noted that IP Phones responded that it was not relevant. Commissioner Karukin disagreed with that response. He noted that servers have messaging capabilities and if the phones are down the Town Manager has to be notified somehow. The President and Representative of IP Phone addressed Commissioner Karukin's concerns. Commissioner Karukin stated that he wants for a notification to be sent to the Town Manager as well.

Vice Mayor Graubart expressed concern about the cost of the system. Commissioner Karukin noted that it's an evolving standard and a necessary function.

Commissioner Olchyk inquired about another alternative. Mr. Carlton mentioned that there was a less expensive alternative, but the company did not comply in the bid.

Mayor Dietch spoke in favor of the system and mentioned that the Town does not have telephone expertise and it needs phones.

The motion carried unanimously on roll call.

- C. Municipal Code Corporation – Munibill\$ - Roger M. Carlton, Town Manager and Debra Eastman, Town Clerk and Director of Administrative Services**

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, AUTHORIZING THE TOWN TO ENTER INTO AN AGREEMENT WITH MUNICIPAL CODE CORPORATION

FOR MUNIBILL\$ FOR INVOICING WATER, SEWER AND STORMWATER; AUTHORIZING THE FUNDS TO PAY FOR; AND PROVIDING FOR AN EFFECTIVE DATE.

Mr. Carlton that this resolution allows the residents in the Community to pay their water and sewer bills over the internet and use credit cards. He added that the process is extremely inexpensive.

Commissioner Karukin made a motion to approve the resolution. Commissioner Kopelman seconded the motion.

Vice Mayor Graubart inquired about how Bay Harbor has their system set up. Town Clerk Debra Eastman responded that she has consulted with Bay Harbor regarding their website payment system. She added that they have a traditional credit card machine at their counter and they had to pay a lot of money and incorporate that into their website. Commissioner Karukin spoke in favor of this system.

The motion carried unanimously.

D. Resolution for Master Utility Bond – Roger M. Carlton, Town Manager

A RESOLUTION OF THE TOWN OF SURFSIDE, FLORIDA SUPPLEMENTING ORDINANCE NO. ____ ; AUTHORIZING THE NEGOTIATED AND PRIVATE SALE OF THE NOT TO EXCEED \$16,000,000 TOWN OF SURFSIDE, FLORIDA UTILITY SYSTEM REVENUE BONDS, SERIES 2011; AWARDING SAID SERIES 2011 BONDS TO THE ORIGINAL PURCHASERS THEREOF; APPROVING THE TERMS OF SAID SERIES 2011 BONDS; PROVIDING FOR THE DELIVERY OF SAID SERIES 2011 BONDS TO THE ORIGINAL PURCHASER; PROVIDING CERTAIN OTHER MATTERS IN CONNECTION THEREWITH; AND SETTING FORTH THE EFFECTIVE DATE OF THIS RESOLUTION.

Town Clerk Debra Eastman read the resolution by title.

Commissioner Karukin made a motion to approve the resolution. Commissioner Kopelman seconded the motion. The motion carried 4 to 1 with Vice Mayor Graubart dissenting.

6. Good and Welfare

Dorie Lurie expressed that she wants Surfside to remain debt-free and spoke against the \$16 million pipe project. She also expressed resentment for comments made by Mr. Carlton about the Surfside business Oberly Opticians. She opined that the comments showed ageism and prejudice.

Peter Neville thanked all those who wished him well during his hospital stay. Mr. Neville also asked the Commission to consider installing a solar system in the new Community Center. He spoke about the cost benefits.

Belkys Nerey wished to express support for the Mayor, Commission and Town Manager for all the tough decisions they have had to make recently. She also stated that she is tired of receiving e-mails from naysayers who do nothing but criticize. She also noted that change is never easy and it is more difficult still with people who put out misinformation and use scare tactics to prove their point.

Lou DiAntwano asked if any Commissioner is in support of the Surfside resident association that is requesting an annual due of \$25. Commissioner Kopelman stated that he is not familiar with that organization. Vice Mayor Graubart stated that he is aware of the organization, but is not aware of their goals. Commissioner Olchyk mentioned that she also received a notice via e-mail and stated that this is a group that is trying to gather resident support to show that the Commissioners are not worthy of doing their jobs. Mr. Carlton suggested that Mr. DiAntwano contact the Miami-Dade's Consumer Protection Office if he no longer wishes to receive solicitations from this or any other group. Mr. DiAntwano thanked the Commission for their efforts and stated that the Town is being run better than ever.

Commissioner Olchyk noted that she is submitting to the Town Clerk the Beautification Committee Report and stated that she appreciates the work the Committee is doing.

David Steinfeld spoke favorably about the work the Commission is doing and encouraged them to continue the good work. He stated that the small group of negative people should not deter the Commission's work.

Aaron Holland suggested that the Town allow Bal Harbor Shoppes to use to build a parking garage and mall and the stores in Surfside will be back.

Sasha Plutno spoke against putting the Town in debt for \$16 million. He suggested that they find another way. He spoke against the moratorium for new restaurants in Town. Mr. Plutno noted that he has been told that the Young Israel case could not be discussed, but the Town Attorney discussed it at tonight's meeting. Mr. Plutno also mentioned that he has requested financial records pertaining to the first law suit between the Town and Young Israel from the Town and was told that the request had to go through the attorney. He stated that he is still waiting.

Dr. Mercy McDowell expressed support for the Mayor, but stated that the e-mails and blogs are making residents confused as to what is really going on.

Charles Burkett stated that he respects the efforts of the Commission to move the Town forward. He also spoke about how the Town of Surfside is debt free and cautioned about committing to long-term debt. He further opined that the sewage work should be done in sections and not all in one shot.

Vice Mayor Graubart stated that each Commissioner comes from a different perspective. He noted that Surfside is very important to him and added that he votes with his conscience and will continue to do so.

Commissioner Olchyk stated that she is happy that the Attorney made her statement because, although she does not agree with her choice to hire Mr. Houlihan, she appreciates that Ms. Dannheisser was up-front about her reasons.

Commissioner Kopelman stated that his vote will always be for the good of the community.

Commissioner Kopelman also expressed support for Ms. Dannheisser's statement and mentioned that he feels bad about the scapegoating. He also noted that the article was totally misrepresentative. Commissioner Karukin stated that at first he also had questions about the salary that is paid to the Town Attorney, but hiring an outside firm would be more expensive and inconvenient. Commissioner Kopelman addressed Dr. McDowell's comments on the misinformation and noted that the Commission cannot use the Town's Gazette to communicate their feelings on the issues.

Mayor Dietch thanked all the residents who spoke. He stated that his goal is for everyone to be respectful and civil to each other. He spoke about the solar heaters and noted that it was too expensive. He added that a solar cover is being installed. The Mayor also told Mr. Plutno that his concerns about his records request will be addressed tomorrow morning.

The Mayor closed good and welfare.

7. Town Manager and Town Attorney Reports

Town Manager and Town Attorney Reports have been moved to the Consent Agenda – Item 3.

All items on the Consent Agenda are considered routine or status reports by the Town Commission and will be approved by one motion. Any Commission member may request, during item 1E Agenda and Order of Business, that an item be removed from the consent agenda and discussed separately.

8. Unfinished Business and New Business

9. A. Report of Code Compliance Ad Hoc Committee – Anthony Blate, Chairman

Town Manager Roger Carlton directed the Commission to the report on Code Enforcement Ad Hoc Committee and noted that it suggests priorities. Mayor Dietch noted that the report contains good recommendations and recommended accepting the report and instructing the Town Manager to affect the program that is going to incorporate these recommendations.

Commissioner Karukin agreed with accepting the report, but expressed concern about implementing the provisions in the report. He noted that he does not agree with every recommendation contained in the report. Mayor Dietch recommended accepting the report and having the Town Manager come back to the Commission with specific direction.

Tony Blate commented that code enforcement is not a simple thing in Surfside.

Commissioner Kopelman made a motion to accept the report and asked the Town Manager to return next month with direction. Commissioner Karukin seconded the motion, which carried unanimously.

Commissioner Olchyk spoke about the Mayor's comments regarding taking a long time discussing the Points of Light. She noted that if she does not have enough time to study the issue, she will continue to bring the questions to the meetings. Commissioner Olchyk also stated that she does not appreciate receiving almost 400 pages of agenda packet 48 hours before the meeting. She expressed that if the Commission is required to make the most accurate decisions, they should be given as much time as needed to study the issues. Mayor Dietch spoke about the staff's efforts to get the agenda packets out as soon as possible. Mr. Carlton noted that there was a miscommunication of where Commissioner Olchyk's agenda packet was supposed to have been left for her.

Vice Mayor Graubart stated that the agendas are too long for a 3 to 4 hour meeting.

9. Mayor, Commission and Staff Communications

A. Rescheduling of May 10, 2011 Commission Meeting – Commissioner Michael Karukin (verbal)

Commissioner Karukin mentioned that he will be away on business on May 9 – 11, 2011. Commissioner Kopelman mentioned that he will be away the May 15 – 21, 2011. Mr. Carlton mentioned that if the Commission wishes to move the meeting they have to let staff know for advertising purposes. Ms. Dannheisser noted that the Charter requires the Commission to meet on the prescribed day, which is the second Tuesday. No action was taken.

B. Rescheduling of July 12, 2011 Town Commission Meeting – Roger M. Carlton, Town Manager

Commissioner Olchyk stated that she has a problem with rescheduling the meeting. She noted that she worked for many years in the Federal Government and added that supervisors were never allowed to take off at the same time. She stated that it gives a poor image to the Town. She suggested that the supervisors rotate during the months of July and December. Mr. Carlton stated that he personally put in over 40 hours of time over the Christmas holiday while he was away from the Town reviewing the Town's 5 year plan. He added that the Chief was here and there was always a senior official present. He added the Ms. Dannheisser was available by phone for legal opinions.

Commissioner Olchyk expressed that the Chief Allen was not present in during the holidays in December, but Chief Allen noted that both he and Assistant Chief DiCenso were both present during December.

The Commission agreed to change the July meeting from July 12, 2011 to July 19, 2011.

C. Fiscal Year 2009-2010 CAFR

Mr. Carlton asked to defer the CAFR report. The Mayor noted the hard work that was put into producing this report and thanked those involved.

D. Smoking Ban- Vice Mayor Joe Graubart

Vice Mayor Graubart asked that this issue be heard by the Downtown Vision Advisory Committee. Town Manager Roger Carlton agreed.

E. 9/11 Memorial Ceremony – Vice Mayor Joe Graubart

F. Grace Period for Parking Citations – Vice Mayor Joe Graubart

G. FPL, Telephone and Cable Underground Conversion of Existing Overhead

Service Lines Report – Roger M. Carlton, Town Manager and Bill Evans, Director of Public Works

Commissioner Karukin made a motion to defer Items 9E, 9F and 9G. Commissioner Kopelman seconded the motion. The motion carried unanimously.

H. Professional Concessionaire Services Agreement – Tim Milian, Parks and Recreation Director

Mr. Carlton mentioned that an RFP went out on the concession stand and one proposal was received. He noted that the one proposal was not perfect in meeting every criterion. He asked the Commission for authority to negotiate with the bidder and waive some of the requirements of the RFP and come back to the Commission with more information. Mr. Carlton suggested preparing the contract for two years with a strong cancellation provision for non-performance.

Commissioner Kopelman made a motion to accept. Commissioner Karukin seconded the motion. The motion carried unanimously.

I. Bike Rental Station – Vice Mayor Joe Graubart

Vice Mayor Graubart requested to make the bike rental station a Point of Light.

Commissioner Kopelman expressed disagreement of the motion. Mayor Dietch stated that he wants to know the applicability and feasibility. Town Manager Roger Carlton will make the item a Point of Light in the Town Manager's Report and will come back with recommendations.

J. Crime Prevention Initiatives– Mayor Daniel Dietch

Mayor Dietch asked Mr. Carlton to add to the Points of Light looking into more comprehensive programs to send a message to criminals that Surfside does not want them around. **All were in favor.**

K. Photo/Film Ordinance Update – Roger M. Carlton, Town Manager

Town Manager Roger Carlton stated that from time to time the Town receives requests from people to film and conduct photo shoots in the Town. He noted that Surfside currently does not have an ordinance regulating this. He added that due to people renting their homes out in Vizcaya for longer periods of time, he felt the need to provide the Commission with a status report. Mr. Carlton mentioned that there is a request to film the “T. O. Show” at a home in Vizcaya for one month, which has become controversial. He added that the show has failed to meet all the criteria he set is therefore not allowed to start filming yet. He suggested that a Committee of 3 people be appointed to oversee these issues.

Vice Mayor Graubart expressed concern that the advice the Commission is receiving from Town Hall is not consistent with the Town Code. He noted that the advice is that the Town Code does not prohibit a house from becoming a TV studio. He added that the use of a house for commercial television activity is contrary to the Town’s wishes to maintain commercial use and residential use separate. Commissioner Kopelman expressed agreement with the Vice Mayor. Mr. Carlton asked for legal advice as to if conducting a onetime photo or film shoot in a house is considered to not be in compliance with the Town Code. He also wants to address the economic development side of the issue and whether this will be encouraged in the Town. Mr. Carlton stated that staff intends to present the Commission with an ordinance on first reading. Ms. Dannheisser noted that the ordinance, as written, pertains to long-term everyday use. She added that the County and other cities have allowed filming to be conducted in homes. She added that it is a policy decision and an ordinance will be prepared to that effect.

Commissioner Kopelman suggested voting on whether to allow filming as it pertains to this one event. Mayor Dietch inquired if it can be retracted. Mr. Carlton noted that the TO Show people know that they cannot move forward without the Town’s approval. He mentioned that if the Commission’s wish is to not allow the filing, he will notify the filming crew immediately

Commissioner Kopelman made a motion to not move forward with the filming application. Vice Mayor Graubart seconded the motion.

Commissioner Karukin expressed interest in wishing to hear the public’s comments prior to Commission discussion. Commissioner Olchyk inquired about the possible liability to the Town should the Commission deny the application. Ms. Dannheisser noted that she does not know enough facts on this case to opine. Mr. Carlton noted

that the film crew has reason to believe that this would go forward with the approval from neighbors. He added that he did make it clear to the film crew that until he saw the lease, there would be no moving forward.

Commissioner Olchyk expressed concern about Vizcaya having a narrow street and cited possible danger to children walking along the street. She also noted that the Town does not have enough people to monitor if this is developing into an industry for more than a day, or week. She stated that she does not feel comfortable voting in favor or against without all the necessary information. The Mayor noted that he is concerned that there is a compatibility issue and that it might not be harmonious with the day to day activities in the neighborhood. Mr. Carlton noted that if the film crew violates any term of the agreement, they will not be allowed to continue.

Ms. Dannheisser suggested that the Commission table the discussion and asked that she and the Town Manager be given the authority to further study the liabilities and exposures to the Town and not proceed with any further applications. The Mayor asked that if it is determined that there is not liability to the Town that the project be shut down. Mr. Carlton noted that a permit has not been issued.

10. Adjournment

The meeting adjourned at 12 a.m.

Accepted this ____ day of _____, 2011

Daniel Dietch, Mayor

Attest:

Debra E. Eastman, MMC
Town Clerk



**Town of Surfside
Town Commission Meeting
MINUTES
May 10, 2011
7 p.m.**

Town Hall Commission Chambers - 9293 Harding Ave, 2nd Floor
Surfside, FL 33154

1. Opening

A. Call to Order Vice Mayor Joe Graubart called the meeting to order at 7:03 pm.

B. Roll Call of Members Town Clerk Debra Eastman called the roll and the following members of the Commission were present upon roll call: Commissioner Edward Kopelman, Commissioner Marta Olchyk and Vice Mayor Joe Graubart. Commissioner Michael Karukin and Mayor Daniel Dietch were absent.

C. Pledge of Allegiance Mr. Lou Cohen led the Pledge of Allegiance.

D. Mayor and Commission Remarks – Mayor Daniel Dietch

Vice Mayor Graubart spoke about the resolution by the Miami Dade County League of Cities dealing with civility in the way the municipalities conduct business.

Vice Mayor Graubart spoke of a letter he received from the University of Florida advising him that May is “Older Americans” month.

The Vice Mayor also noted the following community events:

Downtown Vision Advisory Committee is meeting May 12th and May 25th

Seniors Performing Arts trip, Alfred Hitchcock May 18th

Miami-Dade County Mayoral election on May 24th

Memorial Day Ceremony at Veteran’s Park, May 30th

Registration open for 2011 Parks and Recreation Summer Camp

Taste of Surfside Culinary event, June 26th

Town Manager Carlton added that the parking lot on 95th and Collins will be closed this Friday for resealing and restriping of the lot.

Commissioner Marta Olchyk mentioned that the Beautification Committee has been meeting regularly every month. The Commissioner thanked the members of the committee for volunteering their time, interest and effort. She noted that they are discussing the beautification of Harding Avenue.

E. Agenda and Order of Business Additions, deletions and linkages

Town Manager, Roger Carlton asked to pull the Water and Sewer Storm Water item from the Points of Light to report an update on the force main with Bal Harbor.

Vice Mayor Graubart asked the pull the following items from the consent agenda: 73, #2, pg 74 Maranon, pg 75 concession stand, pg 77 circulator bus, pg 81 #26, pg 82 #32, item 3F code enforcement regarding chain link fences.

Commissioner Olchyk noted that she did not pull any items because she met with the Town Manager and the Town Attorney prior to the meeting to discuss her questions.

Town Clerk Debra Eastman request to add Item 3G (Consent Agenda) Resolution for the re-appointment of Special Masters.

F. Community Notes – Mayor Daniel Dietch

H. Certificate of Appreciation – Town Intern, Chantel Raymond – Roger M. Carlton, Town Manager and Duncan Tavares, Tourism, Economic Development and Community Services Director

Duncan Tavares presented Town Intern Chantal Raymond a Certificate of Appreciation for her work in the Town of Surfside. Mr. Tavares noted that Ms. Raymond will soon be receiving her Bachelor's degree from Johnson and Wales.

2. Quasi-Judicial Hearings

Please be advised that the following items on the Agenda are Quasi-Judicial in nature. If you wish to object or comment upon an item, please complete a Public Speaker's Card indicating the agenda item number on which you would like to comment. You must be sworn before addressing the Town Commission and you may be subject to cross-examination. If you refuse to submit to cross-examination, the Town Commission will not consider your comments in its final deliberation. Please also disclose any Ex-Parte communications you may have had with any Commission member. Commission members must also do the same.

Vice Mayor Graubart read a statement regarding the process of a quasi-judicial hearing.

Town Clerk Debra Eastman swore in the witnesses wishing to testify.

Commissioner Marta Olchyk volunteered to serve as Vice-Chair of the Commission during the quasi-judicial proceeding. All were in favor. Town Attorney Lynn Dannheisser asked that any Commissioner who has had communication on the matters being discussed with the residents involve, please disclose that. Vice Mayor Graubart mentioned that he has spoken to residents on the issue, but not to the applicants. Commissioner Kopelman disclosed that he has spoken to both residents and the applicants. Commissioner Olchyk noted that she has spoken only to residents.

Town Planner Sarah Sinatra presented the first application which is the proposed hotel on 9200 Collins Avenue and presented the staff recommendation of the application. Ms. Sinatra noted that the applicant is proposing a site plan and conditional use application and provided details of the project and the conditions.

Commissioner Olchyk noted that during her meeting with the Town Manager and Town Attorney she was assured that the project would not be issued a Certificate of Occupancy unless all the requirements are met by the applicant. Vice Mayor Graubart distributed a map of the area where the lot is located.

Town Clerk Debra Eastman swore in new attendees to the evening's meetings who wished to speak.

Mr. Nieson Kasdin and Mr. Bill Spencer, Legal Representatives for Transacta Lanai Developers, spoke before the Commission. Mr. Kasdin noted that the site plan application is in compliance with all the requirements of the Town Codes. He added that it also fulfills all the conditions required in the standards of review for a conditional use. Mr. Kasdin then discussed the criteria for approval and how the project complies. He noted that the project is under the allowable density and intensity of use. He added that the project is consistent with and helps fulfill the goals of the Comprehensive Plan for that area. Mr. Kasdin submitted to the Town Clerk and distributed to the Commissioners a Google aerial map showing the various properties that are on the corridor between the town border and the business section, 95th street between Harding Avenue and Collins Avenue. He noted that his client's project reflects the predominant pattern of Development between Collins Avenue and Harding Avenue.

Vice Mayor Graubart noted that all the buildings cited in the map Mr. Kasdin distributed are residential condominiums and not hotels. Vice Mayor Graubart spoke about the traffic light analysis and expressed concern about beach goers in that area and the impact that additional hotel guests will have on the already dangerous intersection.

Mr. Kasdin introduced the project architect Mr. Luis Revuelta, Revuelta Architecture International 2950 SW 27 Avenue, Suite 110. Mr. Revuelta opined that the project agrees with what the Land Use Plan requests. Town Clerk Debra Eastman swore in Mr. Revuelta. Mr. Revuelta gave a PowerPoint presentation of the rendering, architectural design and dimensions of the proposed hotel.

Vice Mayor Graubart distributed a handout from when the project was first presented several years ago before the Planning and Zoning Board. He questioned why back then the total square footage of the land had been measured to be 1.7 acres and is now reported to be 2.25 acres. He noted that the measurements were reported as net square feet and gross square feet. Mr. Revuelta noted that the difference is based on square footage and gross square footage.

Ms. Silvia Coltrane (applicant), 9401 Collins Avenue – Ms. Coltrane spoke about the project and asked for the Commission's favorable vote. She noted that the number of units she is building is less than what is allowed by either the gross or net acreage. Ms. Coltrane mentioned that she is bringing a quality development to the Town in the form of an extended stay hotel. She noted that she has received letters of support from Marriot for her to continue with the project. She added that the property management that will be chosen for the hotel will be of the highest quality fitting of the Marriot brand.

Vice Mayor Graubart acknowledged former Commissioner Blumstein. Vice Mayor Joe Graubart asked Ms. Coltrane if she would sign a covenant that this site plan approval would not be transferable. Ms. Coltrane expressed surprise upon the Vice Mayor's question and noted she has private property rights and added that any changes to the site plan would have to come up before the Commission's approval.

Mr. Tucker Gibbs (Representative for the objector, The Surfside Resident's Association, 9032 Garland Avenue and Mr. David Semat, 9165 Collins Avenue) - Mr. Gibbs noted that he had been retained by his client to object to the project because the conditional use application is not in compliance with Article I, Section 4 of the Town Charter. He noted that this charter amendment limits density, intensity and height. Mr. Gibbs mentioned that the application should be denied because it exceeds the allowable density permitted under the 2004 code.

Mark Alvarez, 625 NE 50th Terrace, Miami – Mr. Alvarez presented a PowerPoint presentation regarding the property. In his presentation, Mr. Alvarez spoke about the density, intensity and height of this project and outlined how the project will not be in compliance with the Town's Charter.

Town Attorney, Lynn Dannheisser stated that the applicants have entered into the record their interpretation of why they feel the application should be denied based on its non-compliance with the Town Charter. She asked Special Zoning Counsel Nancy Stroud to present why this case is consistent with the Town Charter.

Nancy Stroud, 1900 Glades Road, Boca Raton, FL – Ms. Stroud opined that Mr. Alvarez's interpretation of the charter is not correct. She noted that it is clear in terms of density, intensity and height requirements by referring specifically to floor area, floor area ration and building heights.

The Commission took a 5 minute break and reconvened at 9:03 pm with a quorum.

Vice Mayor Graubart opened the Public Hearing.

Mark Blumstein spoke before the Commission in favor of approving the application. He spoke of the importance of the recommendations from the Planning and Zoning Board.

Barbara McLaughlin agreed with Mr. Blumstein that the application should be approved.

Randi McBride stated that she better understood Mr. Alvarez's interpretation if the Charter than that of Ms. Stroud's and expressed concern about the project violating it.

Neil Shuster stated that the hotel is out of character with the neighborhood and is inappropriate.

Martin Oppenheimer spoke in favor of the project. He noted that the project has already been approved by the Planning and Zoning Board and the applicant has met all the conditions and issues.

Debra Schilling Jade spoke in favor of the project. She noted that there are two hotels next to where she lives and she does not hear any noises coming from the pool areas.

Faruk Ramfala, stated that he is neither a consultant nor a lobbyist, but he has been in the hotel business for over 35 years and is currently Managing Director for the Hilton Hotels Corp in Downtown Miami. He asked the Commission to look at the positive economic impact the hotel will have in the community.

Barbara Cohen spoke in favor of building the hotel.

Joseph Whitman inquired if the parking that will be made available to residents by the hotel will be paid or free.

Richard Iacobacci spoke in favor of the project. He expressed concern that the residents are paying 88% of the taxes in town and spoke about the revenues the hotel will bring in to the town.

Town Manager, Roger Carlton clarified that the current percentage of property taxes paid by residents is 80%. He added that the 5 year plan indicates that the figure will increase to 88% if no commercial properties are added. He noted that both numbers are extraordinarily high for Dade County.

Vice Mayor Graubart closed the public hearing.

Commissioner Kopelman asked Mr. Kasdin if his client accepts all the conditions of the resolution. Mr. Kasdin responded that they do accept all the conditions as reported by the Planning Director.

A. Resolution for hotel at 9200 Collins Avenue – Lynn M. Dannheisser, Town Attorney

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, (“TOWN”) APPROVING A SITE PLAN APPLICATION, PURSUANT TO SECTION 90-41 ET SEQ. OF THE ZONING CODE TO PERMIT A 175 UNIT FOUR (4) STORY HOTEL WITH ACCESSORY USES, AND A CONDITIONAL USE APPLICATION PURSUANT TO SECTION 90-23 OF THE ZONING CODE TO PERMIT THE DEVELOPMENT OF A THREE (3) STORY STRUCTURED PARKING FACILITY AND HOTEL SWIMMING POOL AND JACUZZI, SUBMITTED BY TRANSACTA LANAI DEVELOPERS, LTD., (THE “APPLICANT”), ALL ON THE PROPERTY LOCATED AT 9200 COLLINS AVENUE, SUBJECT TO CERTAIN CONDITIONS; AND PROVIDING FOR AN EFFECTIVE DATE.

Town Clerk Debra Eastman read the resolution by title into the record.

Town Attorney, Lynn Dannheisser clarified the title of the resolution.

Commissioner Kopelman made a motion to adopt the resolution. Commissioner Olchyk seconded the motion. The motion passed 2 to 1 with Vice Mayor Graubart dissenting.

B. Resolution for Variance 1355 Biscaya Drive – Lynn M. Dannheisser, Town Attorney

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, CONSIDERING THE APPLICATION OF 1355 BISCAYA DRIVE, TO PERMIT A SEVEN FOOT 11 INCH SIDE SETBACK VARIANCE FROM SECTION 90-45 OF THE CODE OF ORDINANCES TO ALLOW A 12.9 FOOT SETBACK FOR THE ENTIRE LENGTH OF THE PIE SHAPED LOT; AND PROVIDING FOR AN EFFECTIVE DATE.

Town Planner Sarah Sinatra noted that the applicant is requesting a side setback variance from the town's code to add a second story structure. Ms Sinatra noted that the code requires the setback to be 10% of the frontage of the lot. She added that this property is pie-shaped and the front is 129.6 feet. Ms. Sinatra stated that staff has determined that this is a hardship since the side setback would be required to be 12.9 feet. She added that staff and the Planning and Zoning Board are recommending approval.

Commissioner Olchyk disclosed that she is related to the applicant and asked the Town Attorney if she should recuse herself. She noted that the Town Attorney advised that she would not have to recuse herself unless she is in any way financially benefitted.

Peter Glynn noted that this house is next to his and he has no problem with it.

Vice Mayor Graubart clarified that the Commission is voting to approve the variance and not the plans for the project. Ms. Sinatra noted that the plans for the project have already been approved by P&Z, LPA.

Commissioner Kopelman made a motion to approve the application. Commissioner Olchyk seconded the motion, which carried unanimously.

3. Consent Agenda

**A. Minutes – March 8, 2011 Regular Commission Meeting
March 23, 2011 Special Commission Meeting**

B. Budget to Actual Summary as of February 28, 2011 – Martin Sherwood, Finance Director

C. Town Manager's Report (Points of Light) – Roger M. Carlton, Town Manager

Town Manager, Roger Carlton reported that the Maranon property has been sold for \$188,000, as previously approved by the Commission.

Town Manager, Roger Carlton also reported on the Water and Sewer project. He noted that 6 bids were received and will be on the June agenda for the Town Commission approval. He also mentioned that the force main that takes the all the sewage is 60 years old and has never been shut down for inspection. Bal Harbor has put out a bid on a new force main that would go down Collins Avenue. As a result of the sewage incident on Miami Beach, where the force main blew up, the bid was amended to get prices for Surfside's sewage and their own to go North from Bal Harbor through Haulover cut to the main pumping station on NW 163rd Street. Town Manager, Roger Carlton mentioned that he has been in discussions with Bay Harbor and Bal Harbor about cost sharing for the section that runs through Surfside. He added that he will present a proposal to the Town Commission to share in the line. He noted that once the new line is built, the force main that runs through Byron Street can be shut down and inspected. He added that County Commissioner Sally Heyman can help to accelerate the connection north. Town Manager, Roger Carlton asked for authorization from the Town Commission to continue discussions with Bay Harbor and Bal Harbor. Vice Mayor Graubart asked the Town Manager to look into the cost of having the discharge go north rather than south to Miami Beach.

Town Manager, Roger Carlton reported that he has met with the sole concessionaire for the concession stand and that the negotiations have been successful in tying down the terms. He noted that an agreement will be ready for the Town Commission's approval in June.

Vice Mayor Graubart thanked the Town Manager and all who participated for the plaque and tenth year anniversary commemorative memorial for 9/11.

Town Manager, Roger Carlton mentioned that the Code Enforcement report takes it to another level in defining what the Town's code enforcement program is. He suggested that when the code enforcement report comes to the Commission that they need to set the policy of what code enforcement should be.

D. Town Attorney's Report – Lynn M. Dannheisser, Town Attorney

E. Projects Progress Report – Calvin, Giordano and Associates, Inc.

F. Code Enforcement Update – Paul Gioia, Building Official

G. A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA RATIFYING AND RE-APPOINTING SPECIAL MASTERS; PROVIDING FOR AN EFFECTIVE DATE.

Cheryl Arnold explained that she is bringing to the Community an organic buying club in which people in the community get together and purchase fresh organic produce at a discount. She noted that there will be two options to choose from: a half share for a 15 lb

bag of produce for \$35 or a full share for a 25-30 lb bag of produce. She added that the bags will contain 7-9 different types of vegetables and different fruits. Ms. Arnold mentioned that the items will come prepackaged and that for the use of the space, they will also offer other organic items that residents can purchase at a discount. She also mentioned that there will be cooking and wellness classes through Johnson and Wales.

Page 73, Item 2 – Downtown Vision project, update on moratorium – Town Manager, Roger Carlton mentioned that he had two meetings with the Vision Committee and one with the property owners downtown. He noted that the moratorium was discussed and about 70% of those in the meeting agreed with the conceptual program to energize downtown. He added that he will prepare a list for the Vision Committee which might recommend rescinding the moratorium.

Commissioner Kopelman made a motion to accept the consent agenda. Commissioner Olchyk seconded the motion. The motion carried unanimously.

4. Ordinances

A. Second Readings (Ordinances and Public Hearing)

***1. Short Term Rentals** – Lynn Dannheisser, Town Attorney (linked with item 4B2 and 5A)

AN ORDINANCE OF THE TOWN OF SURFSIDE, FLORIDA AMENDING ARTICLE IV “DISTRICT REGULATIONS” SECTION 90.41 “REGULATED USES” ADDING A NEW SECTION 90.41.1.5 ENTITLED “SHORT TERM RENTAL OF SINGLE FAMILY DWELLINGS, TWO-FAMILY DWELLINGS, MULTI-FAMILY DWELLINGS, AND TOWNHOMES” REQUIRING REGISTRATION OF SHORT TERM RENTALS IN RESIDENTIAL NEIGHBORHOODS; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEALER; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR AN EFFECTIVE DATE.

[This ordinance requires registration of short term rentals for compliance with resort and other taxes. It also limits short term rentals to no more than three per year.]

Town Clerk Debra Eastman read the second reading of the ordinance (**Item 4 (A)1**) by title into the record.

Town Clerk Debra Eastman read the first reading of the ordinance (**Item 4 (B)2**) by title into the record.

Town Attorney, Lynn Dannheisser explained that the reason for the ordinance is House Bill 883 adopted by the Florida Legislature that does not allow local regulations to restrict short-term rentals to be adopted if not in place by June 1, 2011. She noted that the ordinance for second reading will require anyone renting their home for less than 6 months to register with the town and pay all applicable taxes and fees. She noted that she does not recommend approval of Item 4(B)2.

Vice Mayor Graubart noted that the town has a code 90.41 that deals with regulated uses that seems to address this issue, but does not specify short-term rentals. Vice Mayor Joe Graubart cited a case from 2004 in which a judge found that Surfside would prevail in similar situation.

Town Attorney, Lynn Dannheisser noted that the code prohibits the renting of a portion of a property or a room, but does not prohibit renting an entire house on any basis.

Town Manager, Roger Carlton mentioned that if the Commission approves the ordinance on first reading, staff will develop that criterion that Town Attorney, Lynn Dannheisser stated for second reading before the end of May.

Commissioner Kopelman made a motion to adopt the ordinance on second reading. Commissioner Olchyk seconded the motion.

Vice Mayor Graubart opened the public hearing.

Dorie Lurie reported that she found short term rentals advertised on line and suggested that the tourist board look into it in order to collect taxes.

Polly Kopelman noted that she saw an advertisement on a bus for a room for rent for one week or one month.

Barbara McLaughlin stated that the short term rentals and non-collection of taxes has been going on for several years and noted that the condominiums are big offenders. She added that it is a complicated issue and there is little the Tourist Bureau can do.

Vice Mayor Joe Graubart asked Duncan Tavares, Tourist Bureau, Community Affairs and Economic Development Director if the Tourist Board is willing to forgo collecting taxes on short term rentals since they are prohibited. Mr. Tavares agreed with this comment.

The motion passed 2 to 1 with Vice Joe Mayor Graubart dissenting.

B. First Readings Ordinances

- 1. Resort Tax – Roger M. Carlton, Town Manager and Duncan Tavares, Tourism, Economic Development and Community Services Director**
AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA AMENDING CHAPTER 70 AND SPECIFICALLY ARTICLE IV “RESORT TAX” DIVISION 1 “RESORT TAX” AND DIVISION 2 “RESORT TAX BOARD” SPECIFICALLY AMENDING SECTIONS 70-106 THROUGH 70-111; AND CREATING SECTIONS 70-112 THROUGH 70-127, OF THE TOWN OF SURFSIDE CODE OF ORDINANCES PROVIDING FOR INCLUSION IN THE CODE;

REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; AND PROVIDING FOR AN EFFECTIVE DATE. (Deferred from April 12, 2011 Commission Meeting)

[This ordinance updates resort tax imposition and adds an appeal process.]

Town Clerk Debra Eastman read the ordinance by title.

Commissioner Kopelman made a motion to adopt the ordinance. Commissioner Olchyk seconded the motion, which carried unanimously.

2. **Short Term Rental Prohibition Single Family Dwellings – Lynn Dannheisser, Town Attorney (linked with item 4A1 & 5A)**
AN ORDINANCE OF THE TOWN OF SURFSIDE, FLORIDA AMENDING ARTICLE IV “DISTRICT REGULATIONS” SECTION 90.41 “REGULATED USES” ADDING A NEW SECTION 90.41.1.5 RELATING TO A PROHIBITION OF SHORT TERM RENTALS OF SINGLE FAMILY DWELLINGS AND REGULATION OF TWO-FAMILY DWELLINGS, MULTI-FAMILY DWELLINGS, AND TOWNHOMES REQUIRING REGISTRATION OF SHORT TERM RENTALS IN RESIDENTIAL NEIGHBORHOODS; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEALER; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR AN EFFECTIVE DATE.

[This ordinance is the same as Item 4A1 but prohibits short term rentals in H-30 Single family district]

No action taken due to adoption of item 4(A)1.

3. **Film and Print Production Ordinance – Lynn Dannheisser, Town Attorney**
Page
Option A- (All districts)
AN ORDINANCE OF THE TOWN COMMISSON OF THE TOWN OF SURFSIDE, FLORIDA CREATING CHAPER 11 “ARTS, CULTURE, AND ENTERTAINMENT” AND ARTICLE I “FILM AND PRINT PRODUCTIONS” AND SPECIFICALLY CREATING SECTION 11-1 “FILM AND PRINT PRODUCTION PERMITS”, OF THE TOWN OF SURFSIDE CODE OF ORDINANCES PROVIDING FOR INCLUSION IN THE CODE; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; AND PROVIDING FOR AN EFFECTIVE DATE.

[This ordinance permits and regulates film permitting and processing in all districts.]

Vice Mayor Joe Graubart moved to defer this item. The motion failed to receive a second.

Town Manager, Roger Carlton mentioned that this issue is not clear, but it is a community issue. He noted that the Commission could adopt option B, which would bring clarification that would allow indoor fashion and photo shoots.

Commissioner Kopelman moved to adopt Option B with the understanding that on second reading exceptions will be developed by staff. Commissioner Olchyk seconded the motion.

Peter Glynn stressed that the town needs a film policy. He suggested issuing contracts and permits and to have a film Commissioner and indicated that the town can make money in the permits issued.

Robert Basson stated that there should be regulations for the use of the homes as well as parking and traffic and that permits should be issued in advance to notify the town of film shootings. He added that there should be a clear delineation between the photo shoots and large scale film productions. Commissioner Kopelman acknowledged speaking with Mr. Basson earlier today on the phone and letting him know that he would agree with photo shoots, but not reality television shows or anything like that.

Laurie Swedroe mentioned that she has had filming in her home spoke in favor of allowing film and photo.

Vice Mayor Graubart read Town Code Section 90.41 which relates to permitted uses in the town within the district. He opined that there is a conflict and thinks that there should be a code against it. Nancy Stroud, Town Counsel, commented that based on the code, if the town wishes to allow filming, it will have to make it clear.

Commissioner Olchyk mentioned that the Town Attorney has reviewed all the information and opined that if she deemed that it was against the Town Code, she would have said so. She added that the legal sufficiency has already been discussed prior to the meeting and called on a vote.

Commissioner Kopelman made a motion to adopt the ordinance. Commissioner Olchyk seconded the motion. The motion carried 2 to 1 with Vice Mayor Graubart dissenting.

Option B – (Exempt single family)

AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA CREATING CHAPTER 11 “ARTS, CULTURE, AND ENTERTAINMENT” AND ARTICLE I “FILM AND PRINT PRODUCTIONS” AND SPECIFICALLY CREATING SECTION 11-1 “FILM AND PRINT PRODUCTION PERMITS”, OF THE TOWN OF SURFSIDE CODE OF ORDINANCES PROVIDING FOR INCLUSION IN

THE CODE; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; AND PROVIDING FOR AN EFFECTIVE DATE.

[This ordinance is the same as Option A above but prohibits filming in the single family district west of Harding.]

5. Resolutions and Proclamations

A. Resolution Opposing Legislation on Short Term Rentals –

Vice Mayor Joe Graubart *(linked with 4A1&4B2)*

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, OPPOSING FLORIDA LEGISLATION THAT PREEMPTS THE RIGHT OF LOCAL GOVERNMENT TO REGULATE SHORT TERM RENTALS ON RESIDENTIAL PROPERTY; AND PROVIDING FOR AN EFFECTIVE DATE.

Vice Mayor Graubart withdrew the item.

B. FPL Easement – Roger M. Carlton, Town Manager

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, APPROVING AN AFTER-THE-FACT EASEMENT DESCRIBED IN EXHIBIT “A” GRANTING AND GIVING TO FLORIDA POWER AND LIGHT COMPANY FOREVER A TEN (10) FOOT WIDE EASEMENT FOR THE CONSTRUCTION, OPERATION AND MAINTENANCE OF OVERHEAD AND UNDERGROUND UTILITIES TO BE INSTALLED FOR THE COMMUNITY CENTER AND AQUATIC FACILITY; PROVIDING FOR AN EFFECTIVE DATE.

Town Manager, Roger Carlton stated that FPL needs to finish installing the power at the Community Center and Surfside needs to grant them the easement. He added that he has already signed the agreement with FPL and would like to have retroactive approval from the Commission.

Commissioner Kopelman made a motion to approve. Commissioner Olchyk seconded the motion. The motion carried unanimously.

Commissioner Kopelman made a motion to extend the meeting to 11:30pm. Commissioner Olchyk seconded the motion, which carried unanimously.

6. Good and Welfare

Sasha Plutno spoke about a letter he received from Fidelity National Property and Casual Insurance indicating that the town had lost its community rating discount. Mr. Plutno noted that Surfside lost the 10% rating discount in 2008. Building Official Paul Gioia

responded that when he came to work for the Town a year ago the town had 64 violations. He added that the violations have now been cleared and validated by FEMA and the auditors. Mr. Gioia noted that they have copies of the data to clear it up. He also noted that the violations do not fully clear until they sunset after 5 years.

Peter Glynn stated that he cannot understand his water bill and the tier system. He opined that it penalizes large families.

Peter Neville stated that he was shocked by his water bill. He noted that he has been collecting the water dripping from his A/C unit to water his plants.

Richard Iacobacci stated that Surfside has the best Mayor, Town Manager and Town Attorney the town has ever seen. He also noted that he is upset about the cyber bullying in town.

Dorie Lurie questioned why the citizens who worked so hard to elect the current Commission are now disappointed with their work. She noted that the elected officials have continued with the high costs such as Calvin Giordano and the Town Attorney. She also cited the \$16 million Water and Sewer Project bond.

Vice Mayor Graubart acknowledged former Vice Mayor Frank McBride.

Randi McBride stated that she believes the Town now has the second best Vice Mayor it has ever had. She also expressed disappointment with the vote on the hotel. She felt that the charter amendment was violated.

Commissioner Olchyk stated that she votes for what she thinks is right. She added that she was not elected based on promises other than to be honest and ethical. She also stated that she has nothing against anybody and owes nothing to anyone, but is here to do what she thinks is best for the community.

Commissioner Kopelman agreed with Commissioner Olchyk and reiterated that they were elected to do the best job for the community. He addressed the vote on the hotel and noted that the town needs the tax dollars.

Vice Mayor Graubart expressed disappointment with the hotel vote.

7. Town Manager and Town Attorney Reports

Town Manager and Town Attorney Reports have been moved to the Consent Agenda – Item 3.

All items on the Consent Agenda are considered routine or status reports by the Town Commission and will be approved by one motion. Any Commission member may request, during item 1E Agenda and Order of Business, that an item be removed from the consent agenda and discussed separately.

8. Unfinished Business and New Business

9. Mayor, Commission and Staff Communications

A. Community Center Opening – Roger M. Carlton, Town Manager

Town Manager, Roger Carlton mentioned that we are on track with the completion of the Community Center and added that there will be a soft opening on Friday, June 10th. He added that there will be a series of weekend and week events after June 10th themed around bringing the community together. He noted that the events will end Sunday, June 19th with a community celebration.

B. Wounded Warriors Family Support – Vice Mayor Joe Graubart

Vice Mayor Graubart asked the Commission to approve a onetime \$500 contribution to this organization that supports the families of wounded warriors.

Commissioner Kopelman made a motion to approve. Vice Mayor Graubart seconded the motion. The motion carried unanimously.

***C. Fiscal Year 2009-2010 CAFR**

Finance Director, Martin Sherwood read the following statement into the record: The comprehensive Annual Financial Report, as well as a letter from the Town's independent auditors, Marcum, LLP dated April 4, 2011, was received by Town staff. The rules of the Auditor General, Chapter 10.550, required that the financial statements be filed as an official record at a public meeting. In addition, the auditors have requested that their letter dated April 4, 2011, be accepted for filing with the Town Commission.

Mr. Sherwood recommended that the Commission accept the CAFR as audited by Marcum, LLP for the fiscal year ended Sep 30, 2010.

Commissioner Kopelman made a motion to accept the CAFR. Commissioner Olchyk seconded the motion.

Vice Mayor Graubart noted that the CAFR is available online.

Town Manager, Roger Carlton noted that the Town ended the September 30, 2010 fiscal year with a \$975,000 surplus in the general fund and added that every other fund had a positive balance. Town Manager, Roger Carlton also stated that the pension fund is fully funded.

Commissioner Olchyk expressed concern that the Town over budgeted last year and noted that she hopes the same is not done this year. She stated that doing so can open the doors to more spending by the town.

The motion carried unanimously.

D. FPL, Telephone and Cable Underground Conversion of Existing Overhead

Service Lines Report – Roger M. Carlton, Town Manager and Bill Evans, Director

of Public Works

Commissioner Kopelman spoke about the importance of all the lines being underground in the town. He noted that he has spoken about this with Town Manager, Roger Carlton as well as the previous Town Manager. Vice Mayor Graubart agreed that it is a good idea, but noted that it is very expensive. He also commented that the green boxes are ugly and obtrusive. He would like to see this on a ballot for the residents to approve.

Commissioner Olchyk noted that there are leaning poles in the Town and expressed concern about those and suggested looking into fixing these poles. Commissioner Kopelman asked the Town Manager to look into any available funds from the State or the County. Town Manager, Roger Carlton stated that he is requesting authorization to continue investigating the option and noted that there is a program that if the underground work is done, the municipality receives a 25% discount. He also added that the poles can lean up to 17 degrees before they need to be fixed. Town Manager, Roger Carlton will precede obtaining information and will bring back to the commission.

E. Report on Non-retail/Restaurant, Moratorium and Status of Meetings with DVAC and Business Owners – Roger M. Carlton, Town Manager (linked to Point of Light Number 2)

No action to be taken.

F. New Crime Prevention Initiatives – Police Chief David Allen

Chief Allen stated that the Mayor asked him to create some crime prevention initiatives. The Chief mentioned that he would like to start a citizen's patrol (Eye on Surfside), a bi-weekly bike with him and the police officers for the residents, crime prevention expo and mobile license readers. He reported that the red light program is being partnered with the license plate reader company alerting if a stolen or wanted car enters the town. Town Manager, Roger Carlton stated that Commissioner Karukin had asked him to express for him that he is not in favor of the license reading devices. Town Manager, Roger Carlton opined that the Town should move forward with the first four points made by the Chief. All were in favor of the suggestion.

G. Resident Parking Program – Assistant Police Chief John DiCenso

Chief Allen stated that the Town has encountered problems with the residential parking permit program. He noted that currently it is being tracked by pencil and paper and has become difficult to track. The Chief recommended more strict policy to control it. He noted that the permit fee should be \$30 to cover the cost. Commissioner Olchyk expressed disagreement with making the residents pay and suggested utilizing the parking fund. Town Manager, Roger Carlton mentioned that the town currently allows free parking, except on Harding and opined that the system is being abused. Vice Mayor Graubart opined that giving something for nothing diminishes its value. Commissioner Olchyk agreed that the parking violators should be prosecuted, but expressed concern for those residents who live in condominiums

who have to use the permits to accommodate their visitors and stated that the town would be punishing the residents who are using those permits legally because there are others who use it illegally. She recommended that the program be more scrutinized and that the permits be taken away from those residents that abuse its use.

Vice Mayor Graubart encouraged that the parking decals will be affixed to the vehicles by a Town Employee and not be simply handed out. He also suggested that board and committee members get a free decal. Commissioner Kopelman agreed that the Town should charge for the parking permits. The Vice Mayor spoke about Abbot and Byron Avenues being the most frequented by non-residents and suggested that the decal be in color, have the word "Resident", or Abbot Avenue.

H. Contract Amendment with LAZ Parking – Assistant Police Chief John Di Censo
(linked to Point of Light Number 8)

Chief Allen explained that the agreement with LAZ is for the services and maintenance in addition to collections, but noted that since the master pay stations have been installed, the police and parking employees have taken over the service and maintenance. The Chief asked to amend the contract to a lower fee and pay LAZ for collection service only. He noted that this will result in a savings of \$11,000.

Commissioner Kopelman made a motion to amend the contract. Commissioner Olchyk seconded the motion. The motion carried unanimously.

9. Adjournment

The meeting adjourned at 11:30 p.m.

Accepted this ____ day of _____, 2011

Daniel Dietch, Mayor

Attest:

Debra E. Eastman, MMC
Town Clerk

TOWN OF SURFSIDE, FLORIDA
MONTHLY BUDGET TO ACTUAL SUMMARY
FISCAL YEAR 2010/2011
As of MARCH 31, 2011

50% OF YEAR EXPIRED (BENCHMARK)

Agenda Item # 3B

Page 1 of 2

Agenda Date: June 14, 2011

GOVERNMENTAL FUNDS	ACTUAL	ANNUAL BUDGETED	% BUDGET	
GENERAL FUND				
REVENUE	\$5,897,729	\$8,817,819	67%	A
EXPENDITURES	\$4,018,349	\$8,817,819	46%	
Net Change in Fund Balance	\$1,879,380			
Fund Bal.-Beg. of FY(audited assigned+unassigned)	\$2,867,867			
Fund Balance-March 31, 2011	<u>\$4,747,247</u>			
RESORT TAX				
REVENUE	\$61,782	\$123,010	50%	B
USE OF RESTRICTED FUND BALANCE		\$19,800	50%	
EXPENDITURES	\$77,052	\$142,810	54%	
Net Change in Fund Balance	-\$15,270			
Fund Balance-Beg. of Fiscal Year (audited)	\$179,035			
Fund Balance-March 31, 2011	<u>\$163,765</u>			
POLICE FORFEITURE/CONFISCATION				
REVENUE	\$54,194	\$25,000	217%	C
USE OF RESTRICTED FUND BALANCE		\$20,000	50%	
EXPENDITURES	\$18,497	\$45,000	41%	
Net Change in Fund Balance	35,697			
Fund Balance-Beg. of Fiscal Year (audited)	\$71,825			
Fund Balance-March 31, 2011	<u>\$107,522</u>			
TRANSPORTATION SURTAX				
REVENUE	\$73,449	\$156,415	47%	D
USE OF RESTRICTED FUND BALANCE		\$80,285	50%	
EXPENDITURES	\$48,376	\$236,700	20%	
Net Change in Fund Balance	25,073			
Fund Balance-Beg. of Fiscal Year (audited)	\$416,500			
Fund Balance-March 31, 2011	<u>\$441,572</u>			
CAPITAL PROJECTS				
REVENUE	\$70,407	\$139,660	50%	
USE OF COMMITTED FUND BALANCE		\$4,000,000	50%	
EXPENDITURES	\$2,496,046	\$4,139,660	60%	
Net Change in Fund Balance	(2,425,639)			
Fund Bal.-Beg. of FY(audited committed+assigned)	\$4,888,357			
Fund Balance-March 31, 2011	<u>\$2,462,719</u>			

NOTES:

A. Timing Difference - FY 2011 ad valorem property tax revenues are remitted to the Town primarily from mid-November to March

B. Timing Difference - Includes only the Oct-Feb resort taxes. The March is collected in April. However, the 4% bed tax collections are higher than anticipated and increased with the mid-year budget resolution

C. Forfeiture revenue fluctuates widely-the Town received a \$15,036 and \$39,091 payment during the months of January and March, respectively. Higher than anticipated revenues budgeted with the mid-year budget resolution

D. Timing Difference - Includes only the Oct-Feb CITT revenues. The March is not received until late April 2011

ENTERPRISE FUNDS

ACTUAL

ANNUAL BUDGETED	% BUDGET
------------------------	-----------------

WATER & SEWER

REVENUE	\$1,415,850	\$3,331,303	43%	
USE OF NET ASSETS/LOAN PROCEEDS		\$8,138,300	50%	
EXPENDITURES	\$1,002,828	\$11,469,603	9%	E
Change in Net Assets*	\$413,023			
Unrestricted Net Assets-Oct 1 (audited)	\$440,000			
Unrestricted Net Assets-Mar 31, 2011	\$853,023			

MUNICIPAL PARKING

REVENUE	\$286,013	\$305,600	94%	
USE OF NET ASSETS		\$2,179,836	50%	
EXPENDITURES	\$638,649	\$2,485,436	26%	E
Change in Net Assets*	(\$352,636)			
Unrestricted Net Assets-Oct 1 (audited)	\$2,043,034			
Unrestricted Net Assets-Mar 31, 2011	\$1,690,398			

SOLID WASTE

REVENUE	\$992,515	\$1,291,343	77%	F
EXPENDITURES	\$552,623	\$1,291,343	43%	
Change in Net Assets*	\$439,892			
Unrestricted Net Assets-Oct 1 (audited)	\$77,491			
Unrestricted Net Assets-Mar 31, 2011	\$517,383			

STORMWATER

REVENUE	\$249,575	\$487,000	51%	
USE OF NET ASSETS/LOAN PROCEEDS		\$1,353,442	50%	
EXPENDITURES	\$111,736	\$1,840,442	6%	E
Change in Net Assets*	\$137,839			
Unrestricted Net Assets-Oct 1 (audited)	\$40,626			
Unrestricted Net Assets-Mar 31, 2011	\$178,465			

NOTES:(con't)

* the change in net assets excludes financial impact from Capital Assets

E. Underage due to delay in commencement of Infrastructure/Capital Outlay projects (\$8.1 mill for water/sewer, \$1.4 mill for stormwater, \$2.1 mill for parking)

F. Timing difference: Billing (and the resulting revenue) for the entire fiscal year pertaining to Residential (non-condominium) customers are recorded in October


Finance Support Svcs Dept Head


Town Manager



**Town of Surfside
Town Commission Meeting
June 14, 2011 - 7:00 p.m.**

Town Hall Commission Chambers - 9293 Harding Ave, 2nd Fl
Surfside, FL 33154

**POINTS OF LIGHT
After Action Items**

1. Downtown Vision project: Tourist Bureau Director, Duncan Tavares will prepare a report for the November Commission agenda with recommendations on how to move the Downtown Vision project forward.

Current Status: The Downtown Vision Advisory Committee (DVAC) met for the eighth time on June 9, 2011. The minutes for the May meetings are attached and the Town Commission is presented with a comprehensive vision package memorandum on the June 14, 2011 Town Commission agenda. The vision package should be considered with the first reading of rescission of the moratorium for non retail/restaurant tenancy on Harding Avenue. The entire package was reviewed and recommended by the Planning & Zoning Board at their May 26, 2011 meeting.

2. Land Acquisition: Finance Director, Martin Sherwood and Building Official, Paul Gioia will order a new appraisal of the two pieces of property south of the Town Hall trailers and an updated appraisal of the vacant lot which the Town currently rents and is used for the parking of police cars. A strategy recommendation will appear on the November 9, 2010 Town Commission meeting agenda.

Current Status: Regarding the Delgado property (south of Town Hall), the court has granted BankUnited a final judgment authorizing a foreclosure sale. An electronic auction was held on April 6, 2011 and the bank was awarded title based on their sole bid of approximately \$2.1 million. The Town has two appraisals at a significant lower amount. We will continue to pursue this acquisition but will not bring a recommendation until a reasonable price is achieved. Regarding the single family home on Harding Avenue between the 93rd and 94th Street lots, the situation has become complicated as the Town Commission requested that discussions be held with the Magen David Congregation across Harding Avenue which at the time wanted to acquire the house for sale as well as the house to the south. Unfortunately, the delay has caused the owner of the north home to accept a third party offer which is under legal review by the seller's attorney. The proposed contract has financing contingencies which may give us an opportunity to re-enter the process. We will keep the Town Commission updated regarding this situation. The Town Commission is aware that all acquisitions are subject to your final approval. This Point of Light will move to "Item Completed" until progress is made toward acquiring either parcel.

3. Town Commission and Planning and Zoning Board joint meeting: A resolution of the Town of Surfside, Florida, calling for a joint meeting between the Town Commission and Planning and Zoning Board to create a process to identify the issues to be reconsidered in the Zoning Code (Ordinance no. 10-1558); authorizing Commissioner Michael Karukin to enter into negotiations

with the Petition Committee challenging Ordinance No. 10-1558; authorizing the Town Manager and Town Attorney to do all things necessary to effectuate the terms of this resolution; providing for an effective date.

Current Status: The first project to complete the new process, Transacta Lanai located at 92nd Street between Harding and Collins Avenues, was approved by the Town Commission on May 10, 2011. The second project, Beach House Hotel, has started its review process. The Design Review Group which verifies compliance with all codes will meet on June 15, 2011 at 1:30 p.m. with the new Development Impact Committee tentatively scheduled for June 28, 2011 at 1:30 p.m. The DIC meeting will be advertised and televised. In the future, the Points of Light will include information regarding scheduled meetings of the DIC to increase Town Commission awareness of pending large scale projects. Item completed.

4. Water, Sewer and Storm Drainage project: Town Manager, Roger Carlton will report to the Town Commission at the November 9, 2010 meeting on financing the water, sewer and storm drainage project. Mayor, Vice Mayor and Commissioners to provide names for a citizen review committee to assist the Town Manager in the review of the alternatives.

Current Status: The fifth meeting of the Water/Sewer/Storm Drainage Project Citizen Oversight Committee (Gerard Chenevert, Walter Lugo, Irving Levine, Jason Nevader, Marty Oppenheimer, Pete Hernandez, and Bertha Goldenberg) was held May 7, 2011 and the focus was the contract award to the apparent low bidder Ric-Man Construction, the addition of the Bal Harbour/Surfside force main on Collins Avenue, the recommendation regarding the additive alternative projects (street trees, new street signs, and upgrades to the street ends) and installation of conduit to allow future undergrounding of utilities. A detailed report regarding award of the contract appears on the June 14, 2011 Town Commission agenda.

5. Concession stand: Town Manager Roger Carlton provided an advertisement for an RFP for a concession stand to Parks and Recreation Director, Tim Milian for review. The timing of the procurement will coincide with the planned opening of the facility.

Current Status: The agreement with David Jacobson, Import International LLC dba Surf Café, appears on the June 14, 2011 Town Commission agenda for retroactive approval. The award to the firm was approved by the Town Commission during the April 12, 2011 meeting. The negotiations were lengthy and it was necessary to sign the document before the June 14, 2011 meeting to ensure that the facility was ready before the projected opening date.

6. Red light cameras and Multi-Space Meters: Police Chief David Allen and Assistant Chief John DiCenso manage the implementation of Red Light Cameras and Multi-Space Meters.

Current Status:

Red Light Camera Safety Program

HB 4087 (Bill to repeal red light cameras) failed to pass the 2011 Florida Legislative session.

Surfside officers have appeared in court twice and of the 52 cases on the docket, 38 were rescheduled, 3 were dismissed (right turn on red) and 11 were found guilty. This represents a 78% conviction rate. This high percentage is a testimony to the professionalism of our Police Department.

Revenue from inception to May 31, 2011 - \$128,100

Citations Issued Through May 31, 2011 - 4088

88th Street and Harding Avenue – 1010
88th Street and Collins Avenue – 359
90th Street and Collins Avenue – 400
93rd Street and Collins Avenue – 1763
96th Street and Collins Avenue - 556

This item will remain active on the Points of Lights for one more month. If the Town Commission approves modifications to the red light system to allow automated identification of stolen vehicles, the implementation of that project will remain as a Point of Light.

7. Photo/film permit program: Town Manager, Roger Carlton will prepare a policy for the photo/film permit program in conjunction with input from Surfside citizens. A report will be prepared by Parks and Recreation Director Tim Milian, Police Chief David Allen and Tourist Bureau Director, Duncan Tavares for the December 14, 2010, Town Commission agenda.

Current Status: Based on direction from the Town Commission on first reading of the Film and Photo Ordinance at the May 10, 2011 Commission meeting, an exception clause was added for second reading at the June 14, 2011 Commission meeting. Filming will not be allowed in the single family residential district, however, photo production will be permitted on private property upon compliance with the limitations stated within the ordinance.

8. Circulator bus: Town Manager, Roger Carlton will review the potential linking of the Surfside circulator bus with other communities to allow residents transportation to the Sunny Isles library and possible other destinations. A report will be made to the Town Commission at their November meeting.

Current Status: After a number of meetings with Bay Harbor Islands, Bal Harbour and Sunny Isles Beach, it has been determined that the greatest opportunity for enhancement is to link with Sunny Isles Beach to allow our riders to use Sunny Isles Beach's route which goes to the mainland with stops at Aventura Mall, Mt. Sinai Medical Center North, Costco and the Aventura Publix shopping center. The details of this and an Interlocal Agreement which defines how their riders will be allowed to use our route to Mt. Sinai Hospital and how our riders will be allowed to use their route will be presented to the Town Commission on the July 19, 2011 agenda.

9. Community Garden

Current Status: A meeting with Town Staff, Ready-To-Grow and Surfside resident Randall Rubin was held on June 1, 2011 to discuss logistics and a timeline for the Community Garden's start-up, the

formation of a resident Garden Club, and incorporating Endlessly Organic's contributions to this initiative. It was decided that a second meeting is needed by mid-June to finalize all details.

10. Farmers Market

Current Status: - The Surf-Bal-Bay Farmers Market is set to begin on Kane Concourse in Bay Harbor Islands on Sunday June 12, 2011 from 9am – 3pm. The market will rotate between Bay Harbor Islands and Surfside every week. Thus on Sunday June 19, 2011, the market will be in Surfside on 95th Street at Collins Avenue from 9am – 3pm. Item completed.

11. Fresh Produce Buyers Club

Current Status: The club Endlessly Organic, a resident owned company, will distribute the bi-weekly produce to local subscribers from the breezeway of the new Community Center as soon as the Parks & Recreation Director deems the space is available for this initiative. In exchange for the use of the space, Endlessly Organic will work with area farmers to provide seeds and mentoring to the Garden Club/Community Garden. Eventually programming at the Community Center will include healthy food cooking demonstrations provided by Endlessly Organic.

12. Feral Cat and Dog Feces Concerns

Current Status: A report was included in the Town Commission March 8, 2011 agenda. The Town Manager will develop ordinances and meet with stakeholders regarding the dual issues once the major initiatives of the Community Center and water/sewer/storm drainage projects are stabilized.

13. Tourist Resort Tax Auditor program received a \$6000 allocation in the FY 10/11 Budget

Current Status: After consulting with the Finance Director and the Town's audit firm, three proposals were sought in the beginning of February for an 'Agreed Upon Procedure Audit' to commence as soon as possible. Based on the feedback from the potential proposers, the Town's process required reassessment. The collection of Resort Tax in the future is related to the proposed changes to the Town's Resort Tax Ordinance. The Resort Tax Ordinance was approved on first reading during the May 10, 2011 Town Commission meeting. Once the proposed amendment to the ordinance is fully approved by the Town Commission, the process to select the auditors will begin.

14. Municipal parking lot renovation program: \$428,000 has been allocated in the FY 10/11 Budget for paving, sealing, restriping, concrete curb repairs, litter receptacles, improved lighting and landscaping and drainage services.

Current Status: This lot renovation and study of the Harding alleys and location identifier signs will be awarded to Florida Transportation Engineering, the firm recommended by the selection committee. The proposals were submitted on May 4, 2011 and the award is recommended to the Town Commission on the June 14, 2011 agenda.

15. Document imaging and scanner software: This \$26,500 project was funded in the FY 10/11 Budget

Current Status: The contract award for this equipment appears on the June 14, 2011 Town Commission meeting agenda.

16. Bike Racks/Bus Benches/Shelters

Current Status: Town Manager Roger Carlton and Parks and Recreation Director Tim Milian have met to discuss the development of a comprehensive bicycle program for Surfside. We also have the bus benches and shelters on our horizon and will report on all three amenities in the near future.

17. Clean up/update/enhance Town Website content

Current Status: The RFP appears on the June 14, 2011 agenda and if accepted by the Town Commission will be advertised on June 15, 2011, bid opening will be July 11, 2011 at 3 p.m. with award tentatively scheduled for the July 19, 2011 Town Commission meeting.

18. Electric Car Charging Stations

Current Status: Staff has obtained the City of Sunny Isles Beach RFP and will meet with the selected vendor to determine if we should use the Sunny Isles Beach process. This item has been put on hold until the new Sunny Isles Beach city manager is on board. It is expected that staff will make a recommendation to the Town Commission in July 2011.

19. Crossing Safely at 93rd and Collins/Harding

Current Status: Assistant Chief of Police John DiCenso, Public Works Director Bill Evans and Town Manager Roger Carlton met with FDOT pedestrian safety coordinator Carlos Sarmento to seek a pedestrian safety upgrade to the two intersections prior to opening of the Community Center. FDOT District Engineer, Gus Pego confirmed on May 2, 2011 that the eight pedestrian crossing warning signs have been ordered and will be installed prior to opening. A follow-up call was held with Miami Dade County officials to ensure that the time extension for the crosswalk “time remaining” sign is completed.

20. Vice Mayor Joe Graubart requested Staff to meet with FPL and AT&T to review poles that are leaning in several areas.

Current Status: A meeting was held with FPL in May 2011. Their policy is that a pole may lean up to 17 degrees unless it is in danger of falling. Apparently, the aesthetics are not the issue. A report regarding undergrounding all utilities in Surfside appeared on the April 12, 2011 Town Commission agenda and was deferred until the May 10, 2011 meeting due to the long agenda. The outcome of the meeting held with FPL executives is that the contract award for the water/sewer/storm drainage project scheduled for the June 14, 2011 Town Commission meeting will include provisions to install conduit at intersections so that in the event an undergrounding project is approved in the future, conduit will be ready to avoid having to break the pavement.

21. Citizen’s Academy: This program is similar to the Police Academy in that Surfside residents are given the opportunity to learn the roles and responsibilities of each department in an interactive and informal setting over a series of evening sessions.

Current Status: The Town is investigating the possibility of working with FIU's Metropolitan Center to develop a seven week program consisting of two hour sessions once a week. Surfside residents would attend sessions devoted to such items as the differences in governmental authority, how the Town operates (budgeting and services provided) and code enforcement. Further information will be provided once scheduling and costs are established. If the Town Commission concurs, this program could begin in Fall 2011.

22. Building Relationships between the Condo Residents and Single Family Homes

Current Status: The Tourist Bureau Director will work with Commission Kopelman to create programs and activities in the new Community Center that will bring the Town's two distinct communities together.

23. Seniors' Assistance Program

Current Status:

The Surfside Civic Association's Julia Magnani will co-ordinate with Richard Iacobacci on contacting the Town's seniors regarding possible chores for the volunteers to complete. They will utilize the existing list from the Police Department. Outreach will be conducted through various avenues including the Town's Gazette. Mr. Iacobacci will ensure that all volunteers are processed through the Town's Human Resources Department for the required background check. Early Fall 2011 is the intended commencement date.

24. Mayor Daniel Dietch has requested that the feasibility of Surfside sharing Bal Harbour's street sweeper be explored.

Current Status: The first cost estimate submitted by Bal Harbour was too high and negotiations to lower the price were unsuccessful. Public Works Director Bill Evans has negotiated a more reasonable price with Sunny Isles Beach and an Interlocal Agreement will be presented to the Town Commission in July. The cost will be \$12,000 annually for once per week service.

25. Ceremony and Plaque Commemorating the Ten Year Anniversary of 9/11 – Vice Mayor Graubart

Current Status: The Police Department will coordinate an event in front of Town Hall for the 10 year anniversary of September 11. The Miami Dade Fire Department and other agencies will be requested to participate. This will be a combined event with Village of Bal Harbour and Bay Harbor Islands.

26. Bike Rental Station

Current Status: Based on a request from Vice Mayor Joe Graubart, and building on inquires made by the Tourism, Economic Development and Community Services Director, the Town is investigating the feasibility of working with Deco Bike (www.decobike.com) on installing a bike rental station similar to the those installed on Miami Beach. See the attached article which explains the complexity with this process. Staff will continue to pursue this initiative.

27. eReaders for Community Center

Current Status: Based on a request from Commission Ted Kopelman, the Town will incorporate eReaders into the addition room of the Community Center. There will be comfortable furniture and patrons will be able to check out Kindle type devices. Further information will be provided once costs and operational procedures are established.

28. Community Center Grand Opening Pin Design

Current Status: The attached pin design has been recommended by the Parks and Recreation Committee through the Parks and Recreation Department. Pins will be given away as a memento throughout Grand Opening Ceremony events. The pins have been received. Item completed.

29. Tree Trimming – Mayor Dietch

Current Status: All trees in Surfside either in the Town’s right of way or FDOT’s right of way have been inventoried for FEMA purposes. We have also completed the trimming process. Nearly thirty residents utilized the contractor at their own expense to remove dead trees or trim dangerous trees. Item completed.

30. 75th Anniversary Time Capsule

Current Status: The Time Capsule has been delivered. The contents of the capsule will be items that were selected by the 75th Anniversary Committee. “Burying” the Time Capsule will be one of the Grand Opening events.

31. Tenth Mile Markers on the Beachwalk Hardpack – Mayor Dietch

Current Status: This request is being investigated and a recommendation will be made during the July Town Commission meeting.

32. e-Waste Collection Event Prior to Hurricane Season – Mayor Dietch

Current Status: Miami Dade County will not provide the service, but can recommend qualified vendors to assist. Staff will discuss options to move this forward as well as explore opportunities to team with Bay Harbor Islands and Bal Harbour Village. A report will be made in July, 2011.

33. FPL Electric and Cable Underground Conversion of Existing Overhead Service Lines

Current Status: In a recent meeting with FPL officials, it was determined that they would accept our contractor for the water/sewer/storm drainage project installing conduit that would be placed at intersections in the single family neighborhood to allow future undergrounding. FPL will provide the conduit. The cost of the study required by FPL will be included in the contract award for the water/sewer/storm drainage project which is included on the June 14, 2011 Town Commission meeting agenda.

34. Resident Parking Program

Current Status: An item appears on the June 14, 2011 agenda recommending several changes to the resident parking permit program including use of a permanently affixed decal and proof of registration. These changes are necessary due to abuses that were discovered. In addition, a \$10 annual fee for the permit is being recommended to cover the cost of printing and staff time.

35. Short Term Rentals Ordinance

Current Status: Staff met with the Town Attorney to discuss implementing the ordinance which was adopted on second reading May 10, 2011. The implementation including a public information program will occur over the summer and will begin October 1, 2011 in conjunction with business license renewals.

36. Resort Tax Ordinance

Current Status: This item was approved in first reading during the May 10, 2011 Town Commission meeting. The second reading appears on the June 14, 2011 Town Commission meeting. If approved the implementation will be completed over the summer including selecting the auditors and notifying the business owners in a series of workshops.

37. New Crime Prevention Initiatives

Current Status: During the May 10, 2011 Town Commission meeting a number of the recommendations from Police Chief were accepted. The balance were deferred until the full Town Commission returned for the June 14, 2011 meeting. Once the final determination regarding the balance of the initiatives is made, staff will begin implementation.

The following items have been completed. These items have been deleted from the May 2011 Points of Light report.

1. Awards/Certifications:

a. Comprehensive Annual Financial Report (CAFR)

Current Status: In an effort to present the Town's financial information to all interested parties, the Town has prepared a Comprehensive Annual Financial Report (CAFR) for the fiscal year ended September 30, 2010. The Town has submitted the CAFR to the Government Finance Officers Association of the United States and Canada (GFOA) to determine its eligibility to be awarded a Certificate of Achievement for Excellence in Financial Reporting. The Certificate of Achievement is a prestigious national award, presented to less than 4,000 of approximately 90,000 governmental units nationwide. The Certificate recognizes conformance with the highest standards for preparation of state and local government financial reports. In order to be awarded a Certificate of Achievement, a governmental unit must publish an easily readable and efficiently organized CAFR, whose contents conform to program standards. Such reports must satisfy both generally accepted accounting principles and applicable legal requirements. Notification regarding the Certificate will be made by August 2011. Item completed.

b. City Livability Awards

Current Status: These are awarded annually through the United States Conference of Mayors. The Town submitted two applications by the April 8, 2011 deadline. One application focused on the Parks & Recreations' Senior Programs, the other on the Tourist Bureau's 3rd Thursday Event Series. Unfortunately we were not selected for the awards. Item completed.

3. Maranon property: In order to accelerate the sale of the Maranon property as previously directed by the Town Commission, Finance Director, Martin Sherwood and Building Official, Paul Gioia will order an update to the appraisal of the Maranon property. Town Manager, Roger Carlton will move forward with the sale process subject to final approval of the sale when the bids are received.

Current Status: The Town Commission approved the sale in the amount of \$188,000 during the January 18, 2011 Town Commission meeting. As mentioned during the March 8, 2011 Town Commission meeting, the sole bidder requested a 45 day extension until May 2, 2011 to close. That extension was granted. The property sale closed on May 3, 2011 after the bidder delivered the full amount of the sale (less deposit) in cashier's checks. Item completed.

8. Red light cameras and Multi-Space Meters: Police Chief David Allen and Assistant Chief John DiCenso manage the implementation of red light cameras and Multi-Space Meters.

Multi-Space Meters – Status Report

This project has been in place for four months. Adjustments have been made as needed and the meters are functioning quite well. A modification to the LAZ parking contract which will save the Town \$11,760 per year by reducing their services to collection only and a one time refurbishment of the remaining 53 single space meters is included in Section 9 of the May 10, 2011 agenda. Item completed.

9. Bal Harbour Comprehensive Plan Amendment hearing: Town Manager, Roger Carlton and Commissioner Edward Kopelman will attend the Comprehensive Plan Amendment hearing at the Village of Bal Harbour on October 19, 2010 at 7 pm. A report to the Town Commission will be made after the Bal Harbour meeting.

Current Status: Staff continues to monitor this project and will report to the Town Commission when appropriate.

20. Library Assets Disposition

Current Status: This project has been finished under the leadership of Duncan Tavares and with the help of various departments and volunteers. The trailers have been removed, however there remains a debate with the trailer rental company regarding "damage" created by the bookshelf anchors. We will now move forward to establish the "Kindle" library in the new Community Center reading area. Appropriate furniture has been ordered. Recognition of the volunteers was completed during the April 12, 2011 Town Commission agenda. Item completed.

28. Earth Day April 22, 2011

Current Status: Initial contact was made with organizers of Earth Day. A resolution of support was approved on the April 12, 2011 Town Commission agenda. A tree planting was conducted at the Community Center on April 22, 2011. Item completed.

29. New Recognition Program

Current Status: Based on a request from Vice Mayor Joe Graubart, Town Clerk Debbie Eastman has completed the process of revamping the look and format of the certificates of recognition that are distributed at Commission meetings and other occasions. The Town Commission accepted the new recognitions as a Point of Light in the April 12, 2011 meeting. There are sufficient funds in the Office Supply budget line item remaining for FY 10/11 to implement the program. Item completed.

31. Town of Surfside Memorial Day Event - Commissioner Olchyk

Current Status: Rabbi Pearlson requested that Town Staff working on Memorial Day stop work for one minute at 3:00 pm for a moment of silence for Memorial Day observation. Police officers working on Memorial Day at 3:00 pm will stop patrol and turn on their blue lights for one minute (except for emergency calls). The Police Honor Guard will also participate in the Memorial Day event. Item completed.

35. Miami Dade County Haulover Golf Course – Use for Town of Surfside Athletics

Current Status: Miami Dade County has given the okay for groups to use the open space temporarily as a practice site. The County has future plans to develop the site as an amphitheater/open green space. Staff will connect Surfside groups with Miami Dade County if requests are made. Item completed.

40. Miami-Dade County Homeless Trust Parking Meters - Vice-Mayor Graubart

Current Status: The program raises funds for the Homeless Trust by utilizing refurbished parking meters that are hand painted by a Romero Brito to collect coin donations. The meters are not used in lieu of any Town owned parking meters. Each meter requires a one-time \$1000 sponsorship payable to the Miami-Dade Homeless Trust. Meters are installed, maintained and collected by the Homeless Trust and all proceeds collected go directly to the Homeless Trust. Based on the cost to install, no further action is recommended. Item completed.



Downtown Vision Advisory Committee

Meeting Minutes

May 12, 2011

The meeting was called to order at 7:00pm in the Manny Crawford Conference Room, 2nd Floor Town Hall.

In Attendance:

Committee Members: Eli Tourgeman, David Steinfeld, Ken Arnold, Sergio Castion, Andy LaBrada, Leeann Roth, Julia Magnani, Louis Cohen, Julie Gordon.

Downtown Property Owners Representatives: Jack Stevens, Henry Stevens, Mary Stevens, Donald Kahn, Christine Justice.

Public: Barbara Cohen, Dr. Edy A. Guerva, Manuel V. LaFont, Franz Arango.

Town Staff: Roger Carlton, Duncan Tavares.

Town Manager Welcome: Due to the number of property owners in attendance, and the importance of the issue, the Town Manger requested and was granted moving the Moratorium Ordinance/Memorandum item for discussion after the review of the minutes.

Review of April 27, 2011 Meeting Minutes: Eli Tourgeman made a motion to accept the minutes as presented. Julia Magnani second the motion. The minutes were approved unanimously by the committee.

Moratorium Ordinance / Property Owners Meeting Update (Key Action Item from Apr 14);

Detailed information on the ideas from Property Owners Meeting (Key Action Item from Apr 27):

The Town Attorney has advised the Town Manager that rescinding the moratorium does not need to go before the Planning & Zoning Board and can be added to the June 14, 2011 Town Commission Meeting. The Town Manager reviewed the following conditional items for rescinding the moratorium as agreed to in principle by the property owners at a meeting on April 26, 2011 and by the DVAC at their meeting on April 27, 2011 (see attached memorandum following the minutes for details):

1) Moratorium Ordinance:

The Town Attorney will provide a "Letter of Intent" document, for acceptance by the downtown property owners and DVAC members, outlining the conceptual items (listed below #2- 7). This conditional document will be presented by the Town Manager to the Town Commission at the June 14, 2011 meeting with the recommendation to rescind the Moratorium Ordinance before its sunset date in October 2011 and before the Town Commission's mandate to return with a recommendation by July 2011.

2) Abbott Avenue Parking Garage Feasibility:

The Town Manager will seek approval from the Town Commission at the June 14, 2011 Commission Meeting to initiate a feasibility study for a parking garage on the Abbott Avenue parking lot. If approved, the Town Administration will utilize the Commission approved group of architects and engineers registered with the town to compete on a feasibility study by August 2011. The feasibility study will address the garage project, the alley upgrade as well as rezoning the west side of Abbott Avenue from 95th to 96th Streets to allow commercial use in the existing homes. An appropriate landscaping buffer on the west side of Abbott Avenue homes would also be addressed.

3) Rebuilding of Harding Avenue Sidewalks:

If the Town Commission determines the need for a garage and the project moves forward to completion, the Town Administration will address expanding the sidewalks on Harding Avenue between 94th and 96th Streets in the Downtown District by removing the existing parking spaces. This would be feasible as adequate parking would now be available in the new Abbott Avenue garage. A small number of spaces on Harding Avenue would remain for bus lay-bys and a valet parking service. The wider sidewalks would provide more space for outside café seating and enhanced landscaping and streetscaping. The financing of this project is yet to be determined but could be achieved through a joint venture with the Town and an assessment on the downtown properties.

4) Upgrading Alleys:

A study of the Town's parking lots and alleys is set to be awarded on June 14, 2011. By way of information, the proposals have already been ranked by the Town selection committee. This study would include the viability of upgrading the alleys, both privately and publicly owned, on both sides of Harding Avenue. The plan would also address the possibility of creating a breezeway from the east side of the Abbott Avenue parking lot through to the west side of Harding Avenue. Financing could be achieved by a joint venture with the property owners of the private alley and the utilization of parking funds.

5) Support the Forty Foot Height Allowance:

Presently the buildings in the Downtown District can be forty feet in height. In an effort to encourage property owners to voluntarily seek larger national retail and restaurant tenants for their ground floor properties, buildings could be redeveloped to the maximum four stories presently allowed and would not include any restrictions regarding residential use. Property owners could voluntarily amalgamate buildings to achieve this initiative. This discussion is presently on-going with the DVAC and would need to go to before the Planning & Zoning Board and Town Commission.

6) Facade Upgrading Program:

The Town Manager will begin an effort to create a consortium of banks operating in the Downtown District over the summer to develop financing for a facade upgrading program for the district's property owners and businesses. Details regarding this proposal would go to the Town Commission in September, 2011. Proceeds from the Parking Fund could be utilized to reduce the interest on loans granted for facade improvements.

7) Business Improvement District:

The Town Manager will continue to meet with the downtown property owners over the summer to develop a possible Business Improvement District for the Downtown District. This initiative will be presented to the Town Commission in the Fall of 2011.

8) 94th Street Parking Garage Feasibility:

A feasibility analysis will be accomplished over the summer relative to developing the 94th Street parking lot into a garage with the possible conjunction of the contiguous properties along Collins Avenue. The intent of this project would be to rent additional parking for a southern anchor to the east side of Harding Avenue and to allow sufficient space for small scale national retail and restaurant opportunities.

The DVAC could approve this document as presented so that it will go to the Town Commission on June 14, 2011. A minority report regarding the fact that some members are still adamant in their support of types of uses restriction could also be presented at that time.

The following are comments from the committee on this matter:

- Agrees with the moratorium otherwise downtown will continue to see service industries move in. Bay Harbor Islands is a prime example of how services industries on the ground floor can adversely affect a downtown district. Need to revisit distance requirements. Need some sort of regulation.
- A moratorium allows for the types of businesses necessary for vitality downtown. Need to regulate the types of uses otherwise service businesses will lock in leases for several years with downtown not seeing any benefit from the other initiatives.
- Change west Abbott Avenue commercial to live/work as this will better reflect the desired outcome. Add an ninth item to the memorandum: the possibility of a parking garage on Collins Avenue at 95th Street as a partnership with the Beach House investor and the inclusion of expanded retail/restaurants on 95th Street.
- Ok with restrictions on types of uses was mentioned by many.
- The Town will need to purchase the homes on Harding Avenue south of the 94th Street parking lot to incorporate into a garage if the venture is to succeed.
- Ok with residential use on upper floors downtown was mentioned by many.
- The Town needs to address the issues of safety and security in the residential neighborhoods if these garages (etc.) are realized. Not sure if in favor of downtown residences. Would rather see arts and technology based on the higher floors. Need to end the moratorium. Most neighbors polled are in favor of proposals but are concerned about safety/security and would not like too many garages being built in Town: Abbott Avenue and 94th Street are ok but no more.
- The memorandum document is fine but still need to address restrictions of types of uses.
- The property owners will continue to rent to service businesses. If the restaurants move out of Surfside the downtown will die. Need to restrict by distance.
- There is a precedent for use restrictions this is nothing new. The property owners are not giving anything. The DVAC has rights as well.
- It was never the mission of this committee to kick out tenants. The property owners need to take advantage of the forty foot allowance to allow for service businesses to locate on higher floors.
- DVAC needs to concede on this one issue. Once the other items are achieved retail/restaurants will come to Surfside due to market forces.

The following are comments from the property owners:

- Unable to have ADA compliance with existing buildings to facilitate service businesses on higher floors.
- We are all here to work on improving the downtown district. However, this conversation is setting an adversarial tone. Need to work together to compromise.
- Retail, especially “mom & pop” establishments are not making it.
- Put the question of restrictions to a referendum as it should not be decided by this committee.

The following are comments from the Public:

- In contemplating a move back to Surfside, the mix of businesses on Harding Avenue is the draw. There are no higher floor spaces for service businesses to move into. Let market forces decide.
- There is a flow of patrons now. Changing the mix is not necessary. Let market forces decide. Downtown just needs an overall cosmetic revamp
- Service businesses bring people to the community. They are then referred to other businesses such as stores and restaurants. The elderly need access. It is too costly to move to a higher floor even if the space existed. Services businesses support the community.
- There is an opportunity to have medium priced retail return to Surfside. It doesn't all have to be high end. There is a community that would support more medium priced retail.

The Town Manager explained that this is a series of compromises. At no time was there discussion or intention regarding the termination of leases. This rumor is not based on fact. The property owners will be affected with the approval of these items as they will need to contribute financially to a BID and/or assessments as outlined in the memorandum. The property owners are at the table for the first time even if it took the moratorium to achieve this. If the Town achieved all of the other points outlined in the memorandum that everyone has repeatedly stated they want, then market forces will affect the change that DVAC envisions. The property owners will not budge on the restrictions issue and are threatening litigation if the Town pursues this course of action. If the DVAC broadly adopts the proposal with the inclusion of a minority report regarding the issue of restrictions then all stakeholders should come to the June 14, 2011 Town Commission Meeting to inform the Town Commission of their views.

The DVAC voted 6:3 to approve the memorandum with a revision to include restrictions on types of uses.

The following are comments from the committee:

- DVAC needs to do something to help downtown. Restrictions will help
- DVAC needs to stay committed and move forward with this recommendation. The property owners will see an increase in rents and property values from a vibrant downtown.
- The property owners are coming together with DVAC on the overall vision. Now is the time to compromise with them.

The following are comments from the property owners:

- The DVAC/Town has taken an adversarial position to the property owners. They will need to take the next steps necessary to protect their rights. The property owners came to tonight's meeting expecting the Town to rescind the moratorium tonight.
- The DVAC is being unrealistic if they think retail will return to Surfside given the expansion to the Bal Harbour Shops and the stores that will be opening in the St. Regis.

The Town Manger explained that if the other items on the memorandum are initiated then the two blocks of downtown will become a fun and desirable place to visit, and possibly live, as market forces will bring the businesses that the DVAC envisions. Only the Town Commission can rescind the moratorium. The earliest the Town Commission could discuss this matter is at their meeting on June 14, 2011. This consensus of the DVAC will be presented at that time with a recommendation that the Town Commission conduct a workshop with the Planning & Zoning Board to discuss the entire proposal. All stakeholders need to be present at the Town Commission meeting and subsequent workshop to discuss their view points. The Town Manager will meet with Mr. Donald Kahn, representing the property owners, to discuss a path forward.

The property owners and supporters from the public in attendance left the meeting.

The Town Manager asked if the DVAC would like to take a second vote based on the above proceedings. If not, he could amend the memorandum to explain to the Town Commission that the DVAC changed their minds regarding the restrictions issue and that there was a paradigm shift since the last DVAC meeting. The Town Commission will make the ultimate decision on this issue. More discussion regarding this issue ensued by the DVAC.

The following are comments from the committee:

- There seems to be a loss of focus. There is a need for a better business mix and this can only be achieved through regulations.
- Regulations may no longer be needed but a timeline with actionable items, and some sort of accountability, is needed to move forward.
- By compromising the Town can begin to work on the bigger picture – a true vision for downtown.
- The threat is that of the property owners. The government has a right to impose conditions.
- The property owners do not own the Town of Surfside.
- Maybe there is a way to meet half way.
- Regulations are not needed at this time.
- The property owners' position is understandable. Now is the time to compromise but the vision needs to be controlled.
- No need for the moratorium.
- There is empathy for the property owners. Need to back off to achieve the bigger picture. There needs to be a timeline with actionable items.
- There still needs to be some sort of regulation.

The second DVAC vote resulted in a 7:2 support of the memorandum, including the rescinding of the moratorium with no provisions for restrictions, on the condition that timelines, accountability and actionable items are addressed by the next meeting on May 25, 2011.

Downtown Code Enforcement Status Report Update (Key Action Item from Feb 15): Over two thirds of the issued notices are now in compliance or in the process of complying. The Town's Building Department is working with the remaining third to guarantee compliance.

Vacant Window Treatment Ordinance Draft Update (Key Action Item from Mar 10): DVAC's suggestions are included in the version set for the Planning & Zoning Board meeting on May 26, 2011. Artwork examples will be brought to the DVAC at the May 25, 2011 meeting for review.

Repaving Alleys Update (Key Action Item from Mar 22): A feasibility study for repaving the Town's parking lots and alleys is set to be awarded on June 14, 2011.

Brand Identity Continued: Due to the late hour, and the fact that more suggestions were submitted at the meeting, all suggestions will be added to a spreadsheet for discussion at the May 25, 2011 meeting.

Sidewalk Café Ordinance: The DVAC members will review the ordinance for discussion at the May 25, 2011 meeting. The Tourist Board will also review the ordinance, at their June 6, 2011 meeting, and will provide their recommendations.

Action Item: The Town Manager and Staff will return at the May 25, 2011 meeting with a more detailed plan of action on rescinding the Moratorium and subsequent conditional items (as discussed above) for review before the document is presented to the Town Commission on June 14, 2011.

On-going meeting schedule: Tabled to the May 25, 2011 meeting.

Public Comment: See above.

Next Meeting: Wednesday May 25, 2011 at 7:00pm

Meeting Schedule: TBD

Adjournment: 9:40pm

Respectfully submitted,

Name of signor

Memorandum

To: Downtown Vision Advisory Committee Members
From: Roger Carlton / Town Manager
Date: 5/20/2011
Re: Proposed initiatives from downtown property owners and DVAC members

Following the adoption of the Moratorium Ordinance by the Town Commission on April 12, 2011, the Town Manager met with downtown property owners on April 26, 2011. From this meeting a series of conceptual initiatives were discussed and approved by general consensus from the attendees in exchange for terminating the Moratorium Ordinance prior to its sunset date. These initiatives were subsequently presented to this committee at the April 27, 2011 meeting and were approved in principle by general consensus from those in attendance. They are presented here for summary purposes in an effort to establish a path forward as required by the Town Commission directive when the Downtown Vision Advisory Committee (DVAC) and its mission were established.

1) Moratorium Ordinance:

The Town Attorney will provide a "Letter of Intent" document, for acceptance by the downtown property owners and DVAC members, outlining the conceptual items (listed below #2- 7). This conditional document will be presented by the Town Manager to the Town Commission at the June 14, 2011 meeting with the recommendation to rescind the Moratorium Ordinance before its sunset date in October 2011 and before the Town Commission's mandate to return with a recommendation by July 2011.

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8) 94th Street Parking Garage Feasibility:

A feasibility analysis will be accomplished over the summer relative to developing the 94th Street parking lot into a garage with the possible conjunction of the contiguous properties along Collins Avenue. The intent of this project would be to rent additional parking for a southern anchor to the east side of Harding Avenue and to allow sufficient space for small scale national retail and restaurant opportunities.

While it is important to note that many of the above proposed initiatives have multiyear timelines for completion, if approved by the Town Commission, there are other initiatives that have had an immediate and on-going impact in the Downtown District. Through the actions of this committee, Surfside's downtown is experiencing an increase in the upgrading and maintenance of the buildings in the district. The Town will continue with Code Enforcement to ensure that this mission achieves its goal of positively impacting the aesthetic environment and image of downtown Surfside. A plan for additional short-term aesthetic upgrades could also be continued as a mission of this committee while the long-term proposals are in process.

It is the clear intent of the property owners, DVAC and Town Administration that this memorandum reflects a package of ideas that justify the acceleration of the Moratorium's termination. While these ideas are not contractual between those involved in formulating this conceptual action plan, all of the mentioned stakeholders agree that this represents a good faith vision of an important cooperative approach to a better future for the Downtown District. It is understood that all of these initiatives must be reviewed by the Town Commission. Upon the approval of any or all of the proposed ideas must then be vetted by the appropriate Town Departments before proceeding to the Planning & Zoning Board. The ultimate decision on subsequent implementation remains with the Town Commission.



Downtown Vision Advisory Committee

Meeting Minutes

May 25, 2011

The meeting was called to order at 7:00pm in the Manny Crawford Conference Room, 2nd Floor Town Hall.

In Attendance:

Committee Members: Scarlet Hammons, David Steinfeld, Ken Arnold, Sergio Castion, Andy LaBrada, Leeann Roth, Robert Andai, Julia Magnani, Louis Cohen, Shaun Grenald.

Downtown Property Owners Representatives: Jack Stevens, Carol Benson, Grace Heizing.

Public: Barbara Cohen, Barbara McLaughlin.

Town Staff: Roger Carlton, Duncan Tavares.

Town Commission: Commissioner Karukin.

Town Manager Welcome: The Town Manager gave an update to DVAC on the Beach House Property and the plans for a hotel on that site. This project would align with the need to diversify the Town's tax base as outlined in the Five Year Financial Plan that the Commission has received. When the plans are submitted to the Development Impact Committee one of the items that will be addressed is a reinvigorated 95th Street corridor from Abbott Avenue to the beach. This area could see expanded café/restaurant dining and would enhance the area for both residents and visitors. A public private partnership will be explored for a parking garage on the west side of Collins Avenue at 95th Street. The Beach House developers presently own all of the property on Collins Avenue west from 95th Street to 94th Street except for the Town owned "Post Office" parking lot.

Review of May 12, 2011 Meeting Minutes: Leann Roth made a motion to accept the minutes as presented. Louis Cohen seconds the motion. The minutes were approved unanimously by the committee.

Downtown Code Enforcement Status Report Update (Key Action Item from Feb 15): The Post Office building is the most recent to repair and paint as requested. Over two thirds of the issued notices are now in compliance or in the process of complying. The Town's Building Department is working with the remaining third to guarantee compliance with some of the notices now moving onto Special Master to resolve.

Vacant Window Treatment Ordinance Draft Update (Key Action Item from Mar 10): DVAC's suggestions are included in the version set for the Planning & Zoning Board meeting tomorrow night. A sample design was presented to the DVAC. The committee members stated that all photos should be of Surfside and that there needed to be silhouetted people added to the mixture similar to the imaging seen in the Tourist Bureau advertisements. Also, the Town seal should be replaced with the eventual slogan/image chosen for downtown.

Repaving Alleys Update (Key Action Item from Mar 22): A feasibility study for repaving the Town's parking lots and alleys is set to be awarded on June 14, 2011.

Moratorium Ordinance / Property Owners Meeting Update (Key Action Item from Apr 14); Detailed information on the vision from Property Owners and DVAC Meetings (Key Action Item from Apr 27/May 12): The Town Manager provided a summary of the process to date. The property owners are in agreement of the proposed vision package including the condition that the moratorium is rescinded. At the last meeting on May 12, 2011 the DVAC members eventually supported the vision, with the rescinding of the moratorium, in a vote of seven to two (7:2). This occurred after an initial vote of six to three (6:3) in support of the vision but retaining the moratorium and exploring restricting uses to retail/restaurant on the ground level resulting in the departure of the displeased property owners in attendance. The vision packaged, as presented in the Commission Communication Draft (attached below), was reviewed as follows:

SHORT TERM INITIATIVES (six months or less):

Upgrading Alleys: A study of the Town's parking lots and alleys is set to be awarded on June 14, 2011. By way of information, the proposals have already been ranked by the Town selection committee. This study would include the viability of upgrading the alleys, both privately and publicly owned, on both sides of Harding Avenue. The plan would also address the possibility of creating a breezeway from the east side of the Abbott Avenue parking lot through to the west side of Harding Avenue. Financing could be achieved by a joint venture with the property owners of the private alley and the utilization of parking funds. The key commitment suggested by the DVAC is that the study begins. The next step would be the completion of the consultant selection process and the awarding of the contract by the Town Commission.

Business Improvement District: The Town Manager will continue to meet with the downtown property owners and tenants over the summer to develop a possible Business Improvement District (BID) for the Downtown District. The basic premise of a BID is that the Town agrees to continue to provide a basic level of service and that incremental services such as extra police protection for expanded special events, maintenance for specialty landscaping, downtown marketing programs, cleaning after special events, and the retention of consultants to secure tenants are funded with as self-imposed assessment on the owners which is generally passed on to the tenants. The use of these funds is governed by the board of the BID. The process for establishing the District and ensuring that funds are collected and property spent is governed by State law. This initiative will be detailed to the Town Commission in the Fall of 2011.

Facade Upgrading Program: The Town Manager will begin an effort to create a consortium of banks operating in the Downtown District over the summer to develop financing for a facade upgrading program for the district's property owners and businesses. Details regarding this proposal would go to the Town Commission in September, 2011. Proceeds from the Parking Fund could be utilized to reduce the interest on loans granted for facade improvements.

Abbott Avenue Parking Garage Feasibility: A feasibility study could address a garage project on the Abbott Avenue parking lot, an upgrade to the alley on the east side of the parking lot to facilitate a more pedestrian friendly environment and access to the Harding Avenue east side businesses, as well as the possibility of rezoning the west side of Abbott Avenue from 95th to 96th Streets to allow very limited commercial use and/or live/work use in the existing homes. An appropriate landscaping buffer on the west side of the Abbott Avenue homes would also be addressed.

- Seek approval from the Town Commission at the June 14, 2011 Commission Meeting to initiate a feasibility study for a parking garage on the Abbott Avenue parking lot.
- If approved, the Town Administration will utilize the Commission approved group of architects and engineers registered with the Town to compete for the feasibility study with completion expected in October, 2011.

Per a request from the Mayor, prior to a feasibility study Town Staff will prepare a staff report evaluating the built environment, assess the present parking demand, and project on future demand. This study will determine the need to continue with a feasibility study.

MID TERM INITIATIVES (six months to twelve months):

The Current Forty Foot Height Allowance and Amalgamation of Properties: Presently the buildings in the Downtown District can be forty feet in height. In an effort to encourage property owners to voluntarily seek larger national retail and restaurant tenants for their ground floor properties, buildings could be redeveloped to the maximum four stories presently allowed and would not include restriction regarding residential use. Property owners could voluntarily amalgamate buildings to achieve this initiative.

- Present to the Planning & Zoning Board on June 23, 2011 for discussion.
- Present to the Town Commission on July 19, 2011 for first reading.

Development of an East West Corridor on 95th Street from Abbott Avenue to the Beach: The Development Impact Committee is working on a design theme for this project which could see a significant contribution from the developers of the Beach House property on the west side of Collins Avenue. An improved linkage on both 94th Street to Harding Avenue and on 95th Street will help ensure that this project becomes an asset to downtown and increase business development as well as augment visitor satisfaction for guests of the hotel.

LONG TERM INITIATIVES (twelve months to thirty months):

Rebuilding of Harding Avenue Sidewalks: If the Town Commission determines the need for a garage on the Abbott Avenue parking lot, and the project moves forward to completion, then the Town Administration will address expanding the sidewalks on Harding Avenue between 94th and 96th Streets in the Downtown District by removing the existing parking spaces. This would be feasible as adequate parking would now be available in the new Abbott Avenue garage. A small number of spaces on Harding Avenue would remain for bus lay-bys and a valet parking service. The wider sidewalks would provide more space for outside café seating and enhanced landscaping and streetscaping. The financing of this project is yet to be determined but could be achieved through a joint venture with the Town and an assessment on the downtown properties.

94th Street Parking Garage Feasibility: A feasibility analysis will be accomplished over the summer relative to developing the 94th Street parking lot into a garage with the possible addition of the

contiguous properties to the east along Collins Avenue. The intent of this project would be to provide additional parking for a southern anchor to the east side of Harding Avenue and to allow sufficient space for small scale national retail and restaurant opportunities.

The DVAC members ratified the document as presented in a vote of eight to two (8:2). Some of the members agreed that with this investment in downtown, market forces would eventually work in proving the retail/restaurant mix desired for the ground level businesses and that service businesses would move to higher floors. Two members in attendance, while supporting the vision package, strongly felt that the Town bears most of the financial burden of the proposed projects and that the moratorium should remain. Only with restrictions on uses for the ground floor will the Town see the mix of businesses everyone agrees are needed. It is felt that the property owners only responded to upgrading the area after code enforcement initiated and they will not pursue the desired mix of tenants as their only concern is to secure any tenant. The Town Manager assured all in attendance that the property owners will be paying their fair share with the proposed initiatives and that a retail/restaurant marketing professional could be retained by the BID to secure desired tenants.

A discussion ensued regarding short term upgrades to downtown with regard to plantings and trees and if the property owners would consider paying for them. The Town Manager and Town Planner advised against installing new trees before the sidewalks are potentially expanded (see above) as the trees would be costly and difficult to move and that there would be an increase in the probability of them not surviving. It was also suggested that the Town could initiate an "adopt a tree" program for the property owners and business operators. It was cautioned that hanging baskets and seasonal flowers would need a dedicated maintenance and replacement program if revisited.

The rescinding of the moratorium, and this draft document, will be presented to the Planning & Zoning Board at tomorrow night's meeting as a Town Attorney update. The Town Commission will review the vision package and recommendations at the June 14, 2011 meeting. Rescinding the Moratorium Ordinance will require two readings by the Town Commission. If passed on June 14, 2011 at first reading, the second reading will occur at the July 19, 2011 meeting.

The Town Manager reiterated that all in support of this package of recommendations, both property owners and DVAC members should come to tomorrow night's Planning & Zoning meeting and, especially, the June 14, 2011 Town Commission meeting. Those members who support the package but still feel that the moratorium should remain in effect and restricting uses to retail and restaurants on the ground level downtown should also attend and express their views.

Brand Identity Continued: DVAC members were given a spreadsheet of all of the suggestions presented by them to date (attached below). Four graphics created by Andy LaBrada and Shaun Grenald were also presented. The committee decided to postpone discussion until next month's meeting pending the presentation of ideas from students of the Parsons School as offered by Charles Kresl of the Beautification Committee. The following are comments regarding this:

- the slogan/image should reflect the whole Town;
- need more than just an image as a slogan is important;
- there is a difference between a tagline for downtown versus one for the whole Town;
- sometimes the two can be the same;
- focus on the downtown and beach only.

- should be visual like concept #1 (attached below).

Sidewalk Café Ordinance: The Town Manger outlined the need to have a dedicated Sidewalk Café Ordinance based on feedback from recent meetings from representatives with FDOT. The ordinance would regulate the placing of tables to enhance ADA compliance, require a site plan for seating from restaurants including any adjacent sidewalk that they intend to utilize and allow for the posting of menus. The DVAC members will provide any additional feedback at the next meeting. The Tourist Board will also review the ordinance, at their June 6, 2011 meeting, and will provide their recommendations.

A News Rack Ordinance is on the Planning & Zoning Agenda for tomorrow night. This will address the mix of news racks presently in existence downtown and will provide a uniform look. The DVAC members expressed the need to incorporate an appropriate color scheme to match the eventual brand identity keeping with the “beachy” theme. News racks and trash receptacles should also display the eventually approved logo/slogan.

Action Item: Town Staff will return at the next meeting with collateral for DVAC to discuss the direction for regulating the awnings downtown and with information from the Parsons School regarding brand identity ideas.

On-going meeting schedule:

Public Comment: See above.

Next Meeting: Thursday June 9, 2011 at 7:00pm

Meeting Schedule: Once a month: July and August.

Adjournment: 8:20pm

Respectfully submitted,

Name of signor

*****DRAFT*****
Town of Surfside
Commission Communication

Agenda Item #

Agenda Date: June 14, 2011

Subject: Downtown Vision Advisory Committee (DVAC) recommendations regarding rescinding the Moratorium Ordinance and related vision initiatives for the Surfside business district.

Background: The Downtown Vision Advisory Committee was formed with Town Commission approval through Commission Memoranda presented at the December 14, 2010 (attachment A) and January 18, 2011 (attachment B) Commission Meetings. Feedback from many residents, committee/board members and downtown business operators/owners formed the consensus that there is a need to reinvigorate the Surfside business district after years of conversation and little tangible action. Further, the Town Commission received and held a workshop regarding a Five Year Financial Plan that demonstrated the need to diversify the Town's source of property tax from the current 80/20 split (residential/commercial) to a more balanced distribution. If the commercial property base is not expanded and upgraded the split could be 90/10 in five years.

Fourteen of the initially proposed members of the DVAC consisted of a representative from each appropriate Town committee/board, a mixture of single family and condominium residents (including both full time and "snow bird" representation), Surfside business owners and operators, as well as representatives from such local organizations as the Surfside Civic Association and the Surfside Business Association. Due to the difficulty experienced in the past with establishing avenues of communication with the downtown property owners, outreach was conducted through existing Surfside business owners/operators. Eventually three names, and accompanying contact information, were recommended as possible members. Of the three repeatedly contacted, only one has consistently attended the DVAC meetings. However, active and responsive communication with the downtown property owners has occurred since the inception of the Moratorium Ordinance which temporarily limited building permits to restaurant and retail uses on Harding Avenue from 96th Street to 94th Street.

As the need to strengthen Surfside's downtown as the social, cultural and economic center of the Town was established, the DVAC was directed to return to the Town Commission with a comprehensive vision for the district. Operating on the basis that a thriving downtown can enhance the quality of life for Surfside's residents and improve the visitor experience, the committee continually and passionately addressed such issues as:

- an overall aesthetic / branding for the downtown.
- creating a welcoming, pedestrian-friendly environment.
- streetscaping: landscaping, benches, newspaper vending racks.
- the creation of a Business Improvement District to help finance improvements and operations.
- the relationship of Surfside's downtown to The Bal Harbour Shops and the St. Regis.
- the impact of side walk cafes and the proper means for regulating the use of sidewalks through a Sidewalk Ordinance.
- installation of business locator and appropriate parking signs.
- code enforcement in an effort to improve the curb appeal of the area.
- the creation of a parking structure with focus on the Abbott Avenue lot.
- the potential combination of retail, commercial and residential land use.
- assisting businesses with marketing initiatives.
- retaining the one hundred presently licensed businesses and attracting businesses to the seventy building, six plus acre downtown through landlord and lease cooperation.
- the merits of major capital improvement projects and lessons from the Town's 2006/2007 Charrette.

It is important to note that many of these items are actionable items that the Town Staff are implementing (explained below) and all will be incorporated into a final report for the Town Commission. However, due to the remarkable and recent historic increase in communication involving the DVAC, downtown property owners and Town Staff, it is now appropriate and imperative that the Town Commission be presented with the following high level vision for analysis. These vision initiatives are being presented with unprecedented support of all stakeholders involved in the process to date and within the shortened time of three months as directed by the Town Commission instead of the six month time period established when the moratorium was enacted.

Analysis: The DVAC has met seven times since its inception in February 2011. At each meeting a number of agenda items are discussed with each meeting producing an Actionable Item for the Town Staff to address and return at the following meeting with a status report. Below are the Actionable Items that have been completed and/or are in process:

1) February 15, 2011: Downtown Code Enforcement:

From the very first meeting the DVAC has exhibited a unanimous displeasure in the public and private maintenance of Surfside's downtown. Based on consensus from the committee the Town Code Enforcement identified all external code violations in the downtown business district. Courtesy notices were sent to all applicable business owners/property owners. To date over two thirds of the issued notices are now in compliance or in the process of complying. The Town Manager has assured the committee that all violations would be addressed through the Code Enforcement process until full compliance is achieved. This means that penalties will soon be applied to non-responsive property owners and eventually the matter could go to Special Master.

2) March 10, 2011: Vacant Window Treatment Ordinance:

In order to address the aesthetic look of the ground floor vacant property windows downtown, Town Staff were requested to amend the Town's ordinance that addresses vacant windows. The amended version is set to go before the Planning & Zoning Board at their June meeting and includes the committee's recommendations. If eventually approved by the Town Commission,

the Town would require downtown property owners to pay for the Town installation of a Town issued external decorative window covering when their ground floor properties are vacant.

- 3) *March 22, 2011: Upgrading Harding Avenue Alleys (outlined in Priority #3 listed below).*
- 4) *April 14, 2011: Moratorium Ordinance / Property Owners Meeting Update (please see below).*
- 5) *April 27 & May 12, 2011: Detailed Vision for Downtown (please see below).*
- 6) *May 25: Sidewalk Ordinance addressing café seating, posting of menus, news racks etc.*

These initiatives are presented below, prioritized by achievable timeline, in an effort to establish a path forward as required by the Town Commission directive when the DVAC and its mission were established and as a strategy to implement the property tax equity and fairness principles envisioned in the Five Year Financial Plan. It is imperative to note that the following vision, with its parking requirements, amalgamated property initiative etc, all needs further discussion. Nevertheless, there is clear consensus that these initiatives for downtown taken as a package would be a benefit.

SHORT TERM INITIATIVES (six months or less):

Rescind the Moratorium Ordinance: The Town Commission adopted a Moratorium Ordinance on second reading at the April 12, 2011 Commission Meeting. The moratorium restricted the downtown property owners to only renting their ground floor spaces to retail and/or restaurant businesses for six months. The intent of the moratorium was to allow the DVAC enough time to discuss the issue of restricting service industries from the ground floors of downtown buildings and to return to the Town Commission with a recommendation. While the moratorium will sunset at the end of six months from inception, Town Staff were instructed by the Town Commission to return with recommendations from the DVAC within three months. This memorandum and its recommendations meet that time limit.

As a direct result from the enacting of the moratorium, the Town Manager was contacted by upset and concerned downtown property owners regarding the restrictions and a meeting was held with owners on April 26, 2011. Sixteen property owners, a number from the same family trust, representing approximately seventy percent of the buildings downtown were in attendance. During this meeting a series of conceptual initiatives were discussed and approved by general consensus from the attendees in exchange for terminating the Moratorium Ordinance prior to its sunset date (Attachment C). These initiatives were subsequently presented to the DVAC at the April 27, 2011 meeting and were approved in principle by consensus from those in attendance. Some members at that meeting still expressed their concern for giving up the restrictions on street level service businesses as they strongly felt that this was the only method to achieve the type of dynamic and vibrant downtown that all favor. The DVAC requested Town Staff to return at the next meeting, held on May 12, 2011, with a more specific written statement, including timelines, for ratification by the members so that this vision could be presented to the Town Commission for review at the June 14, 2011 meeting.

At the DVAC meeting on May 12, 2011 a memorandum listing the rescinding of the moratorium with corresponding initiatives to be taken as a package was presented (Attachment D). Designated representatives of the property owners, accompanied by some of their service oriented tenants and concerned residents, came to the meeting as a reflection of their commitment to the vision. Upon discussion of the initiatives, since approved in principle by the DVAC and the property owners, it became apparent to Town Staff that the division between the various stakeholders was deeper than expected. The DVAC voted six to three to adopt the vision, with the rescinding of the moratorium, but to revisit a plan for restricting ground floor uses

to retail and/or restaurants with a distancing/grandfathering provision. As this is a non-negotiable action for the property owners to support all the elements of the DVAC vision, they left the meeting quite distressed. Upon further reflection and heated discussion amongst the DVAC it was decided that a second vote should be conducted regarding the vision. This second vote resulted in a seven to two vote in favor of rescinding the moratorium as soon as possible and to approve all of the initiatives presented as a package. The DVAC directed the Town Staff to return at the May 25, 2011 meeting with a more definitive plan of action, including specific timelines and commitment requirements from the various stakeholders, for ratification before presenting to the Town Commission for review at the June 14, 2011 meeting. The consensus from the DVAC members is that while the property owners have the threat of litigation on their side, the Town needed something to bind the property owners to all of the initiatives that they have presently committed to in good faith only.

Upgrading Alleys: A study of the Town's parking lots and alleys is set to be awarded on June 14, 2011. By way of information, the proposals have already been ranked by the Town selection committee. This study would include the viability of upgrading the alleys, both privately and publicly owned, on both sides of Harding Avenue. The plan would also address the possibility of creating a breezeway from the east side of the Abbott Avenue parking lot through to the west side of Harding Avenue. Financing could be achieved by a joint venture with the property owners of the private alley and the utilization of parking funds. The key commitment suggested by the DVAC is that the study begins. The next step would be the completion of the consultant selection process and the awarding of the contract by the Town Commission.

Business Improvement District: The Town Manager will continue to meet with the downtown property owners and tenants over the summer to develop a possible Business Improvement District (BID) for the Downtown District. The basic premise of a BID is that the Town agrees to continue to provide a basic level of service and that incremental services such as extra police protection for expanded special events, maintenance for specialty landscaping, downtown marketing programs, cleaning after special events, and the retention of consultants to secure tenants are funded with a self imposed charge on the owners which is generally passed on to the tenants. The use of these funds is governed by the board of the BID. The process for establishing the District and ensuring that funds are collected and property spent is governed by State law. This initiative will be detailed to the Town Commission in the Fall of 2011.

Facade Upgrading Program: The Town Manager will begin an effort to create a consortium of banks operating in the Downtown District over the summer to develop financing for a facade upgrading program for the district's property owners and businesses. Details regarding this proposal would go to the Town Commission in September, 2011. Proceeds from the Parking Fund could be utilized to reduce the interest on loans granted for facade improvements.

Abbott Avenue Parking Garage Feasibility: A feasibility study could address a garage project on the Abbott Avenue parking lot, an upgrade to the alley on the east side of the parking lot to facilitate a more pedestrian friendly environment and access to the Harding Avenue east side businesses, as well as the possibility of rezoning the west side of Abbott Avenue from 95th to 96th Streets to allow very limited commercial use and/or live/work use in the existing homes. An appropriate landscaping buffer on the west side of the Abbott Avenue homes would also be addressed.

- Seek approval from the Town Commission at the June 14, 2011 Commission Meeting to initiate a feasibility study for a parking garage on the Abbott Avenue parking lot.
- If approved, the Town Administration will utilize the Commission approved group of architects and engineers registered with the Town to compete for the feasibility study with completion expected in October, 2011.

MID TERM INITIATIVES (six months to twelve months):

The Current Forty Foot Height Allowance and Amalgamation of Properties: Presently the buildings in the Downtown District can be forty feet in height. In an effort to encourage property owners to voluntarily seek larger national retail and restaurant tenants for their ground floor properties, buildings could be redeveloped to the maximum four stories presently allowed and would not include restriction regarding residential use. Property owners could voluntarily amalgamate buildings to achieve this initiative.

- Present to the Planning & Zoning Board on June 23, 2011 for discussion.
- Present to the Town Commission on July 19, 2011 for first reading.

Development of an East West Corridor on 95th Street from Abbott Avenue to the Beach: The Development Impact Committee is working on a design theme for this project which could see a significant contribution from the developers of the Beach House property on the west side of Collins Avenue. An improved linkage on both 94th Street to Harding Avenue and on 95th Street will help ensure that this project becomes an asset to downtown and increase business development as well as augment visitor satisfaction for guests of the hotel.

LONG TERM INITIATIVES (twelve months to thirty months):

Rebuilding of Harding Avenue Sidewalks: If the Town Commission determines the need for a garage on the Abbott Avenue parking lot, and the project moves forward to completion, then the Town Administration will address expanding the sidewalks on Harding Avenue between 94th and 96th Streets in the Downtown District by removing the existing parking spaces. This would be feasible as adequate parking would now be available in the new Abbott Avenue garage. A small number of spaces on Harding Avenue would remain for bus lay-bys and a valet parking service. The wider sidewalks would provide more space for outside café seating and enhanced landscaping and streetscaping. The financing of this project is yet to be determined but could be achieved through a joint venture with the Town and an assessment on the downtown properties.

94th Street Parking Garage Feasibility: A feasibility analysis will be accomplished over the summer relative to developing the 94th Street parking lot into a garage with the possible addition of the contiguous properties to the east along Collins Avenue. The intent of this project would be to provide additional parking for a southern anchor to the east side of Harding Avenue and to allow sufficient space for small scale national retail and restaurant opportunities.

Through the actions of the DVAC and the property owners, and with Town Commission support, Surfside's downtown is experiencing an increase in the upgrading and maintenance of the buildings and the public spaces within the district. The Town will continue with Code

Enforcement to ensure that this mission achieves its goal of positively impacting the aesthetic environment and image of downtown Surfside. A plan for additional short-term aesthetic upgrades could also be continued as a mission of the DVAC while the mid and long term proposals are in process. The Town will also continue its efforts to increase maintenance of the area such as the steam cleaning of the sidewalks. The FDOT repaving project will also add new crosswalks at all intersections and at the mid-block pedestrian lights.

It is the clear intent of the property owners, DVAC and Town Administration that this Commission Communication reflects a package of ideas that justify the acceleration of the moratorium's termination. The majority of the stakeholders involved in this process to date agree that this represents a vision for an important cooperative approach to a better future for the downtown district. Any disagreement is not about the package presented, it is about the need for regulation to limit certain uses at the street level. Clearly the second vote of the DVAC, as documented earlier in this Commission Communication, reflects willingness to compromise in an effort to move forward.

As your Town Manager, I want to personally thank the members of the DVAC, Tourism Director Duncan Tavares, Planning Director Sarah Sinatra Gould, and the property owners for coming together to vet this vision in a very short time frame as directed by the Town Commission and without the cost of consultants. The vision is a path to sensitively bring our downtown to a more contemporary place without losing its hometown feeling. The vision is also a necessary element of the Town Commission's stated goal of creating property tax equity and fairness through expansion of commercial uses without deteriorating our quality of life. We all look forward to the discussion of this plan perhaps in a joint meeting of the Planning & Zoning Board and the Town Commission.

Budget Impact: TBD.

Staff Impact: TBD.

Recommendation: It is understood that these initiatives must be ratified by the Town Commission before they can proceed. Upon the approval of any or all of the proposed vision the initiatives must then be vetted by the appropriate Town Departments before proceeding to the Planning & Zoning Board. The ultimate decision on subsequent implementation remains with the Town Commission. Therefore it is the recommendation of the DVAC and the owners of a majority of the downtown properties that the Town Commission approves the vision in principle to allow for Town Staff to proceed on each item with the intent of eventually returning to the Town Commission for approval.

Department Head

Town Manager

Please Pick your Top 5	1 (best) to 5 (least)
Surfside - Welcome Home	
Surfside - Our Slice of Paradise	
Surfside - Catch the Wave	
Surfside - You Have Arrived	
Surfside - The Heart Of It All	
Surfside – The Heart & Soul Of It All	
Surfside – The Heart of Miami Beach	
Surfside – The Heart & Soul Of Miami Beach	
Surfside – Miami Beach Relaxed	
Surfside – Relaxed Luxury	
Surfside - A Town To Go To!	
Surfside - A Rare Find	
Surfside - Night and Day	
Surfside - A State of Mind	
Surfside - Feel the Breeze	
Surfside: Beach Chic	
Surfside Chic	
Surfside Shines	
Surfside - The Gold Town	
Surfside - A Paradise	
Surfside - A Relaxing Secret	
Surfside - A Four Season Town	
Surfside - All the Way	
Surfside - The Missing Apple	
Surfside - A Place to go	
Surfside - The Real Sunshine	
Surfside Florida - A Town to Love	
Surfside Calls You	
Surfside - A place to Unwind	
Surfside - Walk the Beach	
Surfside - Pure Pleasure	
Surfside - A Real Fairy Tale	
Surfside Welcomes	
Surfside is for You	
Surfside Loves You	
Surfside - Where Friends Meet	

Surfside Welcomes You	
Surfside - A Way of Life	
Sand in Your Feet - Surfside	
Friendly and Warm - Surfside	
Nothing Comparable - Surfside	
Go with the Wave - Surfside	
Discover Our Secret - Surfside	
Friendly and Warm - Come to Surfside	
Enjoy the Magic of Surfside	
Find Yourself in Surfside	
Recharge in Surfside	
Cool Breezes, Cool Beach, Cool Surfside	
Slip in to Surfside	
Breeze into Surfside	
Take a walk on the Surfside	
Where's Surfside?	
Find Time - Find Surfside	
Change gears in Surfside	
Downtown Surfside – Experience The World On Two Blocks	
SURF the cool SIDE of life	
A sweet life. Without the calories.	
A Surfside state of mind	
Let Surfside Surprise You!	
The Surfside of life	
On the Surfside of things	
Let Surfside Find You	
Surfside - Off the beaten track	

New York

The New York Times

SATURDAY, JUNE 4,

Before Bike-Share Effort Starts, Concerns Are Raised About How It Will Work

By CHRISTINE HAUGHNEY

The Bloomberg administration is only months away from rolling out an ambitious bike-share program intended eventually to rival ones in London, Paris and Washington, yet the proposal has already been plagued by questions of its viability.

Community board members have raised concerns about whether bike-share kiosks and racks would encroach on precious sidewalk areas, or swallow parking spaces. Some of the more seasoned bike-share companies did not bid on the project.

And Alta Bicycle Share, one of the two finalists vying to run the operation, has run into financial problems in Montreal. Government officials there eventually provided \$108 million in financing to Alta's partner, Public Bike System Company, in part to cover losses incurred by Bixi, the city's bike-share program.

All things considered, it has been somewhat of a bumpy start for a program that could help shape Mayor Mi-

Michael M. Grynbbaum contributed reporting.

Michael R. Bloomberg's legacy of leaving a more environmentally friendly city.

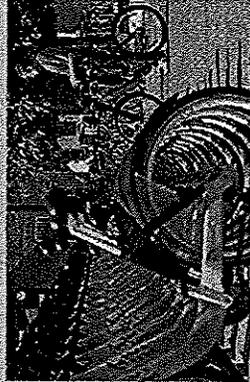
When the city issued its request for proposals last November, it called for "financially self-sustaining, 24-hour transportation that complements existing transit and transportation options."

The city called for a 30-station test program to start later this summer and for the official program, featuring 10,000 bicycles at 600 stations, to start on April 1, 2012. The city emphasized that not only would it not finance any part of the program, but it also expected the winning bidder to share its profits.

With each press conference and public event, the mayor's enthusiasm has grown.

"Every city that I've talked to mayors in around the world, it's one of the most popular things they've ever done," Mr. Bloomberg said last month. "I would expect it to be popular here in the city."

Sean Sweeney, who runs the SoHo Alliance and is chairman of the landmarks committee for Community Board 2, said he liked the idea of a bike-share program. But he fears that the Transportation Department will just add the kiosks to the packed streets of SoHo with little



YANNICK GRANDMONT FOR THE NEW YORK TIMES

In Montreal, a kiosk operated by Bixi, the city's bike-share program.

feedback from the community.

"We want our sidewalks back; the sidewalks in SoHo are not for sale," Mr. Sweeney said. "Our sidewalks are precious to us because they are so narrow."

Seth Solomonow, a spokesman for the Transportation Department, declined to comment on the city's plans.

Many leading bike-share companies expressed early interest in the city's proposal. Wayne Sosin, president of Workman Cycles, a bicycle manufacturer based in Queens that placed an unsuccessful bid for the contract, said

representatives from some of the biggest bike-share companies in the world were at a meeting in December about the program: Cemusa, responsible for the Barcelona and Madrid programs; J.C. Decaux, which designed the Paris program; and Clear Channel, which started the Washington program but later abandoned it.

But while other cities have given advertising companies unlimited opportunities to use the bike-share program, New York specified there could be only one advertising sponsor per bicycle and on each station computer unit.

Mr. Sosin said that when Workman approached Cemusa, J.C. Decaux and Clear Channel to possibly team up with them on a proposal, they all declined and did not bid. Risa B. Heller, a spokeswoman for Cemusa, said the company passed it up because "right now we are focused on our street furniture contract in New York City." J.C. Decaux did not return calls and e-mails. Nancy Zakary, a spokeswoman for Clear Channel Outdoor, said she could not comment on prospective bids and strategies.

In March, the city narrowed its field from six bidders to two: Alta and B-Cy-

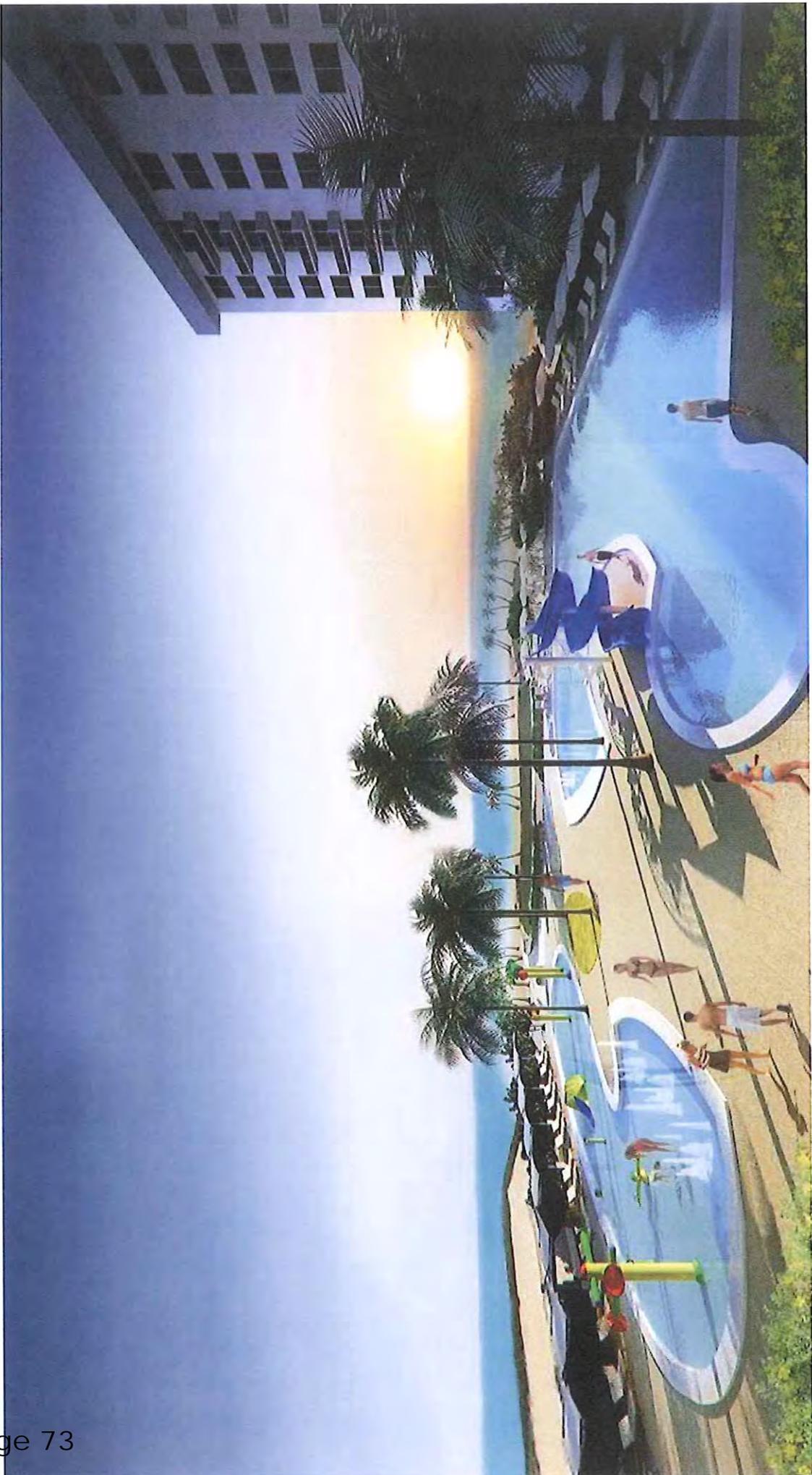
cle, which is affiliated with the manufacturer Trek, and has done programs in Chicago and Denver. Trek did not respond to requests for an interview.

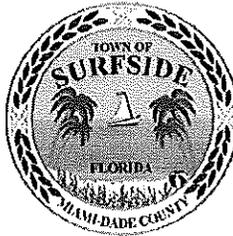
Roger Plamondon, the board chairman of Public Bike System, said the company had the financial resources to come to New York. Despite its issues in Montreal. In 2009, Bixi's first year program lost \$5.5 million; last year lost \$7 million, Mr. Plamondon said.

The City of Montreal lent \$37 million to Public Bike System to be repaid in 12 years and guaranteed a \$7 million private loan to help finance the operation of its programs.

Mayor Gerald Tremblay of Montreal said he supported the bailout because it would help preserve a popular program and "because Public Bike System showed promise in developing international programs patterned after Bixi." "My intent is not for Bixi to lose money," Mr. Tremblay said. "But for Bixi not to lose money."

Mr. Plamondon said he understood how long it would take to secure financing to help pay for its expansion. "I can guarantee you we are on the brink of bankruptcy," he said.





TOWN OF SURFSIDE
Office of the Town Attorney

MUNICIPAL BUILDING
9293 HARDING AVENUE
SURFSIDE, FLORIDA 33154-3009

Lynn M. Dannheisser
Town Attorney

Telephone: 305 993-1065

MEMORANDUM

TO: Town Commission

FROM: Lynn M. Dannheisser, Town Attorney 

CC: Roger M. Carlton, Town Manager
Debra E. Eastman, M.M.C., Town Clerk

DATE: June 14, 2011

SUBJECT: Town Attorney Monthly Update for June, 2011

The following Ordinances and Resolutions have been prepared (and/or reviewed and researched) or other advice rendered regarding the issues contained in them. In the case where agreements are attached, those contracts have also been drafted and/or reviewed and revised this month:

Resort Tax Ordinance
Film Photo Ordinance
Repeal of Moratorium Ordinance
Special Events Permit Ordinance
Vacant Storefronts Ordinance
Newsracks Ordinance
Retirement plan Opt Out Ordinance

Document Imaging Resolution
Community Center Concessionaire Services Resolution
Zambelli Fireworks Resolution
Mid-Year Budget Resolution
Infrastructure Rehabilitation Project Resolution
Parking Lot Improvements Resolution

The Town Attorney has attended and advised at the following meetings:

May 10, 2011 Commission Meeting
May 16, 2011 Development Review Group
May 26, 2011 Planning & Zoning Meeting
June 2, 2011 Special Master Hearing
June 7, 2011 Executive Session FOP Collective Bargaining

Planning & Zoning Meeting – May 26, 2011

The following items were heard:

1. 9585 Harding Avenue (JGB Bank exterior façade upgrades and interior alterations.)
2. Vacant Storefront Ordinance
3. Newsrack Ordinance
4. Town Attorney Report on Status of Moratorium

Town Manager and Town Clerk Issues

All legal issues related to bid award for Infrastructure Rehabilitation Project.
All legal issues related to Community Center opening.
All legal issues related to repeal of Moratorium Ordinance.
All legal issues related to follow up of short term rental ordinance

Continue to work with Manager and Planner on studies necessary for downtown revitalization
Parking and parking study issues town wide and relative to town parking lots

Building Department/Code Enforcement:

The Town Attorney continues to work with the Building Official and Code Enforcement Officer. Preparation for, education of code enforcement personnel, conferences with Special Master, creation of files, and agenda and attendance at Special Master Hearings held June 2, 2011. Liens were placed on the property of two non-compliant Violators. Another Special Master Hearing is scheduled for August 11, 2011. On June 3, 2011, a house foreclosure created self remediation legal issues that were researched and addressed.

Human Resources Department:

The Town Attorney has worked with the Town Manager and Human Resource Director on several issues relating to Town personnel and policies and procedures and personnel litigation.

Finance Department:

Preparation for 2011/2012 Legal Department Budget
Research statutory requirements for instituting policies relating to requirements of large currency transaction reports.
Preparation of Mid-Year Budget Resolution

Police Department:

Review Laz Parking Second Amendment
Review of RFP Parking Improvements
Preparation for Executive Session for FOP Collective Bargaining

Public Works:

Assist and advise Public Works Director on all procurement, water sewer and other capital improvement projects and community center matters.

Parks and Recreation and Community Center issues:

Review issues relative to Community Center and construction requirements included but not limited to:

1. IT issues
2. West Construction's commitment to complete
3. Prepare substantial revisions to Community Center Concession Stand and Agreement
4. VSI – Software Agreement
5. Community Center Change Orders

Tourist Bureau:

Follow-up with Tourist Bureau and Downtown Visionary Committee.
Preparation of Film Permitting Ordinance.
Preparation of Resort Tax Ordinance.
Vacant Window Ordinance
Newsrack Ordinance

Litigation:

John Davis v. Town of Surfside Case No. 07-17286 CA 08, Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida. This case has been consolidated with a previous case filed by a former sergeant in the Town's police department. Hearing scheduled for June 14, 2011 on Surfside's Motion to Consolidate Cases for Trial and Motion for Continuance.

Young Israel of Bal Harbour, Inc. v. Town of Surfside Civil Action No. 1:10-cv-24392 in the United States District Court for the Southern District of Florida. On December 10, 2010, Young Israel served a complaint alleging the Town Zoning Code imposes a substantial burden on Young Israel in violation of the Religious Land Use and Institutionalized Persons Act of 2000 ("RLUIPA). Young Israel asks the Court to grant the following: a preliminary and permanent injunction against the Town and to enjoin the Town from taking any action to prevent, hinder or interfere in any manner with construction of the proposed synagogue; a permanent injunction ordering the Town to adopt amendments to the Town Zoning Code and to issue permits and licenses as are necessary to permit construction of the proposed synagogue; a judgment for \$5,000,000 plus interest and costs for actual and punitive damages; a judgment for attorney's fees; and any further relief the Court deems just and proper.

This matter is covered by The Florida League of Cities which has approved counsel to assist in the defense of this case. The Town's lawyers filed a Motion to Strike and Motion to Dismiss. Plaintiff, Young Israel filed a Memorandum in Opposition to Defendant's Motion to Strike and a Memorandum in Opposition to Motion to Dismiss. The Town reviewed and revised in consultation with outside counsel Replies to Plaintiff's opposition memos. The Court denied the Motion to Strike and the Town has filed a Request for Oral Argument.

American Enterprise Bank v Bishop Partners, LLC, Surfside et.al Case No. 11-07139 CA 04 filed in Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida. The case involves a mortgage foreclosure action against Defendants who owned property in Surfside. It appears that Surfside has been named as a defendant due to an unsatisfied lien on a Surfside property due to a code violation relating to a failure to pull a building permit. Investigation is on-going.

Florida League of City Cases:

We monitor, coordinate witnesses and assist with requests for discovery with League counsel on cases that are covered by the FMIT. In addition to Young Israel (see above), we assist counsel with the following FMIT cases:

Warren Blum v. Town of Surfside Case No. 02-19134 CA 08

This action commenced in 2001 against the Town, former Town Manager, Rodriguez and former Police Chief, Boemler. Blum, a former police officer alleges breach of contract, violation of policeman's bill of rights and fraud in the inducement. A Motion for Continuance has been filed and we await a new trial order. Pursuant to the FMIT policy, the Town is responsible for only the \$5,000 deductible. FMLA counsel and the Town Attorney's office have been in frequent contact to discuss this matter and as of this date, no settlement has been reached. A hearing on Co-Defendant, Larry Boemler's motion to dismiss for failure to prosecute and motion for sanctions is scheduled for August 8, 2011.

Dina Agin v. Town of Surfside Case No. 07-41974 CA 30

Dina Agin filed a complaint seeking damages for injuries allegedly arising from a trip and fall accident due to a defective condition on the property/premises/sidewalk near the corner of 96th Street and Bay Drive in the Town of Surfside. We have assisted League counsel with discovery and document requests and on-going case development issues. Bal Harbour Village has been dismissed as a party. Trial has been re-set for the 3 week period commencing October 17, 2011. Plaintiff's attorney moved the court for a continuance to 2012 because she is a snow bird and to conduct further discovery. Surfside argued that the Town is prepared, there has been more than enough discovery conducted by FDOT and the Plaintiff, and the trial should not be delayed to 2012 on a 2007 case. The case has been re-set for trial on October 17, 2011.

Special Matters:

Discussions with outside counsel. (Young Israel counsel, Harold Rifas, Richard Sarafan, J. Hiley Wicks, Nancy Stroud)

Beginning research on special assessment districts

Evaluating certain Charter issues and new legislation relating to same.

New property acquisitions and foreclosure and research eminent domain issues
Potential private public partnership issues
Hotel density and other zoning inquiries from hotels and other property owners

Follow-up with legislation out of Tallahassee and Miami Dade County.

TOWN OF SURFSIDE

9293 Harding Avenue
 Municipal Building
 9293 Harding Avenue
 Surfside, Florida 33154
 (305) 861-4863
 (305) 861-1302

Page 1
 Town of Surfside
 Projects Progress Report



Daniel Dietch
 Mayor

Joe Graubart
 Vice Mayor

Marta Olchyk
 Commissioner

Michael Karukin
 Commissioner

Edward Kopelman
 Commissioner

Roger M. Carlton
 Town Manager

**TOWN OF SURFSIDE
 PROJECTS PROGRESS REPORT
 CALVIN, GIORDANO & ASSOCIATES. INC.
 June, 2011**

1. **Community Center** –Work continues to occur seven days per week approximately 11 hours per day, depending on daylight. FPL has experienced delays in energizing the building and it was not energized until late May. The soft opening date is set for the week of June 13, 2011 and the grand opening is tentatively scheduled for June 19, 2011.

May Activities

Exterior

FPL electrical conduit, transformer and switch cabinet were installed to facilitate energizing the building.

The main pool and spa were finished with Diamond Brite and were filled with water to begin testing and commissioning the pool equipment.

The building was primed and painted.

The grading, irrigation, fencing and landscaping east of the bulkhead were installed.

The decorative accent bands were installed throughout the paver deck.

The installation of the curtain wall including sealants and decorative pieces were completed.

Security camera poles and camera wiring were installed.

Existing curb and sidewalk along Collins Ave. were demolished and new curb and sidewalk were installed.

Interior

HVAC (Heating Ventilation Air Conditioning) system was energized and tested.

The plumbing fixtures and bathroom accessories were installed.

The interior finishes were installed (tile, paint, stucco).

Doors and door hardware installation began.

Low voltage wiring was installed (computer data and phone lines)

Kitchen equipment was installed at the concession stand.

2. **Planning and Community Development** – Planning and Community Development –The Planning Department reviewed a site plan application for a hotel at 9449 and 9418 Collins Avenue. The Development Review Group (DRG), which consists of a technical review of the plans, held a meeting with the applicant on May 18, 2011. Comments were provided to the applicant at the meeting and staff is expecting a revised site plan to be submitted by June 1, 2011. The DRG will review the plans a second time and meet with the applicant in June to address any outstanding comments. Once the technical comments are address, a DIC meeting will be scheduled. This site plan and accompanying conditional use application could tentatively be scheduled for the July Planning and Zoning Board meeting and tentatively for the August Town Commission meeting. Planning Staff also prepared an ordinance on vacant storefronts per the direction of the Downtown Vision Advisory Committee (DVAC). DVAC highlighted the issue of unattractive storefronts as an initial concern in the business district and instructed staff to prepare an ordinance addressing this condition. The Beautification Committee provided input on the type and appearance of the window covering. The result of this effort is the proposed vacant storefront ordinance. This ordinance addresses the undesirable appearance of vacant windows in the downtown district by requiring a window covering provided and installed by the Town. Planning staff continues to answer general zoning calls and emails from the public and to review building permits for conformance with the zoning code.
3. **Website, Information Technology, TV Broadcasts** - The Town Commission approved the IT Department’s recommendation for the VOIP(Voice over Internet Protocol) phone system vendor on April 12, 2011. Cabling and installation of the phone system have begun in both the Community Center and Town Hall. The new phone system will be operational prior to the opening of the Community Center. IT staff has completed installation of the new Police Department Server which runs all USA software utilized to access FDLE (Florida Department of Law Enforcement) information by all Police staff. The Police Mobile Server has been installed – this server is utilized to run police specific progress reports when the officers are in their vehicles. IT is also in the process of finalizing the laptop order for the Police Department. Two new desktop computers have also been set up for Police Dispatch. In addition, IT and Parks and Recreation completed the installation of hardware and software and training program for Rec-Trac. The Rec-Trac system will be utilized by the Community Center operating staff. The new copier has been installed and is 100% fully functional. Voice & Data cabling for rough inspection at the community center was completed on May 18, 2011, and the final completion, including wall jacks and rack panels was completed on May 26, 2011. Atlantic Broadband cable internet has been ordered for the Community Center and will be installed as soon as the conduit is available.
4. **Public Utilities / Engineering** – The Utility Rehabilitation Project was distributed to the Pre-Qualified Contractors. Bids were received on April 28th and at 2:00 PM the base bids were read aloud. The bids are currently being reviewed by staff for conformance with the bid / contract requirements. CGA prepared a letter for review by the Town Attorney for the Town Commission to recognize the apparent low bidder.

Stormwater System

Construction plans and specifications – 100% complete. Plans have been reviewed by staff and oversight committee.

Permits – All permits obtained except contractor DERM permit and contractor FDEP well permit.

Construction schedule – Bids received April 28, 2011, with anticipated construction duration goal of 16.5 months. CGA and staff are including an “early bonus system” to achieve this ambitious schedule.

Funding Status:

<u>Grant</u>	<u>Status</u>	<u>Probability</u>
FDEP Grant \$873,500	In place	100%
FDEP Grant \$125,000	In place	100%
FDEP Grant \$100,000	In place	100%
FEMA/PDM Grant \$2,949,550	Re-application occurring	10 %
SFWMD Grant \$570,000	In Process -Funding Significantly Reduced	5 %
FDEP State Revolving Fund Loan \$2,771,000	In process	75%

Sanitary Sewer Collection System

Construction plans and specifications – 100% complete. Plans have been reviewed by staff and oversight committee. The Improvements being completed on the Sanitary Sewer System are required per a consent decree with Miami-Dade County.

Permits – All permits related to the Sanitary Sewer System Improvements have been applied for and issued with the exception of the permit for the Dry Sewer Line, which was a late addition to this project. A permit application for this work has been submitted to the proper agencies for review and approval.

Construction schedule – Bids received April 28, 2011, with anticipated construction duration goal of 16.5 months. CGA and staff are including an “early bonus system” to achieve this ambitious schedule.

Water Distribution System

Construction plans and specifications – 100% complete. Plans have been reviewed by staff and oversight committee.

Permits – WASD, DERM and HRS approvals have been obtained.

Construction schedule – Bids received April 28, 2011, with anticipated construction duration goal of 16.5 months. CGA and staff are including an “early bonus system” to achieve this ambitious schedule.

Grant status - Miami-Dade (GOB) Building Better Community Bonds \$829,000 – In place

Stormwater Master Maintenance

This month, CGA Staff assisted the Town by submitting the Annual Report Form for individual NPDES permits. The stormwater drainage system is being cleaned and maintained on a yearly basis as required by the National Pollution Discharge Elimination System Permit. Repairs and replacement program coincide with the Florida Department of Environmental Protection Stormwater project and grants.

5. **Neighborhood Improvements** - The Neighborhood Improvement-“Additive Alternate” items were presented to the Town Commission prior to being competitively bid as part of the Utility Rehabilitation Project. Recommendation for award to the Contractor which is in the best interest of the Town is being made this evening. After the “Base Bid” items are contracted, we will again begin more detailed presentations and discussions regarding the “Additive Alternate” items.



Town of Surfside Commission Communication

Agenda Item # 3F

Agenda Date: June 14, 2011

Subject: Document Imaging and Records Management Contract Award to Municipal Code Corporation

Background: In accordance with State Statute, the Town Commission is charged with the responsibility of the proper care and preservation of municipal records. The Town Commission recognized the need to begin a document imaging and records management program and provides for the same in the FY 10-11 budget.

Analysis: The Town of Surfside has had a long term relationship with Municipal Code Corporation (MCCI) which is the provider of codification services for the Town Code. Municipal Code Corporation (MCCI) also is a provider of Laserfiche software and services to more than 400 cities and counties and offers support, training and updates to the software. Laserfiche software will allow digital archiving of town records and allow a full text search of those records. The State of Florida does not have a document imaging contract. Therefore, it is proposed that the Town of Surfside, using a piggyback from the State of Texas, enter into an agreement with MCCI so that they will provide Laserfiche software, licensing, training and professional services at a reduced cost due to the size of the Texas contract.

Budget Impact: The FY 10-11 budget includes \$18,000 for the document management software, a scanner for the Town Clerk's office and computer hardware upgrades; \$2,500 for overtime/staffing and \$6,000 for a Building Department scanner totaling \$26,500. In the interim, we are advised of additional hardware needed to secure the data that will be scanned. The current budget breaks down as follows:

Laserfiche software \$10,407
Tape Backup drive for IT \$5,246
Backup Software for IT \$1,492
Dell Server for IT \$4,850
Fujitsu FI-6650 Scanner (Building Dept.) \$4,150
Fujitsu 5130C Scanner (Town Clerk's Office) \$900
Total request \$27,045 (+\$545 over total budget)

Tens of thousands of pages of documents are already on file in the Town Clerk's Office and need to be scanned and safely stored for historical purposes. Thousands of additional documents are on file in the Building Department. Both the Building Department and Town Clerk's Office have constant inquiries for copies of documents. Searching for a record is labor intensive and expensive. Admittedly, if no record is found, staff cannot be sure it is because no record exists or that it is because no record can be found.

The Town Clerk's Office has begun the retrieval of boxes from Iron Mountain where they have laid dormant for the last several years. We have started the process of reviewing, cataloging and filing

records. We once thought there were over 400 boxes stored at Iron Mountain, but recently learned that there may be upwards of 700 boxes. We were informed that in some cases a box number was assigned to several boxes, for example 5 boxes with the number 1. The annual cost of storage is approximately \$5,000 per year without substantial charges for the retrieving of documents as needed.

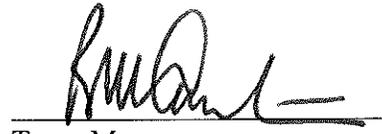
Documents will be scanned, electronically catalogued and stored by expiration date to assist with future disposal projects. Document management will mean eventually that all Town departments will have access via their computer to the scanned information and they will be able to easily search for items. Time and funds invested in this project will ultimately be saved because future searches will take less staff time.

It is also recognized that this is an on-going project. As we continue to produce paper each day, we will need to scan and file it in an organized way for future searches and timely disposal.

Staff Impact: Training and implementation of the software will be done with the current staff.

Recommendation: It is recommended that the Town Commission adopt the Resolution to enter into an agreement with MCCI to implement Laserfiche software and expend funds to purchase the required hardware to implement a document imaging program.


Department Head


Town Manager

RESOLUTION No. _____

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, AUTHORIZING THE TOWN TO ENTER INTO AN AGREEMENT WITH MUNICIPAL CODE CORPORATION LLC., OF FLORIDA AND THE TOWN OF SURFSIDE PIGGYBACKING OFF THE COMPETITELY BID CONTRACT AWARDED BY THE STATE OF TEXAS; AUTHORIZING THE TOWN MANAGER AND TOWN ATTORNEY TO DO ALL THINGS NECESSARY TO IMPLEMENT THE TERMS OF THE CONTRACT; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town of Surfside has a need for proper care and preservation of public records and documents for compliance with Florida law; and

WHEREAS, the Town Commission has recognized the need to begin a document imaging and records management program by piggybacking off a competitively bid contract by the State of Texas with Municipal Code Corporation, LLC. of Florida (hereinafter MCCi); and

WHEREAS, the Town Commission of the Town of Surfside, Florida wishes to enter into an Agreement with MCCi by piggybacking off the competitively bid contract awarded by the State of Texas for Laserfiche software, services, and equipment;

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 incorporated herein by reference.

Resolution No. _____

Section 2. Authorization to enter into an agreement. The Town Commission hereby authorizes the Town Manager to enter into the Agreement by and between MCCi and the Town of Surfside attached as Exhibit "A."

Section 3. Implementation. The Town Manager and the Town Attorney are hereby authorized to take any and all action necessary to implement this Resolution and Agreement in accordance with the terms, conditions and purposes of this Resolution and Agreement.

Section 4. Effective Date. This Resolution shall become effective immediately upon its adoption.

PASSED AND ADOPTED this ____ day of _____, 2011.

Motion by Commissioner _____, second by Commissioner _____.

FINAL VOTE ON ADOPTION

Commissioner Michael Karukin _____
Commissioner Edward Kopelman _____
Commissioner Marta Olchyk _____
Vice Mayor Joseph Graubart _____
Mayor Daniel Dietch _____

Daniel Dietch, Mayor

Resolution No. _____

ATTEST:

Debra E. Eastman, MMC
Town Clerk

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



Lynn M. Dannheisser
Town Attorney

Resolution No. _____



Experience Excellence

Municipal Code Corporation

SALES DEPARTMENT

PO Box 2235 • Tallahassee, Florida 32316

TELEPHONE (800) 342-2633 • FAX (850) 701-0715

Logan Di Liello, Account Executive • extension 725 • logan@mccinnovations.com

March 31, 2011

Debra Eastman
Town Clerk
9293 Harding Avenue
Surfside, Florida 33154

Dear Ms. Eastman:

I enjoyed speaking with you recently regarding the Laserfiche software. Pursuant to our discussion we are pleased to enclose our Professional Services Proposal. While reviewing the proposal please keep in mind the following advantages of being a customer of MCCI:

- **MCCI is the #1 ranked Laserfiche VAR** – For the past three years, MCCI was ranked as the #1 Laserfiche VAR in the United States.
- **MCCI employees have superior credentials** – MCCI’s staff is well-trained and holds multiple certifications in security, HIPPA, Laserfiche certifications and CDIA+ to give you the peace of mind that we are simply the best at what we do.
- **MCCI focuses on local governments**- MCCI was created by Municipal Code Corporation to focus on innovative technologies for Local Government. MCCI provides Laserfiche software and services to more than 400 cities and counties.
- **MCCI offers superior project management services**- MCCI utilizes a multi-layered support team geared towards offering each client multiple contacts to enhance the usage of every product implemented. In addition, all MCCI technicians have advanced professional certifications and are committed to ethical, effective and friendly support.
- **MCCI offers superior support**- MCCI offers support through our help desk, email, and toll free number, and we also have a phenomenal online support center that gives end users access to training manuals, “how to” checklists, training videos, a knowledge base, and software updates.

TX DIR STATE CONTRACT # DIR-SDD-980: MCCI has an active state contract with the State of Texas. The state of Texas allows governmental entities outside of the state of Texas to utilize the contract. The following statement of work is based on the MCCI’s price schedule from our DIR contract. A copy of the contract can be found by visiting <http://www2.dir.state.tx.us/ict/contracts/Pages/ProductsServices.aspx>, and searching by MCCI’s contract number: “DIR-SDD-980”.

If you have any questions concerning our proposal or desire additional information, please do not hesitate to contact me on our toll-free number. We appreciate your interest and hope that we will have the pleasure of working with you and serving the Town of Surfside, FL.

Sincerely,

Logan Di Liello
Account Executive

Executive Summary

Laserfiche has been a resource for over 21,000 organizations since 1987. Laserfiche creates elegant document management solutions that help organizations run smarter. Dedication to customer-driven innovations has built a suite of products and services that address organization-wide business problems from executive, records management, and information technology and end-user perspectives.

Laserfiche is a unified solution that manages all your organization's documents and records, regardless of location or media. Laserfiche strikes a balance between security and accessibility, protecting information while providing efficient access to keep staff working at maximum productivity. Please keep in mind the following competitive advantages of Laserfiche:

- Digital Archiving- Digital archiving is the storage of paper and electronic documents in accessible electronic media with long-term preservation capability. It is cost effective because it saves physical storage space and it cuts media maintenance costs. Original documents can be stored off-site or destroyed as necessary. This simplifies the disaster recovery process by allowing you to backup documents on digital media and stores them off-site.
- Business Process Automation – Laserfiche's Workflow functionality utilizes the Microsoft Windows Workflow Foundation and allows for automating approval processes, document routing, providing additional integration options, and much more.
- Records Management – Laserfiche's Records Management Edition meets the Department of Defense (DoD) standards, and augments traditional ECM functionality by adding Records Management tools to manage retention, disposition, vital records, and much more.
- Comprehensive Security- Laserfiche Comprehensive Security allows you to control the security of your documents on many levels. You determine what functions, such as scanning and printing, each staff member may use. Security features are easy to administer, records managers can administer most security functions without IT staff assistance.
- User Friendly- Laserfiche is very easy to learn and use. It has a folder tree structure similar to Windows Explorer to make it easy to use. Your office can begin to scan and retrieve documents almost immediately after installation.
- Intelligent Search- Laserfiche lets you search your documents based upon full-text search, index search, and document and folder name searches. The Laserfiche full-text search unlocks the contents of your documents; if you need to find a word or phrase within a document, the full-text search retrieves it immediately. There is not any other imaging software that allows you this many searching possibilities.
- Web Access- Laserfiche allows you to publish your documents on the web with our WebLink software. You decide which documents you wanted published and WebLink publishes them on the web without having to use HTML programming. Users can then search the site to find the information they need using the Intelligent Search feature.
- Integration- Laserfiche is able to integrate with current software and hardware on existing systems.
- Service- Laserfiche understands the importance of a thorough support service. From technical help to the latest document imaging news, Laserfiche is dedicated to forming a lasting, complete service relationship. Should you need technical assistance; a qualified professional will be available to help you.

STATEMENT OF WORK

<u>ECM SOFTWARE LICENSING</u>	Qty	Cost	DIR-SDD-980	Total
<input checked="" type="checkbox"/> Avante Server for SQL Express	1	\$1,500.00	\$1,410.00	\$1,410.00
<input checked="" type="checkbox"/> LF Full Named User <i>Includes Snapshot, Email, and Workflow</i>	5	\$500.00	\$470.00	\$2,350.00
<input checked="" type="checkbox"/> LF Starter Audit Trail, 10% Add On to All Named Users	5	\$50.00	\$47.00	\$235.00
<input checked="" type="checkbox"/> LF Scanconnect <i>*required for each scanner purchased/utilized</i>	2	\$165.00	\$155.10	\$310.20
<input checked="" type="checkbox"/> LF Workflow		Included	Included	Included
<i>Document Management Software and Licenses Total</i>				\$4,305.20

ANNUAL SOFTWARE SUPPORT - BASIC LSAP

<input checked="" type="checkbox"/> Avante Server for SQL Express	1	\$300.00	\$270.00	\$270.00
<input checked="" type="checkbox"/> LF Full Named User <i>Includes Snapshot, Email, and Workflow</i>	5	\$100.00	\$90.00	\$450.00
<input checked="" type="checkbox"/> LF Starter Audit Trail, 10% Add On to All Named Users	5	\$10.00	\$9.00	\$45.00
<input checked="" type="checkbox"/> LF Scanconnect <i>*required for each scanner purchased/utilized</i>	2	\$34.00	\$30.60	\$61.20
<input checked="" type="checkbox"/> LF Workflow		Included	Included	Included
<input checked="" type="checkbox"/> First Year Managed Services	1	\$562.50	\$562.50	\$562.50
<input checked="" type="checkbox"/> Service Level Agreement				\$165.24
<i>Annual Support Total</i>				\$1,553.94
<i>For budgetary purposes, the Client should include \$1553.94 in annual budget for renewal of LSAP, SLA and Managed Services of the above quoted software.</i>				

MCCI PROFESSIONAL SERVICES

<input checked="" type="checkbox"/> Onsite Installation & Training of software, per day <i>Travel expenses included.</i>	1.5	\$2,100.00	\$1,932.00	\$2,898.00
<input checked="" type="checkbox"/> MCCI Project Management Services		N/A	N/A	\$1,600.00
<input checked="" type="checkbox"/> Shipping and Handling Fee for Laserfiche Software				\$50.00

Total Project Cost **\$10,407.14**

PAYMENT & BILLING TERMS

MCCI will invoice fifty percent (50%) of the total contract amount upon receipt of the signed contract. Balance of total project will be invoiced and billed upon completion of the proposed installation and training services. Sales Tax will be included where applicable. Payment will be due upon receipt of an invoice.

SERVICE OFFERINGS

To determine which services and products are included with your project, please refer to the Statement of Work above.

MCCI prides itself in providing high quality professional services and support. Providing the most advanced level of tech support via the web, e-mail and phone, you can rest assured that MCCI will provide you with profession installation, training and support services. Our clients can rely on us to provide a continual flow of information through our technical bulletins and newsletters.

MCCI PROJECT MANAGEMENT SERVICES

MCCI Project Management services include CDIA-certified MCCI professionals. The CDIA (Certified Document Imaging Architect) is awarded after a comprehensive and rigorous exam focused on a broad spectrum of document and records management objectives. MCCI administers these services and concentrates on defining business requirements and the deliverables that follow.

Initial Implementation - The assigned MCCI Project Manager will perform a remote pre-installation solution development plan including configuration of security rules for the Client prior to installation and training. This consultation will include a review of current document organization and retrieval practices to determine desired indexing methods, as well as other basic system set up needs. Once this information has been gathered and provided to the MCCI project manager, the basic folder structure, document naming scheme, scheme, and template set-up will be configured prior to onsite training. Project Management Services may also be included for special projects, and remote training, as well as specific departmental needs.

Future Implementations (additional software) – MCCI Project Management services may be included to provide remote training and/or installation, template creation, specific consultation needs such as security set up, or others needs related to adding additional software and/or departments for the defined project.

These services are included to ensure the Client is prepared for the final project implementation.

GAP ANALYSIS

The MCCI Gap Analysis includes input by CDIA-certified MCCI professionals. The MCCI Gap Analysis is the study of the differences between two different information systems or applications, often for the purpose of determining how to get from one state to a new state. A gap is sometimes spoken of as "the space between where we are and where we want to be," and the Gap Analysis is undertaken as a means of bridging that space. MCCI offers Gap Analysis to new and existing MCCI customers, both with similar deliverables.

New customers may be totally new to Records Management/Document Management, or could be transitioning from one system to another. Either way, Gap Analysis not only serves the consulting needs of a project, but can also mitigate many risks that are inherent and in a new project. Risks such as scope creep, unforeseen needs (people, conversions, integrations, equipment), and unknown stakeholders, can be identified and cleared up in the very beginning of the project.

Existing customers may consider Gap Analysis when looking to expand their system into other departments or enterprise-wide. It is also a great opportunity to investigate and report on how the system is being used versus how it was intended to be used – the result being a plan of action.

SERVICE OFFERINGS

Deliverables –The Gap Analysis process involves determining, documenting and approving the variance between business requirements and current capabilities. MCCI takes it a step further by providing recommendations and an action plan. The final deliverable is a report which will detail the following:

- A summary of the current document flow path, with recommended changes/requirements
- Equipment, software, and staffing recommendations
- Storage needs for each department
- Recommendations on the timing of phasing in departments (based on needs/complexity)
- Implementation plan

The amount of time/cost of a Gap Analysis is dependent upon the system size and number of departments to be involved.

LASERFICHE BASE SOFTWARE TRAINING SERVICES

The client is provided with either instructor-led hands-on training or train-the-trainer training in the operation of the Laserfiche Software and Plug-ins, and the scope of all training services to be performed is notated in the Statement of Work. Below are some sample outlines based on user-roles and system modules:

System Administration Training

- Client and Server Installation Procedure
- Users and Groups – Active Directory
- Security
- Templates
- Tags
- Document Relationships
- Records Management
- Volumes
- System settings
- Back up Procedures
- Troubleshooting Procedures
- Technical Support Overview

Full User Training

- Introduction to Laserfiche
- Folders and the Folder Browser
- Scanning and Importing
- OCR and Full Text Indexing
- Document Display
- Index Card/Templates
- Document Retrieval by Index Fields or Text (Searching)
- Annotations
- Extracting a Document from Laserfiche
- Briefcasing and Migrating Documents
- Customize Laserfiche
- Volumes
- Security

SERVICE OFFERINGS

- Advanced Features – Plug-ins

Records Management Module Training

* Please note that client should have full knowledge of internal records management policies and have prior experience in records management.

- Record Series
- Record Folders
- Document Links
- Versioning
- Security Tags
- Vital records
- Cutoff criteria
- Cutoff eligibility
- Retention Period
- Disposition Actions
- Hold Period
- Time Dispositions
- Event Dispositions
- Interim Transfers
- Final Disposition
- Destruction
- Permanent Records
- Accession
- Freezing

Admin Console Setup for Records Management

- Cycle Definitions Setup
- Locations Setup
- Retention Schedules Setup
- Cutoff Instructions Setup

LASERFICHE WORKFLOW CONFIGURATION TRAINING

MCCi will work with the Client to configure a single defined process based on an agreed upon Measurement of Success (MOS).

Client Deliverables

- Provide MCCi with a mapped out/narrative of specified business process
- Define each resource and activity of the business process
- Define the Measurement of Success in conjunction with MCCi
- Appointment of Workflow Configuration Administrator
- Metadata requirements
- Sample reports from this process
- IT resources
- Test Database

MCCi Deliverables

- Up to 2 days onsite with an MCCi Project Manager
- Install and integrate Laserfiche Workflow with current Laserfiche system

SERVICE OFFERINGS

- MCCi project manager to collaboratively identify the MOS
- Workflow process based on defined MOS
- Define and set up metadata structure to support the specified workflow process
- Offer best practices in security to support the specified workflow process
- Project Management services up until MOS signoff
- Workflow Managed Services for up to 30 days past MOS signoff date
- Workflow Configuration Administrator Training
- Workflow definitions report – initial and editable draft

Measurement of Success (MOS): Based on MCCi’s experience, a pre-requisite for providing and/or receiving consulting services is to jointly define an attainable MOS. The MOS is intended to address the desired outcome of the workflow configuration and will be based primarily on the defined resources/activities provided by the client. A typical initial workflow configuration falls within scope listed below. If these levels are exceeded the business process will be broken down to stay within the scope of services to be offered herein.

Process Symbols	Maximum of 10
Decision Gateways	Maximum of 10
Interaction with external data sources	None <i>Interaction with external data sources is not funded through this package</i>
Document instance per process action	1 <i>Bulk processing is not funded through this package</i>
Custom Scripts	None <i>Custom Scripts are not funded through this package. Workflow process must lend itself to configuration within the Laserfiche Routing, Laserfiche Activities and General Activities of the Workflow Designer Toolbox.</i>

MCCi’s Laserfiche Workflow Configuration Training service is designed to be highly collaborative. The primary end goal is for the client to have a trained Workflow Configuration Administrator and an initial business process (or one portion of a complex process) configured based on the defined MOS. As a prerequisite, the client’s Workflow Configuration Administrator should be a business process savvy individual with good technical skills. This is the person tasked with handling future workflow configurations, including any modifications needed to the configuration of the specified business process.

LASERFICHE WORKFLOW CONFIGURATION TRAINING – TRANSPARENT RECORDS MANAGEMENT

Measurement of Success (MOS) for this service is configuring Laserfiche Workflow to facilitate Transparent Records Management for one department and up to four document types.

Transparent Records Management: Automatically classifying documents as they are created and route document to appropriate records series/record folder resulting in automatic calculation and assignment of cutoff and disposition eligibility dates. Folder structures are separated and created in the repository for records managers and non-records managers. Using entry access rights, the records management layout will only be visible to records managers and the document management layout will only be visible to non-records managers. Administrators will be allowed to see both. Using Laserfiche Workflow 8, the

SERVICE OFFERINGS

process of classifying and filing records can be automated with security providing document access to both types of users.

Client Deliverables

- Appointment of Workflow Configuration Administrator
- IT resources
- Laserfiche Records Management Edition 8.x
- Laserfiche Workflow 8.x
- A strong understanding of Laserfiche’s records management and document management tools, terms and concepts, especially with regard to Laserfiche security.

MCCI Deliverables

- Up to 2 days onsite with an MCCI Project Manager
- Configure Transparent Records Management according to the MOS
- Workflow process based on defined MOS
- Define and set up metadata structure to support the specified workflow process
- Offer best practices in security to support the specified workflow process
- Workflow Managed Services for up to 30 days past Transparent Records Management implementation
- Transparent Records Management Workflow Configuration Administrator Training
- Workflow definitions report – initial and editable draft

Measurement of Success (MOS): A typical initial Transparent Records Management workflow configuration falls within scope listed below. If these levels are exceeded the business process will be broken down to stay within the scope of services to be offered herein.

Process Symbols	Maximum of 10
Decision Gateways	Maximum of 10
Interaction with external data sources	None <i>Interaction with external data sources is not funded through this package</i>
Document instance per process action	1 <i>Bulk processing is not funded through this package</i>
Custom Scripts	None <i>Custom Scripts are not funded through this package. Workflow process must lend itself to configuration within the Laserfiche Routing, Laserfiche Activities and General Activities of the Workflow Designer Toolbox.</i>

MCCI’s Transparent Records Management Workflow Configuration Training service is designed to be highly collaborative. The primary end goal is for the client to have a Transparent Records Management process configured based on the defined MOS. As a prerequisite, the client’s Workflow Configuration Administrator should be a business process savvy individual with good technical skills. This is the person tasked with handling future workflow configurations, including any modifications needed to the configuration of the specified business process.

LASERFICHE WORKFLOW MANAGED SERVICES

MCCI 's Workflow Managed Services package is a post-implementation service, and is designed to assist the client's Workflow Configuration Administrator with ongoing consulting and configuration needs.

Workflow Managed Services may be used for the following:

- Additional Workflow Set Up Consultation – MCCI continues to consult and make recommendations on best practices for modifying existing / creating new workflow configurations.
- Additional Remote Training – MCCI offers additional training for the client's Workflow Configuration Administrator. This is ideal for refresher training, as well as for new personnel in the event of turnover.
- Ongoing Security Consultation – Laserfiche security plays a much larger role when business processes are being automated by Laserfiche Workflow. MCCI assists the client's Security and Workflow Configuration Administrators to offer security best practices to align with workflow configurations.
- Leveraging existing system(s) – MCCI will help identify more efficient ways of utilizing the Laserfiche product suite, as well as how to leverage other systems and the related data contained therein.
- Meta-data consultation – Various meta-data objects must be created/modified to match up with specific workflow needs. MCCI will consult and help identify meta-data needs.
- Expiration & Additional Services - MCCI's Managed Services is an annual package and will expire on the same date as your SAP plan. Not to exceed The service can also be adjusted for any additional hours needed.
- Remote Access Support – Managed Services are delivered remotely. Remote Access Support allows our helpdesk staff to access your machines remotely to resolve problems faster. The use of Remote Access Support saves you both time and money by reducing the delays in resolving software issues without costly on-site visits.

AFFINITY INTEGRATION CONFIGURATION & TRAINING

Includes:

- Configuration of integration for up to one department within one application
- "Train the trainer" to empower the client to configure other integrations
- All services are conducted remotely, unless an MCCI representative is onsite for other implementation needs and onsite time permits

Client Deliverables

- Application to be integrated with must meet Affinity requirements
 - <http://www.umdata.com/DataNOWAffinity/requirements.html>
- Testing – A test copy of Affinity is available prior to purchase. *Client is responsible for testing to make sure needs are met prior to purchase*
- Assistance in defining the Measurement of Success (MOS)
- IT resources - Appointment of Affinity Administrator
- Laserfiche metadata requirements

MCCI Deliverables

- Install and integrate DataNow Affinity within current Laserfiche system environment pursuant to the Affinity requirements
- Assistance in configuring integration for up to one department within one application

SERVICE OFFERINGS

- At a minimum, if certain data fields cannot be mapped, MCCi will set up Affinity as an image enablement toolbar
- MCCi project manager to assist with defining the MOS
- Affinity integration configuration based on defined MOS
- Define Laserfiche metadata structure to support the specified integration
- Define Laserfiche security to support the integration
- Project Management services up until MOS is met
- Managed Services for up to 30 days past MOS
- Affinity Administrator Training

Measurement of Success (MOS): Based on MCCi's experience, a pre-requisite for providing and/or receiving consulting services is to jointly define an attainable MOS. The MOS is intended to address the desired outcome of the Affinity integration configuration and will be based primarily on the type and capabilities of the application to be integrated with, along with how related data should be organized in the Laserfiche system.

MCCI LASERFICHE ARCHIVE SERVICES BY MUNISCAN

Laserfiche Archive Services are implemented by MCCi's MuniScan department. The service is designed to populate a client's new Laserfiche system with a subset of back-file records, which heightens the system training experience by having a great example to follow. To experience the complete benefit, it is recommended that Laserfiche Archive Services be completed prior to the initial system implementation. While one of MCCi's IT Project Managers consults with the client on the setup and configuration of Laserfiche, a MuniScan Project Manager will assist in determining the scope of the Laserfiche Archive Services based on budget, file types, quantities, indexing requirements, and the file structure desired. Laserfiche Archive Services helps to ensure a successful Laserfiche implementation and a high adoption rate from the very beginning of the Laserfiche project.

MCCi will scan documents using an interface that provides a wide variety of image output formats to allow for easy integration into your current records management system. These image formats include TIFF, JPEG, PDF, Laserfiche, etc. MCCi utilizes slip-sheets to determine document breaks and indexing information. The slip-sheet is created by MCCi to accommodate your organization's indexing needs. Once MCCi has received documents for scanning, the following process will occur according to the terms laid out in MCCi's pricing proposal and may vary according to services selected:

- Pre-Scanning Consultation - A Pre-Scanning Consultation will be scheduled via a telephone conference after receipt of signed contract. This consultation is designed to go over the following: the signed contract and terms, folder structure, current searching methods, document naming scheme, slip-sheet customization, document preparation requirements, and document shipment and/or pick up.
- Document Preparation - The process of document preparation begins with removing any materials that may prohibit the document from being fed through the scanner (i.e. Removal of documents from file folders, Removal of staples, paperclips, tape, clips, etc) and is described as Document Preparation. Upon completion of scanning, MCCi will organize the documents into their original order as received from the Client. Documents attached together by devices, such as staples and paper clips, will not be reattached. Documents filed in folders, will not be re-inserted into those folders if MCCi uses separator sheets (all files and folders will still be kept in order). The process of reattaching devices and/or re-inserting files into folders is described as Document Re-Preparation and offered in addition to Document Preparation only if requested by the Client.

SERVICE OFFERINGS

- Document Organization & Indexing - Based on the scope of the project and outcome of your Pre-Scanning Consultation, MCCI will organize and index your documents. This will enable them to be searched and organized by three different methods. The first method includes organizing your documents in a tree-like folder structure, similar to Windows Explorer. This provides a visual method to store and locate your documents. The second method involves the use of electronic template cards. These templates contain unique information pertaining to that particular document. Once a template layout has been agreed upon, no changes can be made once the job has already been started. The third method includes running a process called optical character recognition (OCR), allowing for full-text indexing and searching capabilities. The OCR process converts printed words into alphanumeric characters dependent upon font and paper quality. This enables each occurrence of an OCR'd word to be searched and retrieved. Microfilm, Maps, and Handwritten documents will be searchable by keyword index only (via template card).
- Document Quality Control - MCCI performs a thorough quality control process after the job has been completed. Each scanned image is inspected for quality, legibility, and accuracy. Steps are taken to ensure each document has been captured, the quality of the scanned image is comparable to the original, and all manual indexing errors have been corrected. MCCI cannot be accountable for records not reflected in original inventory report as provided by Client. MCCI will correct only those discrepancies reported within 90 days after delivery of hard copy materials.
- Document Transportation - The client is required to package all materials per MCCI's instruction prior to delivery of materials to MCCI facilities. If the client chooses to utilize MCCI's pickup and delivery service (offered in select states), pricing is based on picking up the entire project described in the scope of services in one shipment. If additional trips are required due to the Client not having all the documents ready for pick up, additional charges will be applied. If the client chooses to ship via a certified carrier, the client incurs all shipping costs.

BUSINESS PROCESS ANALYSIS

MCCI will work with the Client to document a current business process. By interviewing process stakeholders and documenting facts and feedback, MCCI is able to deliver a comprehensive report. This level of engagement is typically done as a needs analysis exercise prior to attempting to automate an existing business process.

Client Deliverables

- Assignment of a Project Manager who will be responsible for:
 - Acting as the main point of contact for MCCI.
 - Identifying and providing contact information for process stake holders
 - Coordinating and scheduling site visits so that stakeholders are aware and set aside the appropriate amount of time to focus on working with MCCI
 - Coordinating and scheduling conference calls/web meetings between process stakeholders and MCCI as part of the document review process
 - Facilitating access to any/all resources needed for a thorough analysis
- Full participation by all process stakeholders in the interview, review, and finalizations stages

MCCI Deliverables

- Introductory call: Share contact information, and review scope of project
- Stakeholder Interviews: Up to 2 days onsite with Business Analyst
 - Conduct workshops and interviews with customers
 - Document Business Processes on whiteboard during workshops and interviews
- Business Process Report Drafting & Review: Up to 30 hours

SERVICE OFFERINGS

- Draft a Business Process/requirements document
- Review document with customers and make revisions where necessary.
- Business Process Report Delivery: Up to 1 day onsite with Business Analyst
 - Onsite review and presentation of finalized report
- Editable copy of Business Process Report for future use

RECORDS MANAGEMENT CONSULTING

When moving to an enterprise wide Electronic Records Management System, it is important for a Records Program and Records Policies to be in place beforehand. MCCI's Records Management Consulting service focuses on revision and/or creation of such programs and policies. If needed, the service should be completed prior to implementing MCCI's Laserfiche Records Management module. Pricing is dependent on the level of service needed and can be determined by setting up a meeting with MCCI and the appropriate Records Consultant. Services cover a broad spectrum to include designing records management plans, designing systems, identifying records eligible for destruction, assisting with legal compliance, providing training and nearly any other records and information related service requirement.

ELECTRONIC DATA MIGRATION

MCCI has the capability to migrate the Client's legacy data and provide the Client with the migrated data on CD/DVD/Removable hard drive in the desired format according to the specifications listed.

SOFTWARE DESCRIPTIONS

To determine which products are included with your project, please refer to the Statement of Work

LASERFICHE AVANTE

Laserfiche Avante solution is a named user model and starts out with a feature rich system that is based on the number of people who will be using the system. It is designed for small to mid size organizations and helps you capture, manage, distribute, and work with information in diverse working environments. Avante comes with Laserfiche Workflow and allows your organization to move beyond simple document routing to automate everyday tasks, optimize business processes, and share information with a wide variety of applications. Avante systems allow you to choose from SQL Express or full MS SQL platforms and incrementally expand the system with records management edition and other plug-ins such as auditing and batch processing. The Laserfiche Avante pricing structure makes it simple and affordable to add new features and functionality to your Laserfiche system as your needs change.

LASERFICHE RIO

The Laserfiche RIO solution is geared towards Enterprise clients with 100 named users or more. RIO and each RIO license comes coupled with Workflow, Web Access, Snapshot, Email, and Advanced Audit Trail. This licensing structure makes it much easier on IT administration, especially when dealing with a large user base. In addition, RIO supports an unlimited number of application servers, as well as repositories, making it well suited for expansion and testing needs. RIO can either connect to MSSQL or Oracle for the backend database, and of course many of the same optional Laserfiche modules such as the Records Management and Weblink Public Portal licenses are available with RIO.

Feature	Avante	Rio	Comments
Database	SQL Express, SQL, Oracle	SQL, Oracle	
Retrieval Users	Only Public Portal <u>Web Link</u>	Only Public Portal <u>Web Link</u>	Includes Email
Full Named Users	Unlimited	100 - Unlimited	Includes Workflow, Email and Snapshot for Avante; Includes Workflow, Email, Snapshot, Web Access and Advanced Audit Trail for Rio.
Retrieval Named Users	n/a	200 - Unlimited	Includes Email for Rio, minimum purchase of 1,000 users
Default Servers	1	Unlimited	
User License Model	Named	Named	
Model	WF automation / BPM	Enterprise	
Page Limit	Unlimited	Unlimited	
Public Access	Weblink Public Portal (25, 75, PP)	Weblink Public Portal (PP)	Unlimited versions are licensed per Laserfiche application server, and per processor. The licensed number of processors must be equal to or greater than the number of processors (CPUs) on the correlating Laserfiche application server.

SOFTWARE DESCRIPTIONS

<i>Upgrade Path</i>	Rio	n/a	
<i>Laserfiche Versions</i>	Lf 8.1 and later	Lf 8.0.1 and later	

LASERFICHE PLUG-INS

Laserfiche Plug-Ins, Utilities, and Tools

MCCI can provide additional Laserfiche Plug-ins Utilities, & Tools software. Laserfiche offers a selection of add-ons and development tools designed to let you tailor Laserfiche to meet your needs. Certain Plug-Ins may be bundled differently based on the Laserfiche platform.

Laserfiche Batch Processing Tools

- Laserfiche® Quick Fields™ automatically captures useful information from paper and electronic documents and organizes it for fast retrieval. Quick Fields transforms data capture from a costly and labor-intensive operation into an efficient process by collecting precise pieces of information from the masses of unstructured data flowing into your organization. Quick Fields improves the speed and accuracy of data capture while giving authorized staff instant access to the information they need to work effectively.
- Bar Code Validation Package - The Bar Code add-on reads bar codes on a specified page in the document. The value returned by the bar code process can be used to identify a page, populate a field, determine the document name, or determine where the document will be stored. Bar Code is very powerful when combined with Real Time Lookup. Supported barcode formats: Codabar, CODE 39, CODE 128, EAN 8, EAN 13, Interleaved 2 of 5, UPCA, and UPCE.
- QF Real-time Look up Validation Package: Lookup populates template fields and validates metadata by retrieving data stored in third-party databases and other applications.
- QF Zone OCR Validation Package: Images that contain clearly printed or typed information can be converted to text files through a process called OCR (Optical Character Recognition). Once text has been extracted from an image, it can be sent along with the image to the repository. Once the document has been imported into the repository, the extracted text will be associated with the corresponding image in the document. The International Zone OCR add-on will scan a zone on an image for text. Only text found within the zone will be extracted. The data returned by this process can be used to identify a page, populate a field, determine the document name, or determine where the document will be stored. The International Zone OCR add-on can be installed when Quick Fields is first installed or after it has already been installed.
- Laserfiche Import Agent: Laserfiche Import Agent is a capture tool that can bring files into a Laserfiche repository from the Windows file system. Any file that can be stored in Laserfiche can also be imported via Import Agent. What's more, Import Agent allows for scheduled and selective imports, so that users can set up specific criteria for what gets imported when. Import Agent can create fully OCR'd and indexed documents complete with template information and filed in the repository.
- QF Forms Alignment: automatically repositions scanned documents to match a master form, correcting for scanning errors and improving data extraction.
- QF Document Classification: designed for clients who deal with multiple forms, and will recognize and process multiple document types.

- QF Auto Stamp/Redaction/Bates Numbering - The Bates stamp option is a document auto-numbering annotation option
- QF Optical Mark Recognition: detects handwritten information, including marks on surveys, tests and ballots.
- Quickfields Agent: enables administrators to schedule forms processing around the clock and run Quick Fields sessions without operator intervention, reducing labor costs and optimizing business processes.
- QF Forms Identification: automatically recognizes the form or document based on its overall structure, even in the absence of bar codes, form data or other distinguishing information.
- QF Forms Extractor: removes form outlines to isolate data for more accurate capture.
- Laserfiche ScanConnect™: allows ISIS scanning. A collection of ISIS scanner drivers is included with Laserfiche ScanConnect. These drivers allow images to be scanned through supported scanners. ScanConnect 7.x can be purchased as an add-on to both Laserfiche scanning and Quick Fields.
- Laserfiche Snapshot™ Laserfiche Snapshot can generate images and text from an electronic file (e.g. a Word document, a web page, a text editor, etc.). The files generated by Laserfiche Snapshot capture the content of the electronic file at the time that it was processed. In other words, they represent an accurate portrayal of an electronic file at a given point in time. The images and text created from an electronic file are then stored in a Laserfiche repository. As you can see, Laserfiche Snapshot can be used as a tool to archive a particular version of an electronic file. Laserfiche Snapshot can process any electronic file that can be opened with a Windows application that has printing capabilities. This feature is automatically included with every Full User purchase.
- OCR Scheduler for Laserfiche is a tool developed by MCCI and provides a simple and effective way to mass OCR documents in Laserfiche. It allows administrators to configure multiple OCR sessions. Sessions are created based on selecting folders within a specific Laserfiche Repository and scheduling the time to begin the OCR process. Benefits:
 - Efficiency: Clients can schedule the tool to perform the OCR function, rather than tie up machines during the normal working rhythm.
 - Support/Search Content: Leaving the responsibility in users hands to conduct OCR can lead to incomplete processing. The tool provides assurance that everything in need of OCR is being addressed without end user interaction.Requirements:
 - Laserfiche Server Versions: 8 (runs as a service)
 - Laserfiche Client version 8 is required
 - Laserfiche Licensing Recommendation: 1 dedicated LF Named User license
 - Windows Operation Systems: 32 & 64 bit
 - Does not support OCR for Electronic Documents.

Distribution Plug-Ins

- Laserfiche WebLink™ the WebLink module publishes select documents in a Laserfiche repository to an intranet or the Internet in read-only form. Documents can be made available through the Web almost instantly, and users need only an Internet browser in order to access them. Built on ASP .NET, WebLink can be customized to match the look and feel of an organization's Internet or intranet site.
- Laserfiche WebAccess Laserfiche Web Access is a Web browser-based thin client offering virtually all of the document management capabilities of the standard Laserfiche interface. Web Access allows your IT staff to roll out high-volume Laserfiche access without increasing your organization's

application support burden. Authorized users organization-wide enjoy simultaneous access to documents, whether they are using the corporate intranet or logging in from a branch office.

- Laserfiche Plus™ Laserfiche Plus allows the information stored in a Laserfiche repository to be portable. Laserfiche documents published by Laserfiche Plus can be viewed by anybody, regardless of whether they have Laserfiche installed. If these portable Laserfiche documents are sent to a company or site that already has Laserfiche installed, then that organization can also choose to attach those documents to their repository. This software prepares a copy of the Laserfiche files (images, text, electronic files, annotations, templates and field data) for burning directly to your removable media or to a temporary directory. Choosing to publish to a temporary directory allows you to write it to your removable media at your convenience.
- Laserfiche E-Mail Plug-in™ allows instant electronic document distribution via standard MAPI-compliant e-mail applications. This feature is automatically included in every Full User and Retrieval User license purchase.

Workflow & Process Automation

- Laserfiche Workflow: Efficiency and accountability-enhancing document routing, e-mail notification and audit trail reporting.
- Laserfiche Audit Trail Modules: Three levels of audit reporting to address your specific regulatory compliance and security needs.
 - The **Starter Edition** tracks basic events that occur in the repository and that involve accessing, modifying or exporting data. Basic events include creating, editing, printing or deleting documents, creating annotations, and assigning metadata.
 - The **Standard Edition** builds on the Starter Edition by tracking additional security- and access-related events. This edition can also track unsuccessful attempts to perform an action, such as failed attempts to access or print documents.
 - The **Advanced Edition** meets the needs of organizations in the most highly regulated environments. It includes all the functionality of the other two editions, and also tracks many more events including password changes, the creation or modification of users and groups, and changes to repository-wide settings. It can also track all the searches users perform, require users to enter reasons for performing certain actions, and automatically add watermarks to printed documents.

Laserfiche Integration Plug-Ins

- LF Integrator's Toolkit: Tools & documentation necessary for customizing Laserfiche

LASERFICHE THIRD PARTY PLUG-IN OFFERINGS

Integration

- DataNow Affinity Integration- DataNow Affinity brings the power of Laserfiche document management to the applications you use most. Document searches can be reduced to a single click of a button. New documents can be added to your Laserfiche repository without manually entering template field values, file names, or folder locations. Affinity truly makes Laserfiche feel like part of your business software
- LF Integrator GP – LF Integrator empowers Great Plains users to scan, search and link supporting documents in Laserfiche document management applications directly from the Great Plains menu bar. Link the document and workflow management power of Laserfiche with your current Great Plains implementation.

SOFTWARE DESCRIPTIONS

- **LF Integrator AutoCAD** – LF Integrator for AutoCAD allows you to store AutoCAD drawing files or associated documents in Laserfiche, including embedded cross reference files, directly from the AutoCAD menu. Launch Laserfiche scan or search modules using the drawing file for template or search criteria, or create a Laserfiche document template using the fields from any AutoCAD drawing title block with a single click.
- **GeoDocs**: GeoDocs™ is a web-based software that seamlessly integrates ESRI ArcIMS (soon to be ArcGIS Server) and Laserfiche. Utilizing robust search capabilities, users of GeoDocs can access digital documents stored in a Laserfiche repository from within the web-based GIS program and vice versa, access spatial information stored in a GIS from within the Laserfiche web client.

Email Archival

- **TrustedEdge (email and document archival)**- The Trusted Edge® Solution automatically captures, classifies, and manages unstructured information created, accessed, and stored at the network's "edge" – on laptops, desktops, and file shares – where 80% of documents are created and stored. Following a Trusted Edge deployment, organizations can proactively apply enterprise-wide policies to desktop information and email at the point of creation and use - and manage content based on centrally-defined business rules. Furthermore, by intelligently identifying, classifying, and securely routing critical email, documents, and files to their appropriate location with the enterprise content management or records management platform, Trusted Edge improves retention compliance, mitigates litigation risk, and reduces enterprise storage costs. With its rich set of policy management and information management features, Trusted Edge is leveraged by organizations as a unified platform which can be deployed as the foundation for numerous enterprise solutions including:

Electronic Forms

- **LincDocs (Electronic Forms)**- LincWare's LincDoc family of eForm creation and document automation tools empowers businesses and government organizations to better serve their customers and constituents, reduce costs and better leverage bottom line critical information. LincDoc data complies with existing systems through features like network-wide interconnectivity, document repositories, version control, business-logic driven data entry, Laserfiche interface, database integration and Word- and PDF-based document authoring.

Physical Records Management

- **InfoLinx (physical records management software)** - InfoLinx provides both custom and commercial-off-the-shelf records and information management system software and professional business services to manage critical business documents. InfoLinx seamlessly integrates barcode and Radio Frequency Identification (RFID) technology, physical file and electronic record tracking, retention schedule management, color-coded label printing, and document imaging into an integrated, intuitive, and user-friendly records management application.

TECHNICAL SUPPORT

When you become a client of MCCI, you gain much more than just a new product. You gain a relationship between our staff and your organization to make your product implementation successful and the usage of your product an enjoyable experience. In order to make this possible, MCCI offers both Proactive and Technical Support.

PROACTIVE SUPPORT

MCCI assigns each account with a Regional Account Executive and an internal Account Manager Team. You will have already worked with your Account Executive in the pre-project phase and they will continue to support you. Your Account Executive will provide a local presence and contact information should local meetings be necessary. The Account Executive also assists in pre implementation processes.

Your Account Manager will assist in managing ongoing support through the life of the product. MCCI believes in a proactive support methodology and it is the Account Managers' role to insure this ongoing communication with clients. Your Account Manager will be in touch throughout the year to discuss optimal system usage and ensure client satisfaction. Items discussed may include, but are not limited to:

- Identify any needs that could easily be addressed with the current system.
- Provide resource for question and answer, best practices, how other customers are using the system with use of documented case studies, Listservs, support center, etc.
- Provide continued education for existing and new users within the organization through the use of webinars, seminars, workshops, users group, and more.
- Annual review of current system configuration
- Dedicated sales support staff for pricing inquiries and budgetary information
- Annual support renewal notification to ensure your renewal process is timely and accurate

Educational Resource Definitions

- *Case Studies*- MCCI works with our clients to put together narrative accounts of specific usages of MCCI solutions in their organization. Specific departments, document types, integrations, etc. are noted to allow other users to learn from the information.
- *MCCI Listserv*- MCCI has created a Listserv for specific types of system customers. A Listserv is a creative use of e-mail, which provides a means for End Users to share information on a common interest. Members are able to communicate with peers thru a single e-mail. Uses of the Listserv may include fielding requests about system usage, as well as best practices.
- *Support Center*- This resource is a compilation of white papers, best practices, and information for system users all in one location. Through the support center, users can also submit and check the status of their support tickets.
- *Webinars*- MCCI conducts monthly webinars on different topics promoting more efficient system usage. User webinars are also offered on more specific topics related to products, concepts, departments, etc regarding the usage of your system. These are done through the web and are a convenient way of staying informed on the newest technologies available.
- *Seminars*- MCCI conducts seminars on different topics to help educate new and existing end users throughout the year. They are usually located at a host site of an existing customer. These can also be offered at current client's locations to invite departments to learn more regarding their current system.
- *User Groups*- MCCI offers annual user groups to keep end users trained on the newest versions and products. These are geared to both users and administrators of the system.

TECHNICAL SUPPORT

The Laserfiche Software Assurance Plan (LSAP) helps preserve your investment and extend the benefits of your original purchase by providing you access to the assistance needed to ensure that you maximize system uptime. You have access to a toll free line to call for technical support or submit tickets online through our support center. When you subscribe to the LSAP you receive the following benefits:

- 100% upgrade credit for your existing software (in the event of an upgrade)
- Free software updates for your current system
- 24-hour FTP and website access which includes the MCCi Online Support Center
- Technical bulletins and newsletters

MANAGED SERVICES

MCCi Managed Services are strongly encouraged to be included with every support renewal and provide the client with a discounted hourly rate by purchasing an advanced block of services per year based on the products purchased. Managed Services can be used for the following professional services:

- Additional Training – additional training, via web conferencing, can be conducted to train new users on the use of the system or as refresher training for existing users.
- Additional System Set Up Consultation – MCCi offers additional consultation that includes recommendations on best practices for adding additional departments, additional types of document etc. to your current system.
- Remote implementation of software updates – While the standard SAP plan covers free updates for software, implementation of those updates is sometimes overlooked. With the addition of our Managed Services, MCCi is at your service to directly assist in implementing software updates such as minor updates, quick fixes or point releases. Major software upgrades may or may not be covered and should be discussed with your Account Management Team.
- Annual System Review & Analysis – Upon request, MCCi will access your system to review and analyze how your organization is using the system, identify discovered potential problem areas and make recommendations for better use of the system. This analysis is designed to be implemented 6 months after the initial Software installation, and should be performed annually after that date. This is an optional service that will be completed only if requested by the Client.
- Remote Access Support – Remote Access Support allows our helpdesk staff to access your machines remotely to resolve problems faster. The use of Remote Access Support saves you both time and money by reducing the delays in resolving software issues without costly on-site visits.
- Expiration & Additional Services –MCCi Managed Services is an annual package and will expire on the same date as your SAP plan.

MCCi does provide continued technical support for all MCCi applications. Technical support is provided via email or telephone during normal business hours of 8:00 AM to 6:00 PM EST. Clients can designate several individuals who are to be the technical support contacts. Those individuals may contact MCCi at any time for technical support. There is no limit on the number of technical support calls that can be made. Adjustments in annual support rates may be made to coincide with current U.S. inflation rates.

RECOMMENDED MINIMUM HARDWARE REQUIREMENTS

MCCI will provide necessary consultation as to the compatibility of current hardware with the Laserfiche System. Changes and recommendations will be made at the time of consultation. See system requirements below. Please keep in mind that these are the minimum system requirements.

Scanning Station PC:

OS: Windows XP Professional (Service Pack 2 or later), Windows Vista, Windows 2003 (Service Pack 1 or later), or Windows Server 2008
CPU: 2.4 GHz processor or faster
Memory: 1 GB RAM or more
Communications: TCP/IP
Web browser: Internet Explorer 6.0 or higher

Client:

OS: Windows XP Professional (Service Pack 2 or later), Windows Vista, Windows 2003 (Service Pack 1 or later), or Windows Server 2008
CPU: 1 GHz Processor or better, Performing OCR: Dual Core 2.4 GHz or faster processor
Memory: 1 GB RAM or more
Communications: TCP/IP
Web browser: Internet Explorer 6.0 or higher

Server:

OS: Windows Server 2003 (Service Pack 1), or Windows Server 2008
CPU: Dual Core Processor, 2 GHz Processor or better
Memory: 2-4 GB RAM
Communications: TCP/IP

Database Management System

Avante SQL or Rio SQL: Microsoft SQL Server 2005 (Service Pack 3 or later), Microsoft SQL Server 2008 (Service Pack 1), Oracle 9i Release 2 (9.2.0.8+), Oracle 10g (10.2.0.4+), Oracle 11g (11.1.0.6+)
Avante SQL Express: Supports MSDE (Service Pack 3 or later) and Microsoft SQL Server 2005 Express Edition (Service Pack 2 or later).

Note: Oracle or Microsoft SQL Server must be purchased separately. You must additionally purchase enough licensing for your DBMS to support your Laserfiche installation.

Weblink Public Portal:

OS: Windows Server 2003 with IIS 6, Windows Server 2008 with IIS 7
CPU: 2.8 GHz or faster processor
Memory: 1 GB RAM or more
Viewer: Web Browser (minimum versions): Weblink is best viewed using Internet Explorer 6, Internet Explorer 7, Internet Explorer 8, Firefox 2, Firefox 3, Safari, Chrome, and Opera.

Laserfiche RIO version licensing specifics:

Public Portal is sold per Laserfiche application server, per processor. It allows unlimited read-only connections to that Laserfiche Server, as many as the machine can handle. The Public Portal License allows unlimited connections, however a large numbers of connections may affect Laserfiche Server performance (one processor can handle roughly 100 to 150 concurrent retrieval connections). You must have one Public Portal License for each CPU on the Laserfiche Server computer that Weblink will connect to, or you must have a dual-processor or multiprocessor license for a Server computer with two or more processors. Public Portal Licenses may only be used with Weblink; they are not available for other applications.

Scanners:

Must utilize ISIS drivers to be compatible with Laserfiche ScanConnect software. MCCI also recommends confirming scanner compatibility by referencing the most up to date Laserfiche published supported scanner list at <http://laserfiche.com/static/Resources/scanlist.html>.

The terms of this agreement shall remain in force and effect for a period of ninety (90) days from the date appearing below, unless accepted by the Client.

Submitted by: **MCCI, a Limited Liability Company**

Date: **March 31, 2011**

By: _____
(Signature)

(Printed Name & Title)

Witness: _____
(Signature)

Noted Items Accepted by: **SURFSIDE, FL**

Date: _____

By: _____
(Signature)

(Printed Name & Title)

Witness: _____
(Signature)

(Printed Name & Title)

MCCI, a Limited Liability Company and subsidiary of MUNICIPAL CODE CORPORATION, which is duly organized and existing under the laws of the State of Florida, hereinafter referred to as MCCI, hereby offers the Laserfiche Software & Services to the Town of Suwannee, FL according to the following terms and conditions.

LASERFICHE SOFTWARE UPGRADE

When software is upgraded, the old copy of the software must be returned and will no longer be a valid copy. Proof of previous purchase is required to receive upgrade. Upgrade credit applied towards new purchase is 100% of original software purchase price. The difference between the new system (server, full and retrieval users) price and the old system (server, full and retrieval users) price must be greater than or equal to 10% of the new system price. Otherwise, a minimum software upgrade adjustment will be applied to comply with the 10% price difference requirement. One year of LSAP must be purchased for new products when upgrading LSAP of the original product; will not be credited. However, remaining months of SAP can be applied towards the new purchase of one year of LSAP for the new products.

SOFTWARE ASSURANCE PACKAGE (SAP)

Software Support is provided by MCCI and the manufacturer. MCCI acts as a 1st tier support and works with the manufacturer at a 2nd tier level when needed. MCCI's Software Assurance Packages include: Access to software point release updates, Telephone or E-Mail support for software related issues, 24-hour FTP and web site access, technical bulletins and newsletters. Adjustments in annual support rates may be made to coincide with current U.S. inflation rates - any increase will not exceed the cumulative increase in the Consumer Price Index (CPI) occurring since the last price increase. Any updates requiring shipment of software require Client to pay shipping costs.

Customers may contact MCCI support via MCCI's Online Support Center, email (support@mccimunicipal.com), or telephone 866-942-0464. Support is available Monday-Friday (excluding major holidays) from 8:00 a.m. - 6:00 p.m. EDT.

SERVICE LEVEL AGREEMENT (SLA)

MCCI's SLA is offered in addition to the Software Assurance Package. It is required in some circumstances, and offers the customer escalated response times depending on the severity of the support issue, as well as extended support hours and many other additional benefits. The SLA documentation is readily available upon request.

MCCI SOFTWARE CUSTOMIZATIONS

The customer may elect to contract with MCCI to customize the standard software. As standard software is upgraded, any customizations performed will require support in the form of updating through our Integration Support Assurance Program (ISAP). ISAP must be current to receive updates to the integration at no additional charge. Otherwise current hourly rates will apply.

Upgrades to existing programs, or the acquisition of new programs from vendors other than MCCI, may have an effect on customizations made to the software by MCCI. MCCI will not be held responsible if upgrades or changes made by the customer or another vendor or application preclude the operation of MCCI's customizations.

CLIENT SOFTWARE CUSTOMIZATIONS

The client may choose to customize their software internally, without MCCI's help. MCCI is not responsible for any damages caused by the user's customization of the software. MCCI will not be held responsible for correcting any problems that may occur from these customizations. Routine updates to the software may affect any customizations made by the user. If MCCI's help is required to correct/update any customizations made by the client, appropriate charges will apply.

CLIENT INFORMATION TECHNOLOGY ASSISTANCE

In order for MCCI to excel in customer service, the client must provide timely access to technical resources. The client must provide adequate technical support for all MCCI installation and support services. If the client does not have "in-house" technical support, it is the client's responsibility to make available the appropriate information Technology resources/consultant when needed.

SOFTWARE INSTALLATION

MCCI will install all software outlined herein. If additional software is needed to bring the site up to specifications, customer will be billed accordingly.

SITE PREPARATION

The Client site should be ready for installation according to specifications outlined within the Hardware section listed below. If site is not prepared and results in cancellation, delays, or rescheduling of an installation after MCCI has made travel arrangements, the client may incur expenses due to circumstances such as non-refundable airline tickets, training/install charges, hotel reservations, rental cars, etc.

ARCHIVE SERVICES BY MUNISCAN TERMS AND CONDITIONS

DOCUMENT STORAGE: MCCI's facilities contain secure rooms for hardcopy "work in progress" document storage that are designed to prevent damage from natural disasters. MCCI will arrange for the return of hardcopy documents to the client after completion of scanning. If documents reside at MCCI facilities for a period longer than 90 days after a request for delivery has been made, storage charges will apply. MCCI is not responsible for maintaining permanent archive and accepts no responsibility to loss of electronic data.

ENTERPRISE WIDE SCANNING SERVICES: In accordance with the terms and conditions as laid out here within, MCCI can provide any department in the organization with scanning services for documents other than those described in Section 1 of the pricing proposal. Costs will be based on the attached pricing schedule (Exhibit A). MCCI will consult with each department interested in beginning their own MunisScan project to determine individual scanning and indexing needs. For further information and instruction regarding this service please contact our Service Bureau Manager.

MICROFILM & FICHE CONVERSION SERVICES: MCCI offers electronic conversion services for microfilm, microfiche, and aperture cards. The Client will provide MCCI with data to be converted to electronic format. MCCI will extract the images contained on the film/fiche and migrate them to Laserfiche or to another industry standard format as requested by the Client. The images will be captured based upon the reduction ratio and threshold between

the beginning and ending of new images on the original film. MCCI is not responsible for the accuracy of existing image quality, such as black borders, skewed images, blurring images, non-legible images, or other errors that are not controllable by MCCI. Unless otherwise specified in the project scope, MCCI will index by the roll/card number or unique identifier.

PROJECT TIMELINE: MCCI will complete and deliver the project within 90 days after receipt of documents. Should MCCI require additional time, the Client will be notified immediately. The delivery for routine updates to the database will be within 30 days.

PRICING: Charges apply on a per project basis and are dependent upon size and volume of documents. MCCI requires having the entire project in bulk, rather than in small quantities. Breaking the project into smaller quantities will affect the volume pricing, and additional charges per image may apply. A sample may be required prior to confirming large volume job pricing.

UNANTICIPATED DOCUMENT TYPES & SIZES: The prices quoted are made with the expectation that customer will properly prepare and annotate materials for scanning bureau use and that documents are consistent with the description provided in the scope of services. If documents are not as initially represented, additional charges will apply according to Exhibit A. MCCI will call for authorization to proceed with the project.

LASERFICHE SYSTEM CUSTOMERS: Due to requirements by Laserfiche systems regarding the importing of images and indexing information, it is highly recommended that Clients who already have a Laserfiche system have their documents scanned using only Laserfiche software. This will ensure that all associated indexing information will be properly retained after the importing of images into the Laserfiche system. MCCI has knowledge of the software versions, indexing requirements, and compatibility issues for each of our Laserfiche system clients. For these reasons, MCCI should be considered as a Sole Source provider for scanning services.

MCCI CERTIFIED PARTNERS: MCCI maintains MunisScan partnerships for the purpose of additional capacity and flexibility in meeting client expectations. In the event MunisScan partners are used for a project, the management and support of the project is handled directly by MCCI.

ADDITIONAL SERVICES

As an additional service/product under this contract MCCI and MCCI can provide the following:

- Electronic Agenda and Legislative Management (Legistar). MCCI offers Legistar Software and related services which provides electronic automation and creation of Agendas.
- Document Scanning Services (MunisScan). MCCI offers scanning, indexing and integration of hard copy documents with Laserfiche Software to provide the Client with the most powerful index retrieval search engine available with the following features: intuitive browse window, index cards, and fuzzy logic.
- Contract Management Software (Contract Assistant). MCCI offers the Contract Assistant Software (developed by Bluebridge Software) which is a web based solution designed to provide control and automation of the contract management process.
- Code Supplement and Codification Services (MuniCode). Municipal Code Corporation offers supplementation of existing Codes, Codification of Ordinances and Recodification of existing Codes. Our optional services include legal review, republishing, editorial and index work and electronic Ordinance (CD, Internet).
- Utility Billing Services (MuniBills). MCCI Advantage offers billing, statement and remittance processing services as an additional benefit under this agreement. MCCI Advantage, a subsidiary of MCCI, can provide the client with design, printing and mailing services for customer billing/statements of all types. These services also include remittance payment options, software and other billing solutions.

AGREEMENT EXTENDED TO OTHER GOVERNMENTAL UNITS

MCCI agrees to allow any other Government agency to purchase items, at the same terms, conditions and pricing as this contract during the period of time that this contract is in effect. Minor changes in terms and conditions may be negotiated by MCCI and participating Government agencies. Any orders issued against this agreement shall be the sole responsibility of the Government agency placing the order. It is understood that the Client shall incur no financial responsibility in connection with any purchase by another Government agency.

TRAVEL EXPENSES

If the client cancels or reschedules an installation after MCCI has made travel arrangements, travel expenses may be incurred due to circumstances such as non-refundable airline tickets, hotel reservations, rental cars, etc.

LIMITED LIABILITY

In no event shall MCCI's total liability to the client exceed the project fees paid to MCCI by the client.

FORCE MAJEURE

Neither party shall be liable for any delay or failure in performance due to causes beyond its reasonable control.

TERMINATION

The services provided in this agreement will be in full force and effect for a period of three (3) years from the date of shipment of the completed product to the organization. Thereafter, this agreement will be automatically renewed from year to year, provided that either party may alter or cancel the terms of this agreement upon sixty (60) days' written notice.

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Purpose

The purpose of this Support Service Level Agreement (SLA) is to formalize an arrangement between MCCi and the client to deliver specific support services, at specific levels of support, and at an agreed-upon cost. This document is intended to provide details of the provision of level 3 application support services to the client. This SLA will evolve over time, with additional knowledge of the client requirements, as well as the introduction of new applications and services into the support portfolio provided to the client.

Scope of Agreement

The following services are provided in response to the transfer of trouble tickets from the client to MCCi in accordance with MCCi's case management process.

Services Automatically Provided Under This Agreement

The following services are provided in response to the transfer of trouble tickets for level 3 support from the client to MCCi:

1. **Corrective maintenance**—Defined as activities associated with correcting software errors and/or system disruptions caused by software related issues.
 - **Four business hour response time** – For Severity Level 1 and Severity Level 2 support requests.
 - **Extended support hours** – Extends regular support by adding three additional hours (5PM – 8PM EST)
 - **Unassisted remote access** – Rather than requiring a client user to monitor and aide in remote support sessions, MCCi will work in an unassisted environment when appropriate and when granted access.
 - **Root-cause analysis**—Analysis of the root causes of problems. Problems will be reviewed to determine their root causes, measures will be taken to correct the sources of the problems, and responses will be distributed in a timely fashion.
 - **Application of available bug fixes**—Defined as the emergency repair of any system operation that does not comply with the current system specification. This includes system errors, "hung" or halted screens, or unexpected results within the system that render it unusable for the purpose for which it was designed. MCCi relies on the partner software manufacture to provide such bug fixes.
2. **Ticket status updates**—MCCi will provide direct access to it's ticket tracking system for monitoring purposes

Requests for Services NOT Covered Under This Agreement

This agreement does not cover the following requests. However, MCCi would be pleased to provide a separate statement of work in proposing services to address any of the following:

1. **Evaluation of new software or hardware**—Evaluation or approval of new software or hardware for use within the client. This includes systems developed outside of the client, such as third-party systems, or systems developed by the client.
2. **Procurement of new software or hardware**—Procurement of new software or hardware for use within the client, or for use for the client at MCCi. If client requires a specific remote access software to be used for support, all software or hardware required for MCCi's use to support the client's applications will be the responsibility of the client.
3. **On-call MCCi support management**—MCCi's support managers are not required to be on call. If at a later date the client requires the support manager to be on call for a specific purpose, or on a longer-term basis, then the time must be scheduled and the client shall be charged additional for this service.

4. **Level 1 and 2 support**—Level 1 (help desk) and level 2 (infrastructure support) shall be provided by the client for each production application to be supported, and they shall perform their assigned duties, such as Operating System software, Web server, authentication software, software installation, application installation on production servers, database connections, client software installation, and database changes, for the duration of this agreement.
5. **Backup Services** – Any and all back up services are the responsibility of the client.
6. **Specific training**—Training packages are available at an additional charge based on client needs. Clients can procure annual training packages through renewal of “Managed Services” or have the option of purchasing training and/or consulting when needed.
7. **Major upgrades to applications supported by MCCi** – The level of effort required to upgrade from one major version release to the next is uncertain until it becomes available and has been tested. Major version upgrades typically require professional service assistance, while point release updates to existing versions are supported as part of the service level agreement. Access to updated and new version licensing always requires an active software maintenance plan, which is separate from MCCi’s SLA.
8. **Upgrades to application software and associated hardware that is not directly supported by MCCi** — This includes operating system upgrades, database upgrades, authentication software upgrades, and other third-party vendor-required upgrades. The client’s IT infrastructure and management of other internal applications are the responsibility of the client. Prior to upgrading a related application or hardware device, MCCi does require the client contact MCCi Support to ensure compatibility.
9. **Assistance with application usage**—Advice about or education on how to use applications, including completing transactions, creating users within or for an application, or on the purpose of an application. Training packages are available at an additional charge based on client needs. Clients can procure annual training packages through renewal of “Managed Services” or have the option of purchasing training and/or consulting when needed.
10. **Assistance with application usage when unsupported or nonstandard hardware or software is involved**— Use of unsupported or nonstandard hardware or software often results in unexpected behavior of otherwise reliable systems.
11. **Manufacturer’s Software Maintenance Renewal** – The renewal of the manufacturer’s required maintenance package is not included in MCCi’s SLA. It is a separate and required renewal item, however MCCi makes every effort to align renewal dates for ease of administration and record keeping.
12. **Managed Services** – Managed Services are not included in MCCi’s SLA. Managed Services are a separate and optional renewal item. Managed Services are typically utilized as pre-purchased discounted time for the purposes of additional training, consultation, professional services, etc. The majority of MCCi clients elect to have Managed Services as part of their annual software renewal package.
13. **Modifications to original application configurations**—Changes in the client’s organization or business needs (such as a reorganization or change in business process) may make the current configurations obsolete. When this occurs, the client should engage MCCi through Managed Services or custom packaged Professional Service options. It is highly recommended that the client manager and MCCi work closely together to anticipate future needs and prepare timely updates of systems to accommodate the client’s constantly changing business.

Applications Covered

This agreement is for services related to support requests concerning the production applications sold and supported directly by MCCi and that have an active Software Assurance Plan.

Processes and Procedures Related to This Agreement

Call Management Process

MCCi's problem-ticket system will be used to record and track all problem reports, inquiries, or other types of calls received by level 3 support. This provides MCCi with the ability to provide metrics in regard to this SLA.

Metrics

Metrics Reporting

Standard reports are available upon request. These reports are expected to be produced by MCCi's problem-ticket system, which will detail ticket management performance against SLA targets. Metrics only include the support requests that are transferred to MCCi for resolution. The metrics will be reported via existing standard problem-ticket system reports as available.

Support Metrics Real-time Monitoring

The client has the ability to track and monitor individual support cases in real-time by utilizing MCCi's problem-ticket system. A requirement is that the client use MCCi's problem-ticket system to enter problem tickets.

Dependence on Other Organizations

MCCi is dependent on other internal groups within the client of services (i.e., help desk, network administration, database services, etc.), and external suppliers (i.e. integrated application providers, hardware providers, etc.) in providing application support services to the client. The client will manage the interface into those suppliers as it relates to the provision of services under this agreement. MCCi is also dependent on MCCi software partners in regards to providing 2nd tier and escalation of support cases when needed.

The list of organizations and vendors that MCCi is dependent on may change during the term of this agreement.

Appendix A

Definitions

Support Request

For the purposes of this agreement, a Support Request is generally defined as a request for support to fix a defect in existing application code or a request for support that involves no modifications to application code, such as a question.

Levels of Support

There are three levels of support, only one of which (level 3) is provided under this agreement. These levels, which are integrated into the the client's support process, are defined as follows:

- **Level 1**—This is support provided by the client's internal help desk when it receives the Support Request from a client end user. This represents generalist support. If this level of support cannot resolve the problem, the Support Request is passed to the client's level 2 support, which is the infrastructure support specialists.
- **Level 2**—This is support provided by a the client infrastructure support or subject matter specialist. Operational issues will be resolved at this level. If resolution requires additional assistance, the Support Request is passed to MCCi's level 3 support.
- **Level 3**—This is support provided by a MCCi application support specialist. This level of support does remotely perform point release version updates and application of available bug fixes, if required to resolve the problem. All level 3 contact/ticket reporting is handled by the client's level 2 support contact.

Severity Codes

The following characteristics are used to identify the severity of a problem report:

- Business and financial exposure
- Work outage
- Number of clients affected
- Workaround
- Acceptable resolution time

It is not necessary (nor is it likely) to have perfect match of each characteristic to categorize a problem report at a particular severity level. A given problem must be judged against each of the characteristics to make an overall assessment of which severity level best describes the problem. The level 1 support agent and the client jointly determine the initial severity rating for the report. Level 2 and level 3 support personnel may then negotiate with the client to modify this severity after the report is elevated to them.

Severity 1 (Critical)	Severity 2 (High)	Severity 3 (Medium)	Severity 4 (Low)
Business and financial exposure			
The application failure creates a serious business and financial exposure.	The application failure creates a serious business and financial exposure.	The application failure creates a low business and financial exposure.	The application failure creates a minimal business and financial exposure.
Work Outage			
The application failure causes the client to be unable to work or	The application failure causes the client to be unable to work or	The application failure causes the client to be unable to perform <i>some</i>	The application failure causes the client to be unable to perform a

Severity 1 (Critical)	Severity 2 (High)	Severity 3 (Medium)	Severity 4 (Low)
perform some significant portion of their job.	perform some significant portion of their job.	<i>small</i> portion of their job, but they are still able to complete most other tasks. May also include questions and requests for information.	<i>minor</i> portion of their job, but they are still able to complete most other tasks.
Number of Clients Affected			
The application failure affects a <i>large</i> number of clients.	The application failure affects a <i>large</i> number of clients.	The application failure affects a <i>small</i> number of clients.	The application failure may only affect one or two clients.
Workaround [<i>This bullet carries the heaviest weighting of the characteristics for Severity 1 and 2.</i>]			
There is no acceptable workaround to the problem (i.e., the job cannot be performed in any other way).	There is an acceptable and implemented workaround to the problem (i.e., the job can be performed in some other way).	There may or may not be an acceptable workaround to the problem.	There is likely an acceptable workaround to the problem.
Response Time			
Within four hours	Within four hours.	Within eight hours or by next business day (EST).	Within eight hours or by next business day (EST).

Appendix B

Roles and Responsibilities

the client

the client has the following general responsibilities under this agreement:

- the client will conduct business in a courteous and professional manner with MCCi.
- the client users, clients, and/or suppliers using the applications stated in the Statement of Work will use the appropriate help desk to request support.
- the client will use their own appropriate help desk to provide level 1 support, including creating problem tickets and work orders and assigning responsibility to the appropriate level 2 client resource.
- the client will use their own appropriate IS group to provide level 2 server, network, firewall, and infrastructure support services, including Operating systems, Web server, authentication software, software installation, application installation on production servers, database connections, and database changes.
- the client will provide all information required to open a support request.
- the client will assign severity codes adhering to the correct usage of these codes as defined in the client's case management process.
- Once a support request has been submitted, the client will make themselves available to work with the MCCi support resource assigned to the support request.
- the client end users do not contact MCCi support resources directly to report a problem. All problem calls must be logged through the appropriate help desk. This ensures maximum availability and response times.
- the client will continue to provide MCCi access, software, licensing, training, documentation, and support of its remote access software if it requires MCCi to utilize specific software to provide remote support. Otherwise MCCi will utilize its existing client user-assisted remote access tools.

MCCi

MCCi has the following general responsibilities under this agreement:

- MCCi will conduct business in a courteous and professional manner with the client.
- MCCi will log all information from the client required to establish contact information, document the nature of the problem and the client's hardware/network environment (as applicable).
- MCCi will attempt to resolve problems over the phone on first call.
- MCCi will escalate support request to next level of internal support within MCCi upon approach of escalation points.
- MCCi will obtain the client's approval before ticket closure or may close the ticket if 3 business days elapse without an update from the client.
- MCCi will be the interface on behalf of the client to MCCi's partner software manufacturers

There are several roles deployed within MCCi that are integral to the provision of support services to the client. These roles include the following:

IT Director/Support Manager

The MCCi IT Director will provide the overall direction of the activities of the support specialists, and will participate directly in the production of the associated deliverables when needed. This individual will reports to the MCCi President. His or her duties include supporting Account Support Representatives, Backup Support Representatives, Project Managers, Developers, and other members of the MCCi team.

Account Support Representative:

The MCCi account support representatives work as a dynamic team of support professionals who provide level 3 application support for applications provided and supported by MCCi. Reporting to the MCCi IT Director and/or MCCi Support Manager, they are responsible for the timely submission of all deliverables. Their duties include:

- Dedicating 100 percent of time to the support of existing MCCi clients
- Conducting all root-cause analysis and bug fix isolation and resolution activities, and associated documentation for the individual tasks, as assigned by the MCCi technology director and/or support manager.
- Acting as a point of contact for all application issues (software errors and related questions).
- For enhancements, determining the potential high-level effort for all changes, and based on that, either passing it on to a member of MCCi's Managed Services team if it is not a technical support related issue, or completing it themselves if possible. All bugs/software errors are addressed by level 3 support.
- Identifying all tasks associated with each support request and deriving estimates for the completion of each task.
- Responsibility for responding to and updating tickets.
- Assistance in testing to resolve application problems.
- Providing knowledge transfer to backup support specialist when needed.
- Preparing weekly and monthly status reports for pending support tickets when requested.

Backup Support Representative:

The MCCi backup support specialists work as a dynamic team of support professionals who provide level 3 application support for applications provided and supported by MCCi. Reporting to the MCCi IT Director, they are responsible for the timely submission of all deliverables and typically have other higher level job duties such as project management or development. Their duties include:

- Acting in the capacity of an Account Support Representative when there are additional capacity or escalation needs.

Funded

Town of Surfside, Florida

FY 2011 Program Modification

Document Imaging

Department Name	Division Name	Proposed Funding Source	Dept. Priority	Fiscal Impact
Town Clerk	Administrative	General Fund	1	\$26,500

Justification and Description

This item requests funding to address State of Florida requirements regarding records retention and freedom of information act responsibilities. This item provides for the purchase of Optical Character Recognition (OCR) Software and scanning equipment. These items will make the search for documents easier and save on storage space for documents.

The search feature is the main advantage. Since Florida law requires that municipalities provide sufficient equipment and personnel to adequately retrieve and store public records, this will significantly assist in meeting those requirements. This process is industry standard and an improvement over current operations.

Part of the expense includes training and overtime. Approximately \$6,000 of the expense includes a scanner lease (or purchase) for a scanner large enough to accommodate Building Department blueprints and other oversized public records.

Alternative/Adverse Impacts if not funded:

The alternatives will result either in less progress on record's management issues, the need to fund an additional position or both.

Required Resources

Line item	Title or Description of request	Cost
001-2400-519: multiple	Overtime / Training / Staffing	\$2,500
001-2400-519-6310	Document Scanner and OCR Software	\$18,000
001-2400-519-6310	Building Scanner	\$6,000

DELL**QUOTATION**

QUOTE #: 578200054

Customer #: 15237228

Contract #: 70137

Customer Agreement #: Dell Std Terms

Quote Date: 3/17/11

Date: 3/17/11 1:50:53 PM

Customer Name: TOWN OF SURFSIDE

TOTAL QUOTE AMOUNT:	\$5,246.14		
Product Subtotal:	\$5,246.14		
Tax:	\$0.00		
Shipping & Handling:	\$0.00		
Shipping Method:	Next Day	Total Number of System Groups:	1

GROUP: 1	QUANTITY: 1	SYSTEM PRICE: \$5,246.14	GROUP TOTAL: \$5,246.14
Base Unit:	PowerVault 124T, 2U AutoloaderLTO4-120HH SAS, 800/1600GB 16 Slot 2 Magazine (224-0070)		
Feature	PowerVault 124T Rails for Non-Dell Rack (310-6892)		
Service:	Dell Hardware Warranty Plus Onsite Service Initial Year (985-7799)		
Service:	Dell Hardware Warranty, Extended Year(s) (985-7818)		
Service:	Thank you choosing Dell ProSupport. For tech support, visit http://support.dell.com/ProSupport or call 1-800-9 (989-3439)		
Service:	Pro Support : Next Business Day Onsite Service After Problem Diagnosis, 2Year Extended (989-3722)		
Service:	ProSupport : 7x24 HW / SW Tech Support and Assistance , 3 Year (989-3762)		
Service:	Pro Support : Next Business Day Onsite Service After Problem Diagnosis, Initial Year (989-6410)		
Installation:	On-Site Installation Declined (900-9997)		
	Tape Media for LTO4-120 tape 800GB/1.6TB, 20 Pack (341-4628)		

SALES REP:	Xavier Palacios	PHONE:	1866-302-7449
Email Address:	xavier_palacios@dell.com	Phone Ext:	72-50172

Please review this quote carefully. If complete and accurate, you may place your order online at www.dell.com/qto (use quote number above). POs and payments should be made to *Dell Marketing L.P.*

If you do not have a separate agreement with Dell that applies to your order, please refer to www.dell.com/terms as follows:

If purchasing for your internal use, your order will be subject to *Dell's Terms and Conditions of Sale-Direct* including Dell's U.S. Return Policy, at www.dell.com/returnpolicy#total. If purchasing for resale, your order will be subject to *Dell's Terms and Condition of Sale for Persons or Entities Purchasing to Resell*, and other terms of Dell's PartnerDirect program at www.dell.com/partner. If your order includes services, visit www.dell.com/servicecontracts for service descriptions and terms.

DELL**QUOTATION**

QUOTE #: 580549929

Customer #: 15237228

Contract #: WN05ACA

Customer Agreement #: 250WSCA10ACS;B27160

Quote Date: 4/7/11

Date: 4/7/11 4:02:14 PM

Customer Name: TOWN OF SURFSIDE

TOTAL QUOTE AMOUNT:	\$1,491.39		
Product Subtotal:	\$1,491.39		
Tax:	\$0.00		
Shipping & Handling:	\$0.00		
Shipping Method:	Ground	Total Number of System Groups:	0

SOFTWARE & ACCESSORIES			
Product	Quantity	Unit Price	Total
GOVT UPG-V BACKUP EXEC 2010 WIN BS PER SVR BASIC 12MO (A3469603)	1	\$392.91	\$392.91
GOVT UPG-V BACKUP EXEC 2010 SQL AGENT WIN BS PER SVR BASIC 12MO (A3469737)	1	\$393.00	\$393.00
GOVT UPG-V BACKUP EXEC 2010 WIN SYST AGT WIN BS PER SVR BASIC 12MO (A3469688)	3	\$235.16	\$705.48
Number of S & A Items: 3		S&A Total Amount: \$1,491.39	

SALES REP:	Xavier Palacios	PHONE:	1866-302-7449
Email Address:	xavier_palacios@dell.com	Phone Ext:	72-50172

Please review this quote carefully. If complete and accurate, you may place your order online at www.dell.com/qto (use quote number above). POs and payments should be made to *Dell Marketing L.P.*

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If purchasing for your internal use, your order will be subject to *Dell's Terms and Conditions of Sale-Direct* including Dell's U.S. Return Policy, at www.dell.com/returnpolicy#total. If purchasing for resale, your order will be subject to *Dell's Terms and Condition of Sale for Persons or Entities Purchasing to Resell*, and other terms of Dell's PartnerDirect program at www.dell.com/partner. If your order includes services, visit www.dell.com/servicecontracts for service descriptions and terms.

Quote information is valid for U.S. customers and U.S. addresses only, and is subject to change. Sales tax on products shipped is based on "Ship To" address, and for downloads is based on "Bill To" address. Please indicate any tax-exempt status on your PO, and fax your exemption certificate, with seller listed as *Dell Marketing L.P.*, to Dell's Tax Department at 800-433-9023. Please include your Customer Number.

For certain products shipped to end-users in California, a State Environmental Fee will be applied. For Asset Recovery/Recycling Services, visit www.dell.com/assetrecovery.



SALES QUOTATION

QUOTE NO.	ACCOUNT NO.	DATE
CBNH039	5929666	4/1/2011

BILL TO:
 JOSE L FELIZ
 9293 HARDING AVE

SHIP TO:
 TOWN OF SURFSIDE
 Attention To: JOSE L FELIZ
 9293 HARDING AVE

Accounts Payable
 SURFSIDE , FL 33154-3009

SURFSIDE , FL 33154-3009
 Contact: JOSE FELIZ 305.861.4863

Customer Phone #305.777.2180

Customer P.O. # CBNH039

ACCOUNT MANAGER		SHIPPING METHOD	TERMS	EXEMPTION CERTIFICATE
ROB SULLIVAN 866.245.8105		Pilot Deferred 3-5 days	Request Terms	GOVT-EXEMPT
QTY	ITEM NO.	DESCRIPTION	UNIT PRICE	EXTENDED PRICE
1	1533003	FUJITSU FI-6770A FBSCAN 90PPM W/VRS Mfg#: FJU-PA03576-B035 Contract: PROMARK GSA SCHEDULE GS-35F-4342D	5,798.00	5,798.00
1	1532992	FUJITSU FI-6770 FBSCAN 90PPM W/VRS Mfg#: FJU-PA03576-B005 Contract: PROMARK GSA SCHEDULE GS-35F-4342D	5,398.00	5,398.00
1	1529002	FUJITSU FI-6670 FBSCAN 90PPM W/VRS Mfg#: FJU-PA03576-B505 Contract: PROMARK GSA SCHEDULE GS-35F-4342D	4,150.00	4,150.00
1	1534416	FUJITSU FI-6670A 90PPM/VRS SCANNER Mfg#: FJU-PA03576-B535 Contract: PROMARK GSA SCHEDULE GS-35F-4342D	4,880.00	4,880.00
SUBTOTAL				20,226.00
FREIGHT				0.00
TAX				0.00
				US Currency
TOTAL				20,226.00

Paul

CDW Government
 230 North Milwaukee Ave.
 Vernon Hills, IL 60061
 Phone: 847.371.5000

Fax: 312-705-9405

Please remit payment to:
 CDW Government
 75 Remittance Drive
 Suite 1515
 Chicago, IL 60675-1515



CDWG.com | 800.594.4239

OE400SPS

SALES QUOTATION

QUOT. NO.	ACCOUNT NO.	DATE
CCWR583	5929666	5/16/2011

BILL TO:
 JOSE L FELIZ
 9293 HARDING AVE

SHIP TO:
 TOWN OF SURFSIDE
 Attention To: JOSE L FELIZ
 9293 HARDING AVE

Accounts Payable
 SURFSIDE , FL 33154-3009

SURFSIDE , FL 33154-3009
 Contact: JOSE FELIZ 305.861.4863

Customer Phone #305.777.2180

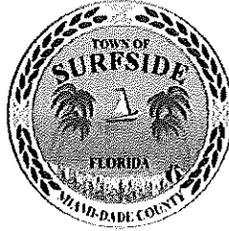
Customer P.O. # FI-6130

ACCOUNT MANAGER		SHIPPING METHOD	TERMS	EXEMPTION CERTIFICATE
ROB SULLIVAN 866.245.8105		FedEx Ground	Request Terms	GOVT-EXEMPT
QTY	ITEM NO.	DESCRIPTION	UNIT PRICE	EXTENDED PRICE
1	1459805	FUJITSU FI-6130 CLR DPLX 40PPM/30PPM Mfg#: FJU-PA03540-B055 Contract: National IPA Tech Solutions 083052	898.00	898.00
SUBTOTAL				898.00
FREIGHT				0.00
TAX				0.00
				US Currency
TOTAL				898.00

CDW Government
 230 North Milwaukee Ave.
 Vernon Hills, IL 60061
 Phone: 847.371.5000

Fax: 312-705-9405

Please remit payment to:
 CDW Government
 75 Remittance Drive
 Suite 1515
 Chicago, IL 60675-1515



Town of Surfside Commission Communication

Agenda Item # 3G

Agenda Date: June 12, 2011

Subject: Community Center Concessionaire Agreement

Objective: Provide a completed Concessionaire Agreement with Import International, LLC, d/b/a Surf Cafe to provide quality concessionaire services to the patrons of the Surfside Community Center.

Recommendation: Retroactively approve the completed Concessionaire Agreement with the terms and conditions listed in the Agreement and agreed upon by the Town of Surfside and Import International, LLC, d/b/a Surf Cafe.

Background: During the April 12, 2011 Town Commission meeting it was determined that staff would negotiate with the sole bidder and work out the necessary items to have a signed agreement for the June 14, 2011 Town Commission meeting. The agreement has been completed and meets the needs of the Town of Surfside to provide quality concessionaire services at a reasonable price.

Analysis: This Agreement will provide the best opportunity for a high quality concessionaire service with the possibility of generating additional revenue for the Town. The main points of the agreement include:

- The principal of the firm is David Jacobson who owns Import International, LLC, d/b/a Surf Café. He is a Surfside resident and owned Bianca's Gourmet Shop and The Piri Piri Gourmet Grill restaurants on Harding Ave.
- The contractor will perform the services that were specified in the RFP in a timely and professional manner.
- The contractor will pay the Town the agreed upon base monthly fee, rising on a yearly basis, from \$550 in year one to \$600 in year two and \$650 in year three, as specified in the contract. In addition the contractor agrees to pay a fee of 5% on gross sales that exceed the base monthly fee.
- The agreement with the contractor is for three years, with the option to extend the agreement for another three years with the same terms unless it is terminated before the contract's end.
- Contractor agrees to operate the concession stand based on the projected needs of the Parks and Recreation Department.
- Contractor is required to carry Comprehensive General Liability Insurance that meets the Town's limits.
- Contractor is responsible for the appearance of the leased area, internal and external, as well as for maintaining, in good working order, all equipment utilized in the operation of the concession stand.

- Contractor agrees to operate the concession stand based on the projected needs of the Parks and Recreation Department.
- Contractor is required to carry Comprehensive General Liability Insurance that meets the Town's limits.
- Contractor is responsible for the appearance of the leased area, internal and external, as well as for maintaining, in good working order, all equipment utilized in the operation of the concession stand.
- Employees must be of the highest standard and be trained in the professional operation of the concession stand.
- The Town Manager establishes the hours of operation of the Surf Café.

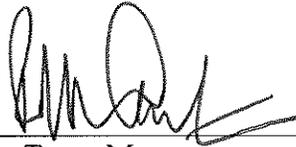
Budget Impact: Annual revenue will be collected based on a set monthly figure, with the opportunity for the Town to collect additional revenues of up to 5% of gross sales on monthly basis if the percentage of gross sales is greater than the fixed monthly concession fee.

Growth Impact: The contract includes the possibility of expanding services required by the Town if and when needed.

Staff Impact: Staff will be required to manage, implement the agreement and oversee the vendor's obligations. This impact will be far less than actually operating the facility with Town employees.



Department Head



Town Manager

RESOLUTION NO. ____

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA APPROVING AN AFTER-THE-FACT EXPENDITURE FOR CONCESSIONAIRE SERVICES FOR SURFSIDE COMMUNITY CENTER AND POOL FACILITY WITH IMPORT INTERNATIONAL, LLC, A FLORIDA LIMITED LIABILITY COMPANY, D/B/A SURF CAFÉ.

WHEREAS, The Town of Surfside , Florida, a municipal corporation of of the State of Florida, (hereinafter referred to as “Town”), agrees to employ Import International, LLC, d/b/a Surf Café, (hereinafter referred to as “Surf Café”), to operate concessionaire services for the Surfside Community Center and Pool Facility pursuant to the specifications outlined in RFP No. 11-02; and

WHEREAS, Surf Café was selected by the Town as the most qualified Proposer in response in RFP No. 11-02; and

WHEREAS, Surf Café is qualified, willing and able to provide the desired services on the terms and conditions set forth in agreement (attached 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-stated recitals are hereby adopted and confirmed.

Section 2. Purchase Order Approved. Surf Café (attached as Exhibit “A”) is hereby approved after-the-fact and the Town Manager is hereby authorized to have made and issued payment on behalf of the Town.

Section 3. Effective Date. This Resolution shall be effective immediately from adoption hereof.

PASSED and **ADOPTED** on this _____ day of _____

Motion by Commissioner _____, second by Commissioner _____.

FINAL VOTE ON ADOPTION

Commissioner Michael Karukin _____
Commissioner Edward Kopelman _____
Commissioner Marta Olchyk _____
Vice Mayor Joseph Graubart _____
Mayor Daniel Dietch _____

Daniel Dietch, Mayor

ATTEST:

Debra E. Eastman, MMC
Town Clerk

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



Lynn M. Dannheisser, Town Attorney

AGREEMENT WITH IMPORT INTERNATIONAL, LLC,
d/b/a SURF CAFÉ FOR CONCESSIONAIRE SERVICES
FOR SURFSIDE COMMUNITY CENTER AND POOL FACILITY

THIS CONTRACTOR AGREEMENT made and entered into this 24 day of MAY 2011 by and between the Town of Surfside, Florida, a municipal corporation of the State of Florida, (hereinafter referred as to "Town") and IMPORT INTERNATIONAL, LLC, a Florida limited liability company, d/b/a SURF CAFÉ, authorized to do business in the State of Florida, (hereinafter referred to as "Contractor or "Licensee").

WHEREAS, the Town wishes to employ Contractor to operate concessionaire services for the Surfside Community Center and Pool Facility pursuant to the specifications outlined in RFP No.11-02; and

WHEREAS, the Contractor was selected by the Town as the most qualified Proposer in response to RFP No. 11-02; 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 RFP No. 11-02, which are incorporated herein. Contractor agrees to furnish all labor and materials in a good and 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 to the or concession stand area located at the Surfside Community Center and Pool Facility, 9301 Collins Avenue, Surfside, Florida 33154 (the "Premises").

3. **CONCESSION PAYMENTS TO THE TOWN.** In consideration for the terms of this Agreement, the Contractor shall pay the Town the concessionaire fees as proposed by Contractor in response to RFP No. 11-02 from sales received by the Contractor from the sales at the Surfside Community Center and Pool Facility Concession Agreement terms:

3 Year Program

First Year Base Concession Fee Due \$550.00 per month due on the first of each month
Second Year Base Concession Fee Due \$600.00 per month due on the first of each month
Third Year Base Concession Fee Due \$650.00 per month due on the first of each month

Additionally there is a monthly concession fee of five percent (5%) of gross sales (excluding business taxes). On or before the end of each month throughout the term of this Agreement Licensee shall furnish to the Town Manager a report of gross sales receipts during the preceding month signed by the Licensee certifying its accuracy. If the five percent (5%) of gross sales is lower than the fixed monthly concession fee due, no additional amount is due. If the five percent (5%) of gross sales is greater than the fixed monthly concession fee, then the difference is due in addition to the base rent. The five percent (5%) of gross sales is due on the 15th of each month. Gross earnings shall not include any sales or excise taxes imposed by any governmental entity. Payment to the Town shall be sent to the Town no later than the fifteenth (15th) day of each month. Payments received from the fifteenth (15th) of each month to the twenty fifth (25th) of each month shall be considered delinquent and shall be assessed a ten percent (10%) penalty. Payments received after the twenty-fifth (25th) of each month shall be assessed an additional ten percent (10%) penalty. Failure by the Contractor to tender the required report and/or the payment to the Town within thirty (30) days of any payment due date shall be sufficient cause for the Town to terminate this Agreement.

4. **TERM.** This Agreement shall be for a term of three (3) years with a renewal options of an additional three (3) years on the same terms and conditions beginning concurrently with the Town's opening of the Community Center and Pool Facility, projected to be on or about June 10, 2011, and agreed to by both parties, unless terminated sooner pursuant to paragraph 12 of this Agreement. Services shall commence upon execution by both parties of this Agreement (the "Commencement Date"). Any changes in fees, terms, or conditions shall be accomplished by written amendment to this Agreement with approval by the Town and Contractor.

5. **LICENSE TO USE PREMISES; NO LEASE OR SUBLEASE INTENDED.** The Town agrees that the Licensee may use the Premises for the sole purpose of operating a concession stand. Contractor understands this Agreement is not intended to, nor should it be construed as, a lease of the premises. The license is personal to Contractor who is hereby granted permission to use the premises for the operation of a concession stand under the terms of this agreement. It shall have no right to sublease or otherwise convey any interest of any kind granted by this agreement to any person or persons whatsoever without prior written consent and approval by the Town. This agreement shall not be construed to grant Contractor any right or property interest in the premises except to the extent of the obligations under this agreement. Request to use the Surfside Community Center and Pool Facility after hours must be made in writing to the Town Manager or his designee.



6. RECORDS AND ACCOUNTS. Contractor shall keep true and accurate books and records showing all of its business sales transactions related to this Concession Agreement 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 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. Audits will be up to once per year. If Contractor fails to provide the required audit, the Town shall contract to have an audit performed at the Contractor's expense.

7. CONDITION OF PREMISES. The taking of possession of the subject premises by Contractor shall, in itself, constitute acknowledgment that the premises are in good and tenantable condition. Contractor agrees to accept said premises as constructed but may propose minor modifications to ensure efficient operations. Contractor shall not construct or modify said premises without the prior written approval by the Town Manager or his designee. Any plans for such construction, if applicable, shall be submitted to the Town for approval. Such construction or modification shall be without cost to the Town. Once the premises are accepted however, Licensee shall be governed by the terms of Section 11.5 hereinbelow.

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

9. DAMAGE TO/DESTRUCTION OF PREMISES. Should the subject premises or the building and other improvements in which the subject premises are 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 subject premises or the building improvements in which the premises are 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 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 subject premises are 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.

10.1 MINIMUM AMOUNT OF SERVICE BY CONTRACTOR. Contractor agrees to devote the hour's 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 present a conflict with Town's business.

Contractor understands that for certain special events only and within the Town Manager's discretion, the Town may, award a Contract to other caterers on a case by case basis.

- 10.2 **HOURS OF OPERATION.** Contractor agrees to perform the services as set forth in this Agreement within the hours of operation reasonably established by the Town Manager or his designee.
- 10.3 **PERMITS.** Contractor is required to provide Town, prior to commencement of operation of the concessions, a copy of all licenses 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.** Town, at its own expense, shall completely equip the concession stand and keep all rental equipment, if any, in good repair and in safe operating condition to the satisfaction of the Town and Contractor throughout the term of this Agreement. Daily inspections of the Contractor's equipment must be maintained and available for review upon request of the Town Manager or his designee. The contractor will provide all routine maintenance and cleaning on equipment to also include the necessary training of all staff on each equipment use. Town of Surfside will pay for one of two refrigerators being purchased by contractor. Town of Surfside will pay 50% of contractors purchase of pizza oven.

QUALITY OF SERVICE/CONTROLLED RATES AND CHARGES: The Town has the right to inspect and schedule the prices and rates of goods sold, entrance fees, and equipment rental prices upon the subject premises. 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 rates and prices of all items in such places as designated by the Town. The Contractor is prohibited from selling alcohol on the premises. Licensee shall conduct its operations in an orderly manner so as not to annoy, disturb, or be offensive to customers or patrons including but not limited to the conduct and demeanor of its employees. It shall use its best efforts to promptly satisfy any complaint by any person. Licensee shall furnish good prompt and efficient service and will sell quality food products and maintain clean and sanitary conditions. Signs or placards must be approved by the Town.

10.6 **TOOLS AND INSTRUMENTALITIES:** Contractor shall provide all tools and instrumentalities to perform the services under this Agreement, except the equipment furnished by Town pursuant to subparagraph 10.5 above.

10.7 **INDEPENDENT CONTRACTOR RELATIONSHIP.** The Contractor, including its 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 its duties as contemplated under this agreement. The Town shall not be responsible for any expense incurred by the Contractor. The Town shall have no duty to withhold any Federal income taxes or pay Social Security services and that such obligations shall be that of the Contractor other than those set forth in this agreement. Contractor shall furnish its own transportation, office and other supplies as it determines necessary in carrying out its duties under this agreement.

10.8 **INDEMNIFICATION.**

a. For other good and valuable consideration the receipt and adequacy of which is hereby acknowledged, 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 risen 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. That the aforesaid 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.

b. Town agrees to indemnify, defend and hold harmless, the Contractor, 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 risen from the negligent acts, errors, omissions or other wrongful conduct of the Town, its agents or other personnel entity acting under Town's control in connection with the Town's obligations under this Agreement and to that extent the Town 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 Contractor in defense of such claims and losses including appeals. That the aforesaid hold-harmless agreement by Town 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 Town or any officer, agent or employee of Town regardless of whether or not such insurance policies shall have been determined to be applicable to any of such damages or claims for damages provided however, nothing in this agreement shall be deemed or otherwise interpreted as waiving the Town's sovereign immunity protections existing under the laws of the State of Florida, or as increasing the limits of liability as set forth in Section 768.28, Florida Statutes.

- 10.9 **INSURANCE.** Contractor shall, at its sole cost and expense, during the period of any work being 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:

Comprehensive General Liability ("CGL") insurance, with minimum limits of Five-Hundred Thousand Dollars (\$500,000) per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability, and One Million Dollars (\$1,000,000) aggregate.

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

Business Automobile Liability which shall include coverage for all business owned and business hired vehicles for minimum limits of not less than Five Hundred Thousand (\$500,000) per occurrence, Five Hundred Thousand (\$500,000) per accident for bodily injury and Two Hundred Fifty Thousand Dollars (\$250,000) per accident for property damage.

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 work under this Agreement is 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.**

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

To maintain throughout the agreement term in good sanitary order, condition, and appearance, all portions of the leased premises, including, without limitation, the equipment furnished by Town, and any personal property of the Contractor situated in or upon the subject premises.

To notify the Town promptly of any damage to the subject premises 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.

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 leased 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.

11.2 EQUIPMENT: The Town shall be responsible for repair of the concession area equipment, whether under warranty or otherwise, due to failure under normal operating conditions and not as a result of abuse or damage by Contractor.



- 11.3 **OPERATION OF THE POOL AND CENTER:** Town shall be responsible for the opening, closing, and normal day-to-day operation of the pool and the community center during ordinary and customary days and hours of operation for similar community facilities, on a non-interrupted basis, so as to provide Contractor a reasonable expectation of business opportunity hereunder.
- 11.4 **COOPERATION; PEACEFUL POSSESSION:** Town shall give its fullest cooperation to Contractor in order to meet the mutual objectives of this Agreement.
- 11.5 **NO WARRANTIES:** Notwithstanding the foregoing, Licensee hereby waives any and all causes of actions, claims or demands based on any warranty, express or implied, including but not limited to any implied warranty of suitability for a particular purpose, any and all warranties of habitability and any and all warranties of habitability, and any other implied warranties not expressly set forth in this agreement. Licensee acknowledges and agrees that licensee prior to taking possession shall have fully exercised the right to inspect the premises for any defects as to the suitability of such property for the purpose to which licensee intends to put the premises. The provisions of this section 11.5 shall survive the expiration or sooner termination of this license.

12. **TERMINATION.**

- a. **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 in writing of its violation of the particular terms of the agreement and grant Contractor ten (10) days after receipt of said notice to cure such default. If the default remains uncured after ten (10) days the Town may terminate this agreement, unless the matter giving rise to the default is by its nature incapable of being cured within said ten days, so long as Contractor has taken all prudent steps to commence a cure within said ten days.

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. 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.



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

- Stop work on the date and to the extent specified;
- Terminate and settle all orders and subcontracts relating to the performance of the terminated work;
- Transfer all work in process, completed work and other materials related to the terminated work to the Town; and
- Continue and complete all parts of that work that have not been terminated.

b. 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. 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.

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.

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 work under this agreement without the prior written consent of the Town. Should the Contractor subcontract any services under this agreement, it shall be done with continued liability for the Contractor. The Contractor shall remain responsible for services, responsibilities and liabilities of any person or entity acting under Contractor.



15. AUTHORITY TO PRACTICE. Contractor hereby represents and warrants that it has and will continue to maintain all licenses and approvals required to conduct its business and that it will at all times conduct its business activities in a reputable manner. Proof of such licenses and approvals shall be submitted to the Town prior to commencement of work under this Agreement.

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

17. TIME FOR PERFORMANCE: Except as otherwise expressly provided for in this agreement, should the performance of any required by this agreement to be performed 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 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. ARBITRATION. It is the intention of the parties that whenever possible, if a dispute or controversy arises hereunder then such dispute or controversy shall be settled by arbitration in accordance with the procedures, rules and regulations of the American Arbitration Association. The decision rendered by the Arbitrator shall be final and binding upon the parties and judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction. Arbitration shall be held in Miami-Dade County, Florida. The non-prevailing party shall pay all costs of arbitration and attorneys' fees incurred by the parties or, if neither party prevails on the whole, each party shall be responsible for a portion of the costs of arbitration and their respective attorneys' fees as may be determined by the court on confirmation.

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

20. NOTICES. All notices and communications hereunder shall be in writing and shall be deemed given when sent postage prepaid by registered or certified mail, return receipt



requested and, if intended for Town to Town Manager, Roger M. Carlton, with a copy to Lynn M. Dannheisser, Town Attorney, Town of Surfside, Florida, 33154, and, if intended for Contractor, shall be addressed to:
Surf Café, c/o David Jacobson 424 92nd Street, Surfside, FL 33154.

21. **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 of any action or proceeding commenced under or pursuant to this Agreement shall be in Miami-Dade County, in the State of Florida.

22. **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.

23. **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.

24. **CONFLICT OF INTEREST.** The Contractor agrees to adhere to and be governed by the Miami-Dade County Conflict of Interest Ordinance Section 2-11.1, as amended; and by Town of Surfside Ordinance No.07-1474, which are incorporated by reference herein as if fully set forth herein, in connection with the Agreement conditions hereunder. Contractor covenants that it presently has no interest and shall not acquire any interest, direct or indirectly that should conflict in any manner or degree with the performance of the services.

25. **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.

26. 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.

27. MISCELLANEOUS.

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.

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.

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.

In the event of any litigation arising from or related to the services provided under this Agreement, the prevailing party will be entitled to recovery of all reasonable litigation costs and attorneys' fees and other related expenses including those incurred in any appeal. If neither party prevails on the whole, each party shall be responsible for a portion of the costs of arbitration and their respective attorneys' fees as be determined by the court on confirmation.



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

WITNESSES:

[Signature]
Signature
DUNCAN TAVARES
Print Name

COMPANY SURF CAFE

BY: David E. Jacobson OWNER
Name & Title
[Signature]
Signature

WITNESSES:

[Signature]
Signature
DUNCAN TAVARES
Print Name

TOWN OF SURFSIDE, FLORIDA

BY: [Signature]
Roger M. Carlton, Town Manager

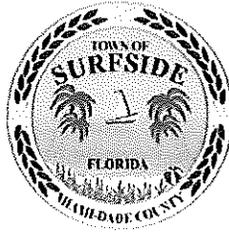
ATTEST:

[Signature]
Debra E. Eastman, MMC
Town Clerk

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

[Signature]
Lynn M. Dannheisser, Town Attorney

[Handwritten mark]



Town of Surfside Commission Communication

Agenda Item # 3H

Agenda Date: July 19, 2011

Subject: Community Center Grand Opening Firework Display

Objective: To enhance the celebration of the Grand Opening for the Community Center.

Recommendation: Work with Zambelli Fireworks to display and close the Grand Opening activities for the Community Center.

Background: The Town of Surfside has a previous working relationship with Zambelli Fireworks. Zambelli Fireworks is the most reputable fireworks company, known nationwide. Through the longstanding working relationship with Zambelli Fireworks, the company has proven to be reliable, professional and accommodative of the town's needs.

Analysis: Through a well-known company, such as Zambelli Fireworks, the town will be able to continue to provide quality work results to the residents of Surfside. As a town, we would be displayed by a national company who carries the family name and understands the importance of providing top-notch quality service.

Budget Impact: Onetime fee of \$10,000

Growth Impact: Having the capability of a firework display presented by Zambelli Fireworks helps commemorate the opening of the Community Center. With the reputable company, Zambelli Fireworks, it will leave a lasting impression for residents to carry the remembrance of the day and associate it for years to come with the Community Center.

Staff Impact: One point person from the Parks and Recreation Department to coordinate with Zambelli the launch site and specifics prior to event. Day of event – the Parks and Recreation Department to ensure proper launch site is secured.

Department Head

Town Manager

RESOLUTION NO. ____

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, APPROVING AN AFTER-THE-FACT EXPENDITURE FOR ZAMBELLI FIREWORKS MANUFACTURING CO. FOR EXHIBITION AND DISPLAY OF FIREWORKS; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, The Town of Surfside is celebrating the grand opening of the Community Center; and

WHEREAS, Zambelli Fireworks Manufacturing Co. (hereinafter “Zambelli”) specializes in designing and performing exhibitions and displays of fireworks and has previously done work for the Town of Surfside was able to provide necessary services agreed upon in exhibit “A”; and

WHEREAS, Zambelli was authorized to proceed with the agreement to ensure preparation in time for the celebration of the grand opening of the Community Center. The total cost of the agreement is \$10,000. (as reflected in exhibit “A”).

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

Section 1. Recitals. The above-stated recitals are hereby adopted and confirmed.

Section 2. Purchase Order Approved. The Zambelli Contract (attached as Exhibit “A”) is hereby approved after-the-fact and the Town Manager is hereby authorized to have made and issued payment on behalf of the Town.

Section 3. Effective Date. This Resolution shall be effective immediately from adoption hereof.

PASSED and ADOPTED on this ____ day of _____

Motion by Commissioner _____, second by Commissioner _____.

FINAL VOTE ON ADOPTION

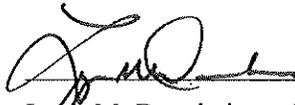
Commissioner Michael Karukin _____
Commissioner Edward Kopelman _____
Commissioner Marta Olchyk _____
Vice Mayor Joseph Graubart _____
Mayor Daniel Dietch _____

Daniel Dietch, Mayor

ATTEST:

Debra E. Eastman, MMC
Town Clerk

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



Lynn M. Dannheisser, Town Attorney

ZABELLI FIREWORKS MANUFACTURING CO.

THIS CONTRACT AND AGREEMENT (this "Contract") is made effective as of this 23rd day of May, 2011, by and between:

Zambelli Fireworks Manufacturing Co. of New Castle, Pennsylvania (hereinafter referred to as "Zambelli"),
Town of Surfside, 9293 Harding Avenue, Surfside, FL 33154

WHEREAS, Zambelli is in the business of designing and performing exhibitions and displays of fireworks; and

WHEREAS, Client desires that Zambelli provide an exhibition and display of fireworks for Client's benefit pursuant to the terms and conditions hereof, and Zambelli desires to perform an exhibition and display of fireworks for Client's benefit pursuant to the terms and conditions hereof.

NOW, THEREFORE, in consideration of the mutual agreements herein contained:

Zambelli, intending to be legally bound, agrees as follows:

1. Zambelli agrees to sell, furnish and deliver to Client a fireworks display [per the program submitted by Zambelli to Client, accepted by Client and made a part hereof] (hereinafter referred to as the "Display") to be exhibited on the display date set forth below (hereinafter referred to as the "Display Date"), or on the postponement date set forth below (hereinafter referred to as the "Postponement Date") if the Display is postponed as provided herein, which Display Date and Postponement Date have been agreed upon at the time of signing this Contract.

Display Date: June 19, 2011 Postponement Date (if any applicable): _____

Zambelli agrees to furnish the services of two display technicians (hereinafter referred to as "Display Technicians") who are sufficiently trained to present the Display. Zambelli shall determine in its sole discretion the number of Display Technicians necessary to take charge of and safely present the Display.

2. Zambelli agrees to furnish insurance coverage in connection with the Display for bodily injury and property damage, including products liability, which insurance shall include Client as additional insured regarding claims made against Client for bodily injury or property damage arising from the operations of Zambelli in performing the Display provided for in this Contract. Such insurance afforded by Zambelli shall not include claims made against Client for bodily injury or property damage arising from failure of Client, including through or by its employees, agents and independent contractors, to perform its obligations under this Contract, including without limitation those set forth in paragraphs 5 and 6 below. Client shall indemnify and hold Zambelli harmless from all claims and suits made against Zambelli for bodily injury or property damage arising from failure of Client, including through or by its employees, agents and independent contractors, to perform its obligations under this Contract, including without limitation those set forth in paragraphs 5 and 6 below.

Client, intending to be legally bound, agrees as follows:

3. Client agrees to pay Zambelli the sum of **\$9,000 (Please see paragraph 24)** (hereinafter referred to as the "Purchase Price"), fifty percent (50%) of which is due upon signing this Contract and the balance of which is due at noon three days before the Display Date. Zambelli reserves the right to add to Client's invoice an equitable transportation surcharge in the event of any material increase in transportation costs (including the cost of fuel and third party shipping costs) to Zambelli after the date of this Contract. In addition, Client agrees to pay a postponement fee of fifteen percent (15%) of the Purchase Price plus Additional Third Party Charges (as defined in paragraph 11 below) if the Display is fired on the Postponement Date, or twenty-five percent (25%) of the Purchase Price plus Additional Third Party Charges if the Display is fired on a date other than the Display Date or the Postponement Date ("Alternate Date"). The Alternate Date must occur within six months of the original Display Date at a time agreeable to both Zambelli and the Client. Generally, Alternate Dates will not include the period from June 28th through July 7th. These Checks shall be made payable to Zambelli Fireworks Manufacturing Co., unless otherwise authorized in writing by Zambelli. NO CASH shall be paid to any agent or employee of Zambelli, unless otherwise authorized in writing by Zambelli. There shall be no refund of the Purchase Price due and payable under this paragraph 4, except as specifically provided in paragraph 11 below.
4. Client agrees to meet all deadlines outlined in the Design and Production Provisions, which has been provided to Client, including but not limited to the following:

- (a) Client must select a suitable place for the Display, including a firing and debris zone reasonably acceptable to Zambelli (hereinafter referred to as the "Display Area") and submit such selection to Zambelli no later than sixty (60) days prior to the Display Date. The Display Area shall adhere to or exceed applicable National Fire Protection Association ("NFPA") standards including the Zambelli guideline that the Display Area have a radius of at least 100 feet per inch (or as mutually agreed to between Zambelli and Client) of the largest diameter pyrotechnic from the firing site in all directions to any parking area, spectators, inhabited buildings, public roads, or active railroad. Client shall submit a site map (attached hereto as Exhibit A) to Zambelli accurately representing the physical characteristics of the Display Area as pertains to NFPA and Zambelli guidelines. The content of the Display may be limited by the selection of the Display Area due to the requirement to provide sufficient safety zones.
 - (b) Zambelli will secure all permits necessary for the Display as required, including but not limited to police, local, state and United States Coast Guard ("USCG") permits, where applicable, and arrange for any security bonds or insurance as required by law. Client will assist Zambelli when appropriate in completing permit applications.
5. If, in its sole discretion, Client designates an area for members of the public to view the Display (hereinafter referred to as the "Spectator Area") or an area for vehicular parking (hereinafter referred to as the "Parking Area"), Client shall (a) ensure that the Spectator Area does not infringe on the Display Area, (b) have sole responsibility for ensuring that the terrain of the Spectator Area and any structures thereon, including but not limited to grandstands and bleachers are safe for use by spectators, (c) have sole responsibility for ensuring that the Parking Area is safe for use, (d) have sole responsibility to police, monitor and appropriately control spectator access to the Spectator Area and the Parking Area and police and monitor and appropriately control the behavior of persons in these areas. It is expressly agreed that Zambelli shall not inspect any area other than the Display Area, except to ensure that any Spectator or Parking Areas are outside the Display Area.
 6. Prior to, during, and immediately following the Display, Client shall monitor the Display Area and will be solely responsible to keep all persons and property not authorized by Zambelli out of the Display Area and behind safety zone lines and limits.
 7. Following the Display, Client shall be solely responsible for policing of the Display Area and for cleanup except as specifically provided in the sentence immediately following. Zambelli shall be responsible for the removal of unexploded fireworks and the cleanup of material debris, the removal of frames, sets and lumber from the Discharge Area, and the refilling of holes created by Zambelli or on behalf of Zambelli within the Discharge Area.
 8. Client will include a direct reference to "Zambelli Fireworks" in all promotional material, including but not limited to event schedules; radio, television, newspaper and internet announcements; newspaper articles; and other media.

The parties, intending to be legally bound, mutually agree as follows:

9. It is agreed and understood by the parties hereto that should inclement weather prevent firing of the Display on the Display Date, as determined by the Authority Having Jurisdiction (as defined in paragraph 14 below) or as reasonably determined by Zambelli, then the program shall be postponed and fired on the Postponement Date. If there is no Postponement Date and the Display is not fired on the Display Date, or if inclement weather prevents firing of the Display on the Postponement Date, as determined by the Authority Having Jurisdiction or as reasonably determined by Zambelli, the Display will be cancelled and there will be no refund of the Deposit or fifty percent (50%) of the Purchase Price, whichever is greater.
10. Client's cancellation of the Display will only be effective upon receipt by Zambelli of a written notice from an authorized person representing Client. In the event of cancellation of the Display, the parties agree as follows:
 - (a) If Client cancels the Display more than sixty-one (61) days prior to the Display Date, Client agrees to pay Zambelli a cancellation fee equal to ten percent (10%) of the Purchase Price plus Additional Third Party Charges, as defined below.
 - (b) If Client cancels the Display from thirty-one (31) to sixty (60) days prior to the Display Date, Client agrees to pay Zambelli a cancellation fee equal to twenty percent (20%) of the Purchase Price plus Additional Third Party Charges, as defined below.
 - (c) If Client cancels the Display from five (5) days prior the Display to thirty (30) days prior to the Display Date, Client agrees to pay Zambelli a cancellation fee equal to thirty percent (30%) of the Purchase Price plus Additional Third Party Charges, as defined below.

- (d) If Client cancels the Display less than five (5) days prior to the day of the Display, Client agrees to pay Zambelli a cancellation fee equal to fifty percent (50%) of the Purchase Price plus Additional Third Party Charges, as defined below.
- (e) "Additional Third Party Charges" shall mean all costs and expenses incurred by Zambelli and paid or payable to third parties in connection with the Display, including but not limited to security fees, permits and licensing fees and expenses, barge and tow expenses, and firewatch fees.
11. Zambelli reserves the exclusive right to make minor modifications and substitutions to the Display, provided that such changes are reasonable and necessary and do not materially adversely affect price, time of delivery, functional character or performance of the Display.
 12. It shall be within Zambelli's and/or the Authority Having Jurisdiction's discretion to terminate the firing of the Display if any unsafe or unsuitable condition is identified. If such condition is not corrected, Zambelli may cancel the Display without further liability to Client for such cancellation.
 13. The parties agree to cooperate with the regulatory authorities having jurisdiction over the Display, including, but not limited to local fire and police departments, the Bureau of Alcohol, Tobacco, Firearms and Explosives, the Department of Transportation, the Department of Homeland Security, and the USCG (any such authority having jurisdiction over the Display is sometimes referred to herein as, the "Authority Having Jurisdiction"). The parties acknowledge that such governmental regulatory authorities having jurisdiction over the Display have the right to prohibit the Display until unsafe or unsuitable conditions are corrected.
 14. This contract shall be deemed made in the Commonwealth of Pennsylvania and shall be construed in accordance with the laws of the Commonwealth of Pennsylvania, excluding its conflict of law rules. The parties agree and consent to the jurisdiction of the courts of the Commonwealth of Pennsylvania and the Federal District Court for the Western District of Pennsylvania to decide all disputes regarding this Contract.
 15. If Client becomes bankrupt or insolvent, or if a petition in bankruptcy is filed by or against Client or if a receiver is appointed for Client, Zambelli may refuse to perform under this Contract and may terminate this Contract without prejudice to the rights of Zambelli. If Client's financial condition becomes unsatisfactory to Zambelli, Zambelli may require that Client deposit the balance of the Purchase Price in escrow or provide sufficient proof of its ability to pay the balance of the Purchase Price.
 16. Except to the extent, if any, specifically provided to the contrary herein, in no event shall Zambelli be liable to Client for any indirect, special, consequential, incidental or punitive damages or lost profits, however caused and on any theory of liability (including negligence of any kind, strict liability or tort) arising in any way out of this contract, whether or not Zambelli has been advised of the possibility of damages.
 17. If Client fails to pay the monies due under this Contract, Zambelli is entitled to recover the balance due plus interest at one and one-half percent (1 ½ %) per month on amounts past due sixty (60) days or more. Further, on balances outstanding one hundred twenty (120) days or more, Zambelli is entitled to recover the balance due, plus accrued interest, plus attorneys fees of ten percent (10%) of the amount past due, plus court costs, or, if less, the maximum amount permitted by law.
 18. This Contract shall not be construed to create a partnership or joint venture between the parties or persons mentioned herein.
 19. Each party hereunder shall be excused for the period of delay in the performance of any of its obligations hereunder and shall not be liable for failure to perform or considered in default hereunder, when prevented from so performing by a cause or causes beyond its reasonable control, including but not limited to fire, storm, earthquake, flood, drought, accident, explosion, operation malfunction, or interruption, strikes, lockouts, labor disputes, riots, war (whether or not declared or whether or not the United States is a member), Federal, state, municipal or other governmental legal restriction or limitation or compliance therewith, failure or delay of transportation, shortage of, or inability to obtain materials, supplies, equipment, fuel, power, labor or other operational necessity, interruption or curtailment of power supply, or act of God, nature or public enemy.
 20. This Contract constitutes the sole and entire understanding of the parties with respect to the matters contemplated hereby and supersedes and renders null and void all prior negotiations, representations, agreements and understandings (oral and written) between the parties with respect to such matters. No change or amendment may be made to this Contract except by an instrument in writing signed by each of the parties.

- 21. Notices, consents, requests or other communications required or permitted to be given by either party pursuant to this Contract shall be given in writing by first class mail, postage prepaid addressed as follows: if to Zambelli, to the address set forth below; if to Client, to _____.
- 22. This Contract may be executed in one or more counterparts, each of which shall be deemed to be an original but all of which together shall be deemed to be one and the same instrument. The exchange of copies of this Contract and of signature pages by facsimile transmission shall constitute effective execution and delivery of this Contract as to the parties and may be used in lieu of the original Contract for all purposes. This Contract and all the rights and powers granted by this Contract shall bind and inure to the benefit of the parties and their respective successors and assigns.
- 24. Price reflects fireworks display with a duration of 12 minutes plus a "Surfside Community Center" set piece.

IN WITNESS WHEREOF, we set our hands and seals to the agreement in duplicate the day and year first above written.

FOR Client:

FOR: Zambelli Fireworks Manufacturing Co.

BY _____
date

BY _____
date

Please sign contract where indicated for Client and return all copies for final acceptance to:
Zambelli Fireworks Manufacturing Co.
1 West Camino Real Blvd, Ste 100
Boca Raton, FL 33432
 561.395.0955 800.245.0397 FAX 561.395.1799

Zambelli Fireworks Mfg., Co.

Southeast Regional Office
1 W. Camino Real Blvd, Ste 100
Boca Raton, FL 33432
www.zambellifireworks.com

Phone (561) 395.0955

Fax (561) 395.1799

Communications Sheet must be completed in its entirety each year. *Our insurance carrier requires a newly completed form each year.* A Zambelli representative will use this sheet to contact you.

Customer Information		Show Information	
Customer Name	_____	Show Date	_____
Address	_____	Rain Date	_____
City, State, Zip	_____	Time of Show	_____
		Duration of Show	_____
Firing Site Location		Storage Site Location	
Description	_____	Description	_____
Site contact Name	_____	Site Contact Name	_____
Phone Number	_____	Phone Number	_____
Address	_____	Address	_____
City, State, Zip	_____	City, State, Zip	_____
Contact Person		Alternate Contact #1	
Name	_____	Name	_____
Address	_____	Address	_____
City, State, Zip	_____	City, State, Zip	_____
Home Phone Number	_____	Home Phone Number	_____
Fax Number	_____	Fax Number	_____
Office Number	_____	Office Number	_____
Cell Number	_____	Cell Number	_____
E-Mail	_____	E-Mail	_____
Alternate Contact #2		Day of Show Contact	
Name	_____	Name	_____
Address	_____	Address	_____
City, State, Zip	_____	City, State, Zip	_____
Home Phone Number	_____	Home Phone Number	_____
Fax Number	_____	Fax Number	_____
Office Number	_____	Office Number	_____
Cell Number	_____	Cell Number	_____
E-Mail	_____	E-Mail	_____

Suggested Routing from New Castle:

Zambelli Fireworks Mfg., Co.

Southeast Regional Office
1 W. Camino Real Blvd, Ste 100
Boca Raton, FL 33432
www.zambellifireworks.com

Phone (561) 395.0955

Fax (561) 395.1799

Required Insurance Requisition Form

Customer Name _____

Address _____

City _____ State _____ Zip _____

Display Date _____ Display Duration _____

Location of Display _____

City _____ State _____ Zip _____

Name all Additional Insured

Name & Address of Display Site Property Owner

Certificate to be issued to: _____

Address _____

City _____ State _____ Zip _____

Title _____ Phone _____

*** This form must be returned with your signed contract in order for the insurance certificate to be processed. Our insurance company requires that we have this form in addition to the signed contract prior to the certificate being issued.**



Town of Surfside Commission Communication

Agenda Date: June 2, 2011

Subject: Town Commission Budget Workshop

The first draft of the Fiscal Year 2011/2012 Town of Surfside proposed budget will be distributed to the Town Commission as many days as possible before the proposed June 23, 2011 workshop date. In order to provide guidance to Town Staff, it is requested that the Town Commission meet in a workshop to discuss the proposed budget on Thursday, June 23, 2011 at 7 p.m.

The millage rate for purposes of the TRIM notices will be set during the Tuesday, July 19, 2011 Regular Town Commission Meeting. The final millage rate will be set after two public hearings to be held Tuesday, September 13, 2011 at 5:01 p.m. and Monday, September 26, 2011 at 5:01 p.m.

Roger M. Carlton
Town Manager



Town of Surfside Commission Communication

Agenda Item # 3J

Agenda Date: June 14, 2011

Subject: Professional Website Vendor Services

Background: The Town Commission appointed a Communications Committee that made a final report at the March Town Commission meeting. One of the high priority recommendations of the Communications Committee was for the Town to solicit proposals for professional website vendors.

Analysis: The RFP has been prepared and will be issued and advertised on June 15, 2011. A copy of the RFP is attached. The following list contains just a few of the options recommended by the Communications Committee that are to be included in the bid proposal:

- Designs must be original
- Site must be unique, look professional, and uniformly present the quality and character of the Town
- Site must be well organized
- Have the ability to conduct online polls and surveys
- Have search functions
- Page translations from English to Spanish with switching mechanism
- Ability to accept online bill payments
- Have strategic placement of social media sharing
- Have a calendar with a listing of important dates and community events
- Ability to submit a request
- Streaming video of live Town Commission meetings

Budget Impact: The exact budget impact will be determined when the bids are received and pricing is reviewed.

Staff Impact: Town Clerk and Director of Administrative Services, Debra Eastman will advertise, accept and open the sealed bid packages along with the assistance of the current IT staff prior to the July 19, 2011 Town Commission meeting.

Recommendation: The results of the bids and a recommendation will be a part of the July 19, 2011 Town Commission agenda.


Department Head


Town Manager

NOTICE TO WEBSITE VENDORS

NOTICE IS HEREBY GIVEN that the **TOWN OF SURFSIDE** is seeking proposals for the following:

Request for Proposal No. 2011-0_

Professional Website Vendor Services

Notice is hereby given that the Town of Surfside is seeking qualified website vendors. Sealed submittals will be received by the Town Clerk until **2:30 p.m. _____, 2011** at **Town of Surfside, Town Hall located at 9293 Harding Avenue, Commission Chambers, Surfside, Florida, 33154**. Submittals received after this time will not be accepted. Submittals will be opened publicly at this time. All submittals must be in 3 ring binder format.

The envelope containing the sealed submittal must be clearly marked:

“SEALED PROPOSALS”

RFP # 2011-05 Town of Surfside Website Redesign, Maintenance, Updates and Hosting

OPENING DATE AND TIME: _____, 2011

The Town seeks a firm that can provide **website redesign, maintenance, updates and hosting services** for the Town’s website. The Town of Surfside, Florida seeks a vendor to redesign, host and maintain the Town’s website. The new design must reflect Surfside’s unique character, beautiful beaches, heritage and small town feel. The new website must be dynamic, useful, well-organized and informative, fully representing the many services and programs provided to residents, businesses and visitors.

RFP packages may be obtained from the Office of the Town Clerk, Town of Surfside, 9293 Harding Avenue, Surfside, Florida 33154 at no cost, and are also available @ www.townofsurfsidefl.gov.

The Town reserves the right to reject any or all submittals, with or without cause, and to waive technical errors and informalities, and to accept the submittal which best serves the interest of the Town.

For further information, please contact Debra Eastman, Town Clerk, at 305-861-4863 X226.

Debra Eastman, MMC, Town Clerk

Town of Surfside

1.0 SUBMITTAL DOCUMENTS

The complete original proposal must be submitted in a sealed package. All proposals shall be marked RFP #2011-05, **Website Redesign, Maintenance, Updates and Hosting Services**.

Proposers shall be responsible for the actual delivery of proposals during business hours to **Town of Surfside, 9293 Harding Avenue, Surfside, Florida 33154**. It shall not be sufficient to show that the proposal was mailed in time to be received before scheduled closing time.

Questions regarding this RFP are due by _____, **2011 at 5 p.m.** and should be submitted via email to Debra Eastman, MMC, Town Clerk and Director of Administrative Services at deastman@townofsurfsidefl.gov

RFP packages may be obtained from the Office of the Town Clerk, Town of Surfside, 9293 Harding Avenue, Surfside, Florida 33154 at no cost, and are also available @ www.townofsurfsidefl.gov.

2.0 COPIES

Two (2) printed and signed originals and five (5) identical printed copies of the proposal and supporting documents must be submitted in 3 ring binder format in response to the RFP. All responses must relate to the specifications as outlined.

3.0 MANDATORY SUBMITTAL REQUIREMENTS

1. Name, address and company, including, but not limited to, a business overview, financial state of the business, annual revenue for past two years, and names and addresses of persons having financial interest in the firm.
2. Provide a complete corporate history and background.
3. Describe your organization's experience in developing websites, with specific clients, samples, dates of service and website links. Specifically, note any experience with design and development for municipalities or governmental organizations. Also comment on the overall history of the organization.
4. Describe experience hosting and maintaining websites, including updating web content. Description must include specific clients, samples, dates of service, website links and level of service.
5. Respondent must provide five (5) references with at least two (2) being municipalities or local government websites. References must be organizations for which the respondent has developed a website that is currently in use.
6. Describe different services offered by your organization and the approximate share of business devoted to web design.
7. Provide a brief bio listing qualifications of each employee that would contribute to developing the website for the Town, if selected. Please note experience with similar projects. Vendor must identify the Project Manager and provide resume, their related

experience to similar projects and amount of time that will be dedicated to this project. Please provide URL's of similar websites the project manager has managed or is currently managing. The Town requires preapproval for changing key personnel originally assigned to this project. Describe your transition from one Project Manager to another.

8. The hosting facility must be located within Miami-Dade, Broward or Palm Beach County.
9. Acknowledge and acceptance that all Sections and requirements described in this RFP will be met.
10. List types of software or practices used for website development and design.
11. Clearly define responsibilities of the Town during the web site design process.
12. Describe the expected interaction between your organization and the Town throughout the development and transition process.
13. Describe the support your organization will provide during design and transition to the new website. Please be specific with respect to type (training, help only, etc.), contact method (phone, email), and available hours for support.
14. Provide all necessary contact information for your organization.
15. Provide any additional information about your organization that you feel is relevant to the decision process.
16. Provide transition plan for this project.
17. Provide timeline and project management plan for this project.
18. Appropriate current Federal 254 and 255 forms showing the firm data and supporting the firm's ability to perform each category of work described.
19. Sworn statement pursuant to Section 287.133(3)(A), Florida Statutes, on Public Entity Crime, a copy of which is attached hereto.
20. Non-collusive Affidavit, a copy of which is attached hereto.
21. Proof of authorization to transact business in Florida from the Florida Secretary of State.
22. Pricing for all components of this RFP listed as per Pricing Schedule shown in Section 19.0.

4.0 PURPOSE

The Town of Surfside, Florida seeks a vendor to redesign, host and maintain the Town's website – each of these components of the RFP are equally as important to the Town. The new design must reflect Surfside's unique character, beautiful beaches, heritage and small town feel. The new website must be dynamic, useful, well-organized and informative, fully representing the many services and programs provided to residents, businesses and visitors. The new site shall be flexible, intuitive, easy to update and modify and able to incorporate additional components in the future. The Town would like to make Town services and events more accessible increasing the level of service provided. Overall, the website must be innovative, attractive and highly functional for all users.

5.0 BACKGROUND

The current Town website is located at www.townofsurfsidefl.gov. The Town's current website utilizes Sitefinity as the content management system (CMS) and all content is part of the database structure within Sitefinity. The site is currently being hosted and maintained by the Town's IT services Vendor, Calvin, Giordano And Associates, Inc, (CGA). Website content updates are currently being performed by CGA and limited Town staff. Full backups are done weekly and stored off site at Iron Mountain and incremental changes are backed up daily. The site currently stores a total of approximately 50GB of information which can be accessed through the web at any given time. Current storage and bandwidth usage is as follows:

1. Current Storage Space Usage: 50 GB
 - 48 GB video files
 - The balance of content is documents, images, databases, etc. that make of the rest of the website and content management system.
 - The entire 50 GBs of information is live content in one form or another and increases weekly.
2. Recent Bandwidth Usage FY2010 and FY2011:
 - July 2010 – 35 GB
 - August 2010 – 32GB
 - September 2010 – 26GB
 - October 2010 – 32GB
 - December 2010 - 29GB
 - January 2011 - 36GB
 - February 2011 - 40GB

CGA will provide the database in use for the current website to the newly selected vendor in its existing database format. Technically, the database will be provided as it resides within the current CMS. It will be the responsibility of the vendor to integrate into their proposed solution. The contractor will be expected to migrate and incorporate all existing content and information into the new website. The vendor must include the use of a content writer, if necessary. Any additional content writing and photography shall be provided by the vendor.

6.0 PRIMARY SCOPE OF SERVICES

A final scope of work will be delivered to the Town by the Vendor and will include website redesign and hosting. The following description acts only as a preliminary scope to generally communicate the Town's expectations. The Town is interested in a hosted solution. The bid should list the price per month, as described in section 19.0, for a two year agreement with a one year renewal.

- 6.1. Primary scope of services for website redesign to include (more specifically described in section 7.0 and 8.0):
 - Utilize Content Management System that is intuitive
 - Ease of use

- Easy access to information
- Overall communication between Residents and Town Hall
- Download Town documents or documents
- Provide notifications to residents of new events
- Stream pre-recorded videos

6.2. Primary scope of services for website hosting to include (more specifically described in section 9.0 and 10.0):

- Resources allocated to the Town website
- Traffic/Usage Reporting
- Location of hosting facility
- Data backup
- Bandwidth
- Storage
- Hardware specs used
- Software specs used
- Website maintenance
- How hardware and software upgrades/updates are handled
- Website content updates
- Technical support
- Security

7.0 WEBSITE DESIGN REQUIREMENTS

The Town expects that the Vendor will work together with the Town to plan and organize information on the site, which most likely will include planning sessions, regular meetings, and continued communication throughout the duration of the website design project.

A complete schedule of milestones and an outline of the projects lifecycle is to be included in the proposal. It is expected that the Vendor will work closely with the Town to develop the best site organizational structure. Requirements include:

7.1 Website Frontend Design Requirements

- The site must be unique, look professional, and uniformly present the quality and character of the Town while promoting interaction with residents, businesses, and visitors both current and potential.
- Create and present three unique webpage layouts. Each webpage layout must include a home page and two secondary page designs.
- Two rounds of revisions are to be included in the proposal cost.
- Create a separate design for the Police Department, but must compliment the overall design.
- Layouts should be designed for a 1024 pixel resolution.
- All designs must be original.

- All designs will be property of the Town and cannot be reused or sold by the vendor.
- Develop a website style guide listing all styles with descriptions on where and how they should be used.

7.2 Website Frontend Development Requirements

- Develop templates for all appropriate sections of the website.
- Must be compatible and consistent on all major browsers.
- If Flash is used a comparable alternative replacement must be developed.
- All designs must be well optimized, and utilize a mechanism for delivering printer friendly pages.
- Develop a usable template and style guide to work with 3rd party vendors to ensure a consistent look and feel.
- Develop a mobile formatted layout and include automatic mobile detection.
- All code must be clean and W3C valid.
- Incorporate spam blocking techniques for all appropriate areas.
- Accessible by viewers with limited computer knowledge and should avoid using technology that may not be compliant with some browsers. In the event such technology is used, the site should provide alternate means for accessing the information.
- The Town would like the site design to be as compliant with Section 508 and Americans with Disabilities Act guidelines as reasonably possible. Respondent should make an effort to comply with guidelines; however, the usability of the site and ability for staff to easily update the site and content contained within the website should be considered. Compliance with the standards should not prevent any other requirements from being met.

7.3 Website Frontend Functionality Requirements

- The ability to conduct online polls and surveys with responses in multiple formats including but not limited to: multiple choice, free flowing text and "check all that apply".
- News pages based on category and/or department
- A search function that allows the user to search the whole site or subsections within the site.
- Page translations from English to Spanish with a switching mechanism.
- Ability to accept online bill payments. The Town is utilizing MuniBills for online payments. Website must integrate with this online bill payment component. A link for MuniBills will be provided.
- Strategic placement of social media sharing options. EX: Share on Facebook, Like, send to Twitter, send by email
- A live calendar with a listing of important dates and community events, which can be divided according to department or category.

- a. Ability to "add to calendar"
- b. Ability to subscribe to specific event categories
- c. Ability to submit a request to post an event
- Ability to subscribe to various content and be notified of updates/changes
- Streaming video archive of all recorded meetings for the past 3 years.
- Associated links to locate useful information. EX: Surfside tourism.
- Advanced document search capabilities with the ability to choose multiple criteria. EX: Commission meeting agendas, Planning and Zoning agendas, date ranges, etc.
- Subscribe to RSS feeds for news and events
- SMS (short message service) notification sign up

Optional Features

- Citizen public information request management
- Streaming video of live commission meetings
- Video and agenda/minutes automation tool to quickly locate recorded meeting segments through key word searches. Automated interactive agenda and minutes that hyperlink the documents to corresponding video segments.

8.0 BACKEND / CONTENT MANAGEMENT SYSTEM (CMS)

The content management system utilized for the website should be easily accessible, and allow Town staff to update any section of the site at any time. The vendor will also be required to update content on regular basis, as per the direction of the Town. The vendor must include a detailed outline of their training and support process.

The Vendor must describe the CMS proposed in this RFP. The proposal must include the following:

- Describe whether CMS is proprietary or commercial.
- Describe your process for updating content on the website.
- Describe the CMS licensing structure and cost.
- Describe the technologies and programming languages used in the CMS.
- Describe which part of the source code will be owned and provided to the Town. The Town desire to own all source developed for the site, including CMS.
- Describe how the CMS handles permission levels.
- Describe the security features.
- Provide a detailed description of the type of support that will be offered.

8.1 Website Backend / Content Management System Requirements

- Recent and Important News Creation
 - The ability to easily post emergency notices on the website homepage.
 - WYSIWYG editor
 - Automatic image thumbnail creation
 - Publish / unpublish scheduling

- Publish by email
 - Separate news items for different departments
- Image Gallery
 - Easily create and manage multiple image galleries.
 - Automatically resize and compress images.
- Video Streaming and Archiving
 - Quick search
 - Advanced search with criteria's
 - Vendor must work with the Town to Develop a video conversion process
 - Video archive to streaming
 - Live video to streaming
- Website must be ready for integration with a Document Management System
 - Quick search
 - Advanced search with criteria's
 - Vendor must work with the Town to Develop a document conversion process
 - Word to PDF
 - Visio to PDF
 - PDF to JPG
 - Version Tracking
- Forms Creation and Management
 - Easily create and manage multiple forms
 - Generate reports
 - Export email lists and submissions
- Events
 - WYSIWYG editor
 - Publish / unpublish scheduling
- Newsletter Management
 - WYSIWYG editor
 - Ability to create multiple newsletters
 - Send to multiple subscriber lists
 - Generate reports
- WYSIWYG Requirements:
 - Import content directly from Microsoft Word
 - Word-like HTML Editor
 - Edit text, format font color and size, set indentation and alignment
 - Insert and manage links
 - Inset and re-size images
 - Insert documents
 - Create tables and lists
 - Check the content for misspellings
 - multilevel undo/redo to revert to old versions of the content
- SEO and Web Analytics Requirements:

- Built-in web analytics
- Metadata (Title, Description, Keywords)
- SEO friendly, extensionless URLs
- Miscellaneous
 - The ability to create different but duplicate instances of a page in multiple areas of the website.
 - Automatic Broken link checker / report generator
 - 404/Page not found management with related pages or “were you looking for” suggestions on 404 page
 - Content approval workflow
 - Drag and drop reordering of items
 - External links open automatically in a new window.
 - Provide future growth for advertising or sponsorship.
- Must allow for Town to be able to post unlimited amount of content at no extra cost to Town.
- Allow for unlimited amount of system users at no extra cost to Town.

9.0 WEBSITE HOSTING

The proposal must include information and cost for website hosting. Email is hosted internally and will remain as such. Include a total monthly cost for complete and full website hosting to include:

- Server information (age of servers, hardware specs)
- Security information (hardware, software, and hosting facility)
- Firewall
- Amount of resources allocated to the Town website
- Outline of backup process
- Emergency plan/redundancy

10.0 HOSTING SERVICE

The hosting facility must be located within Miami-Dade, Broward or Palm Beach County. Provide a full and complete description of Vendor's monitoring and management systems for hosting. This shall include, but may not necessarily be limited to, type of system(s), staffing, network problems and outage tracking capabilities. Provide any information about other aspects of the Vendor's management service, such as monthly trend analysis and service level performance statistics that is relevant, and address this need.

Describe in detail the current system and methodologies that will be utilized in order to provide both service and support should the Vendor be selected to provide the services described in this RFP. This section should include the following features and any other aspect of your business that would set your services apart from other vendors.

- Equipment Description

- Guaranteed 99.9% uptime (penalty will be absorbed by the vendor if site is not available at any given time for more than one (1) hour. Penalty will be negotiated at time of contract.)
- Website traffic/usage reporting
- Billing Services to the Town for service rendered
- Network Management
- Storage
- Bandwidth
- Monitoring
- System Alerts
- Data Backup / Redundancy / Disaster Recovery
- Emergency Planning
- Security

11.0 QUALIFICATIONS

Selection of the Vendor for this contract will be at the sole judgment of the Town and its selection committee. Only those respondents meeting the following conditions, however, will be considered:

- Respondent must demonstrate past success with website development.
- Respondent must have experience developing websites specifically for government organizations.
- Vendor must have experience with state statutes as they relate to government document retention in the State of Florida.
- Respondent must provide five (5) references with at least two (2) being municipalities or local government websites. All references must be developed by, and are currently being managed by the respondent. URL's must be provided.
- Respondent must have experience hosting, updating and maintaining government websites and must be familiar with state statutes as they relate to government document retention in the State of Florida.

12.0 BASIS OF AWARD

Proposals will be evaluated according to the following criteria and weight at a minimum:

- Proposer's qualifications and experience, including support capabilities. (30%)
- Web Design capabilities and Response to Requirements (30%)
- Fees (20%)
- References (20%)

Selection of proposals will be at the sole judgment of the Town and the selection Committee. The Town will consider all parts of the proposal collectively. The selection process may include an interview session. The Town will select the respondent that best satisfies the requirements in the RFP and the expectations of the Town and can do so at

the best value to the Town. Selection does not guarantee a contract. After selection, the Vendor and Town will discuss and agree on final scope of work and final contract amount and terms of the Contract. If the Vendor and Town fail to reach an agreement, the Town is free to select from remaining available respondents, cancel the RFP, or issue an additional Request for Proposals.

Bidders not addressing all elements in Section 3.0 (Mandatory Submittal Requirements) will be deemed unresponsive.

13.0 COMPLETED WEBSITE

The Contract between the Vendor and the Town will include provisions indicating compensation schedule and timeline for completion of and transition to the new website. The Town will retain the right of approval for all work done in designing the website. It is the expectation and desire of the Town to transition to the new website as soon as possible. The contract will be for the design, implementation, maintenance and hosting of the Town website.

Upon completion of the contract all content, site design, site templates, and any other item or idea used in the completed website or contained therein will become property of the Town. Contractor will relinquish all rights to the website and the Town will have sole control over website design, content, and appearance.

14.0 FEE AND AWARD OF CONTRACT

Please be very explicit in listing and describing any services or items not covered in the proposal fee amount. Proposal fee should be broken down to include major fee categories. See Section 19.0 for Pricing schedule format.

15.0 INDEMNIFICATION

Proposer, at its own expense and without exception, shall indemnify, defend and pay all damages, costs, expenses, including attorney fees, and otherwise hold harmless the Town of Surfside, its employees, and agents, from any liability of any nature or kind in regard to the delivery of these services.

16.0 TERMINATION OF CONTRACT

The Town of Surfside reserves the right to terminate, with 60 day notice, if vendor falters on level of service described in this RFP. The vendor has 30 days, from date of notice, to provide the Town with all web content and files related to the Town's current website. The vendor will provide all website content and components to the Town, as the Town is sole owner of all website information, content, source code, databases, documents and images utilized in the website.

17.0 TRANSFER OF CONTRACT

If the Vendor is sold, merged, dissolved, etc. the Town reserves the right to review and approve new vendor inheriting this contract. If the vendor declares bankruptcy the contract is null and void.

18.0 INSURANCE – TO BE PROVIDED BY LEGAL.

CONSULTANT shall at all times carry professional liability insurance, workers' compensation insurance, comprehensive general liability insurance, and automotive liability insurance with policy limits and deductibles for each coverage at amounts reasonably approved by the Town Manager, with such coverages specifying reasonable amounts of per occurrence, single limit, for property damage and bodily injury, including death, except that the dollar amount of workers compensation coverage shall be as provided by Chapter 440, Florida Statutes. CONSULTANT shall be responsible for maintaining this professional liability insurance for a minimum of three (3) years from the date of expiration of this Agreement. Upon request of the Town, CONSULTANT shall make available for inspection copies of any claims filed or made against any policy during the policy term.

CONSULTANT shall additionally notify Town, in writing, within thirty (30) calendar days, of any claims filed or made against any policy in excess of \$50,000 during the policy term.

18.1 Certificates of insurance, reflecting evidence of the required insurance, shall be filed with the Town Manager or designee prior to the commencement of the work. Policies shall be issued by companies authorized to do business under the laws of the State of Florida, with financial ratings acceptable to the Town Manager. The TOWN shall be named as an additional insured on all insurance policies. CONSULTANT agrees to furnish TOWN with at least thirty (30) days prior written notice of any cancellation of any insurance policy required under this Agreement.

18.2 In the event the insurance certificate provided indicates that the insurance shall terminate and lapse during the period of this contract, then in that event, CONSULTANT shall furnish, at least ten (10) days prior to the expiration of the date of such insurance, a renewed certificate of insurance as proof that equal and like coverage for the balance of the period of the contract and extension there under is in effect. CONSULTANT shall not continue to work pursuant to this contract unless all required insurance remains in full force and effect.

18.3 The costs of all policies of insurance required hereunder shall be the obligation of CONSULTANT, and the TOWN shall in no way be responsible therefore.

18.4 Town shall pay for and maintain its own comprehensive general liability insurance or maintain a self-insuring fund for the term of this Agreement in the amount determined by TOWN to adequately insure the TOWN'S liability assumed herein, but in no event shall such coverage be less than the amount of statutory waiver of sovereign immunity. In the event such coverage is modified, in any regard, before the expiration date of this Agreement, and unless otherwise agreed, TOWN will provide at least thirty (30) days prior written notice to CONSULTANT.

18.5 CONSULTANT shall, at all times, carry the following insurance with the limits set forth in accordance with the provisions of this section:

- Workers Compensation Per Florida Statutes
- Commercial General Liability per occurrence \$1,000,000.00
- Personal & ADV Injury \$1,000,000.00
- General Aggregate \$2,000,000.00
- Products Comp/OP AGG \$2,000,000.00
- Technology Errors & Omissions \$1,000,000.00

19.0 PRICING SCHEDULE

The proposal must contain the project cost, as described in the schedule below. All components described in this RFP must be taken into consideration during pricing such as, concept design and development; site production and technical development; programming and application development; site review, testing, problem solving, etc. (prior to and following launch); content management system licensure; staff training; and travel expenses.

Town of Surfside Web Redesign, Hosting and Maintenance Pricing Schedule	
Description	Cost
Website Frontend Design	
Website Frontend Functionality Development	
Backend Content Management System	
Website Hosting	
Website Content Updates	
Web Content & Photography	
Training	
Travel	
TOTAL	

Proclamation

Whereas, Ruth K. Broad Bay Harbor K-8 Center declares June 8, 2011 as Appreciation Day in honor of Janet Tearle for her devoted and conscientious service to our children;

Whereas, we recognize her excellence in teaching which has endured throughout her 39 years of service in the field of education;

Whereas, three of those years were at Ruth K. Broad Bay Harbor K-8 Center;

Whereas, we recognize her caring, compassionate and dedicated service to our students;

Whereas, her outstanding passion for teaching and her gifts as an educator have been shared with her students;

Whereas, she has expressed her creativity in the classroom and has shared this talent with her students;

Now, Therefore, the Bobcat Family does hereby proclaim June 8, 2011, Janet Tearle Day in observance thereof, we call upon her friends and family to join us in celebration of this day.

In witness thereof I have hereunto set my hand this 14th day of June, 2011.

*Daniel Dietch, Mayor
Town of Surfside, Florida*



Proclamation

Whereas, Ruth K. Broad Bay Harbor K-8 Center declares June 8, 2011 as Appreciation Day in honor of Trish Faver for her devoted and conscientious service to our children;

Whereas, we recognize her excellence in teaching which has endured throughout her 32 years of service in the field of education;

Whereas, six of those years were at Ruth K. Broad Bay Harbor K-8 Center;

Whereas, we recognize her caring, compassionate and dedicated service to our students;

Whereas, her outstanding passion for teaching and her gifts as an educator have been shared with her students;

Whereas, she has expressed her creativity in the classroom and has shared this talent with her students;

Now, Therefore, the Bobcat Family does hereby proclaim June 8, 2011, Trish Faver Day in observance thereof, we call upon her friends and family to join us in celebration of this day.

In witness thereof I have hereunto set my hand this 14th day of June, 2011.

*Daniel Dietch, Mayor
Town of Surfside, Florida*





Town of Surfside Commission Communication

Agenda Item # 4A1

Agenda Date: June 14, 2011

Subject: Second reading of Amending the Chapter 70 Article IV "Resort Tax" Ordinance.

Background: Currently Surfside is one of only three municipalities in Miami-Dade County eligible by Florida State Law Chapter 67-930 Municipal Resort Tax (Att 1) to impose a Resort Tax of four percent (4%) on accommodations and two percent (2%) on food and beverage sales as a source of revenue. Miami Beach and Bal Harbour are the other two municipalities with the same capability. This unique revenue generating opportunity is also defined in the Town's Charter in Sec, 69-A. Resort Tax (Att 2).

The Chapter 70 Article IV Resort Tax (Sec. 70-106 to 70-111) governing the collection and use of this tax is from 1960. Other municipalities have revised their ordinances since the tax's inception. Some of the existing language in Article IV is no longer applicable to the Town in the 21st Century.

The ordinance also lacks information on the governance of the Tourist Bureau portion of the Resort Tax Fund by the Tourist Board. The Board represents the Commission, and has oversight on how the resort tax portion, assigned to the Tourist Bureau's budget, is utilized. However, clearly defined roles and responsibilities for the Board members do not presently exist.

To facilitate collection of the tax, businesses submit a monthly Resort Tax Report with their tax payment (Att 3). The report does not require supporting documentation and a procedure for auditing the submissions does not exist. Therefore, the tax submissions are done on an honorary basis. Notifications of past due resort tax submissions are sent to the applicable businesses. This has proven to be an effective means in securing outstanding (honorary) payments to date however there is no course of action if compliance is not achieved or if a business fails. There also lacks a procedure for accommodating any possible tax submission disputes for the Town or applicable businesses.

Analysis:

The proposed amendments address the following areas that were lacking in the original ordinance:

- Provides definitions of terms used throughout the ordinance to avoid any potential confusion.
- Authorizes the taxation of beer, malt and refrigerated beverages, as well as take-out, bringing the ordinance in line with amendments to the State Statute since 1960.
- The responsibility of the applicable businesses to collect and remit the tax is addressed.
- Provisions for enforcing compliance, a delinquency penalty schedule, and the creation of a means for the settling of disputes is provided.
- Requirements to provide sufficient documentation with the tax submittal are defined.
- Identifying the creation of a special fund for all Resort Tax receipts brings the ordinance in line with the Town's Charter and complies with the State's statute. The capability of the Town to use a portion of the fund for Town purposes is not diminished.
- Identifying that a minimum of thirty four percent of the Resort Tax collected becomes the Tourist Bureau's budget aligns this amended ordinance with the traditional amount outlined in the original ordinance (Att 4).
- By simplifying and stating that the Tourist Bureau's use of a portion of the fund becomes part of the Town's annual budgetary process codifies a process that has traditionally been fulfilled.
- Defining the roles and responsibilities of the Tourist Board and its relationship to the Town Commission and applicable staff will, in the event of ambiguities, be of benefit in the future.

Recommendations from the previous and present Tourist Boards, developed during three publicly noticed Tourist Board meetings and a dedicated workshop focused on the Chapter 70 Article IV "Resort Tax" Ordinance, conducted over the last year, are included in these recommended amendments. Besides the existing ordinance, the Board reviewed the Florida Statute and the Town's Charter as well as those ordinances pertaining to Resort Tax from Miami Beach and Bal Harbour. These recommendations were reviewed by the Town Manager and Town Attorney who also included recommendations in this proposal.

Budget Impact: The revision of the ordinance to include beer, malt and refrigerated beverages, as well as take-out, as taxable items will result in an immediate increase to the amount of Resort Tax collected from applicable businesses and, therefore, an increase to the revenue stream for the Town. A potential benefit of codifying requirements for Resort Tax submission documentation from applicable businesses is the creation of a system of checks and balances to assist in the verification that the proper amount of tax is being submitted to the Town. With such regulatory requirements it is appropriate to establish an appeal procedure which is included in the ordinance recommendations.

Increasing Resort Tax revenue is in line with the direction given by the Town Commission during the workshop on the Five Year Financial Plan. The increased revenue, estimated to be \$382,000 in FY 2011/12, will help achieve the goal of diversifying the Town's revenue sources for less reliance on property taxes.

Staff Impact: Existing staff resources will be utilized to facilitate these changes. Audit capacity will be provided by outside consultants at a limited cost.

Recommendation: Staff recommends that the Town Commission approve these amendments to the Chapter 70 Article IV "Resort Tax" Ordinance.


Department Head


Town Manager

ATTACHMENT 1

Municipal Resort Tax

Chapter 67-930, Laws of Florida,

As amended by Chapters 82-142, 83-363, 93-286, and 94-344, Laws of Florida

Brief Overview

The Municipal Resort Tax may be levied at a rate of up to 4 percent on transient rental transactions, and up to 2 percent on the sale of food and beverages consumed in restaurants and bars in certain municipalities whose respective county population fell within specified limits based on the 1960 Census and whose municipal charter specifically provided for the levy of this tax prior to January 1, 1968. The tax levy must be adopted by an ordinance approved by the governing body. Revenues can be used for tourism promotion activities, capital construction and maintenance of convention and cultural facilities, and relief of ad valorem taxes used for those purposes.

General Law Amendments

There were no general law amendments resulting from the 2010 Regular Legislative Session.

Authorization to Levy

Municipalities in counties having a population of not less than 330,000 and not more than 340,000 (i.e., Broward County) and in counties having a population of more than 900,000 (i.e., Miami-Dade County), according to the 1960 decennial census, whose charter specifically provided or whose charter was so amended prior to January 1, 1968, for the levy of this exact tax, are eligible to impose it by ordinance adopted by the governing body. The tax shall be levied upon the rent of every occupancy of a room or rooms in any hotel, motel, apartment house, rooming house, tourist or trailer camp, as the same are defined in part I of ch. 212, F.S., and upon the retail sale price of all items of food or beverages sold at retail, and of alcoholic beverages sold at retail for consumption on the premises at any place of business required by law to be licensed by the state hotel and restaurant commission or by the state beverage department. However, the tax shall not apply to those sales the amount of which is less than 50 cents nor to sales of food or beverages delivered to a person's home under a contract providing for deliveries on a regular schedule when the price of each meal is less than \$10.

Municipalities Eligible to Levy

Currently, only three municipalities in Miami-Dade County (i.e., Bal Harbour, Miami Beach, and Surfside) are eligible to impose the tax. According to the Department of Revenue (DOR), all three municipalities are imposing the tax at the following rates: 4 percent of transient rental transactions and 2 percent on the sale of food and beverages.

Administrative Procedures

It is the duty of every person renting a room or rooms and every person selling at retail food or beverages or alcoholic beverages for consumption on the premises to act as the collection agent. Every such person must collect, report, and pay over to the municipality all such taxes imposed, levied, and collected, in accordance with the accounting and other provisions of the enacted ordinance. Any municipality collecting the tax shall have the same duties and privileges as the DOR under part I of ch. 212, F.S., and may use any power granted to the DOR under this part, including enforcement and collection procedures and penalties, which shall be binding upon all persons and entities that are subject to the tax. Additionally, municipalities responsible for administering the tax shall participate in the Registration Information Sharing and Exchange (RISE) Program and share tax administration information as prescribed by the DOR.¹

Distribution of Proceeds

The governing body may authorize by ordinance the creation of an authority or commission empowered to contract and be contracted with its own name as an agency of the municipality to expend such portion of the proceeds of this tax as the body may determine appropriate.

Authorized Uses of Proceeds

The tax proceeds shall only be used for the creation and maintenance of convention and publicity bureaus; development and maintenance of art and cultural centers; enhancement of tourism; publicity and advertising; construction, operation, and maintenance of auditoriums, community centers, and convention structures; or relief from ad valorem taxes being used for any of these other purposes.

Relevant Attorney General Opinions

No opinions specifically relevant to this tax have been issued.

1. Section 213.0535, F.S.

ATTACHMENT 2

ATTACHMENT 2

Charter references: Resort tax, § 69-A.

Sec. 69-A. Resort tax.

The Town of Surfside shall have the right, pursuant to the provisions of Laws of Fla. ch. 67-930, as amended by Laws of Fla. ch. 83-363, to impose, levy and collect a municipal resort tax, not to exceed four per cent (4%) upon the rent of rooms in any hotel, motel, apartment house, rooming house, tourist or trailer camp as same are defined in F.S. ch. 212, and not to exceed two per cent (2%) upon the retail sale of all items of food, beverages and alcoholic beverages, other than beer or malt beverages, sold at retail for consumption on the premises, provided that the tax shall not apply to sales which are less than fifty cents (50¢). The total receipts from the above tax levy shall be kept and maintained in a separate fund and shall in no event be transferred to the general fund. Said fund shall be used for the following purposes only: payment of necessary expenses of collecting, handling and processing of said tax; creating and maintenance of convention and publicity bureaus, cultural and art centers; enhancement of tourism; publicity and advertising purposes; for the future cost, purchase, building, designing, engineering, planning, repairing, reconditioning, altering, expanding, maintaining, servicing and otherwise operating auditoriums, community houses, convention halls, convention buildings or other structures; and other related purposes, including relief from ad valorem taxes heretofore levied for such purposes.

(Res. No. 677, § 1, 10-12-67; Ord. No. 1285, § 1, 8-11-92)

ATTACHMENT 3

OPERATOR'S COPY

Please keep for your records



TOWN OF SURFSIDE
 9293 Harding Avenue
 Surfside, Florida 33154

RESORT TAX REPORT
4% ROOMS
2% FOOD AND BEVERAGES

If you close or sell your business, or if you change your business location, please immediately notify the Town of Surfside Resort Tax Department in writing.

COLUMNS	1	2
Enter figures for items below in appropriate column at right	Sales	Taxes
A. Gross food and beverage receipts		
B. Exempt Sales		
C. Taxable food and beverage sales (lines A-B)		
D. Gross rental receipts		
E. Exempt Sales		
F. Taxable rental sales (lines D-E)		
G. Total Taxes Collected (lines C+F)		
H. Deduct 2% of line G as your commission if this return is filed on time		
I. Debit or credit memos issued by Town of Surfside		
J. Total amount due (lines G-H plus or minus I) if this return is filed on time pay this amount to Town of Surfside		
K. Add 10% of line G as your original month of delinquency, add additional 10% of line G as your continued month of delinquency if this return is <u>not filed on time</u>		
L. Add ½% of line G and multiply by number of months of delinquency if this return is <u>not filed on time</u>		
M. Total amount due (lines G+K+L plus or minus I) if this return is <u>not filed on time</u> pay this amount to Town of Surfside		

I hereby certify that this return has been examined by me and to the best of my knowledge and belief is a true, correct and complete return.

_____ Date

_____ Signature of Operator

SEE DETAILED INSTRUCTIONS AND GENERAL INFORMATION ON INSIDE

KEEP THIS COPY FOR YOUR RECORDS

RESORT TAX – GENERAL INFORMATION

- I. EFFECTIVE DATE OF LAW – October 2, 1992

- II. ITEMS SUBJECT TO TAX – Certain rent from occupancy of a room or rooms in any hotel, motel, apartment house, rooming house, or condominium and on retail sale price of food, beverages and alcoholic beverages, other than beer or malt beverages, sold at retail for consumption on premises.

- III. RATE OF TAX – Four percent (4%) on all rentals and two percent (2%) on all other sales described in (II) except for certain exempt sales set forth in (IV).

- IV. EXEMPT SALES –
 1. Any person who shall reside continuously longer than six months at any one hotel, condominium, apartment house or rooming house, and shall have paid the tax levied by this section for six months of residence in any one hotel, condominium, rooming house or apartment house.
 2. Any Federal, State, county or municipal government or agency thereof.
 3. Nonprofit religious, educational or charitable corporations or institutions when engaged in religious, educational or charitable activities within the purview of their nonprofit or charitable purposes.
 4. Transactions involving less than fifty cents (.50c).
 5. Any person who is or becomes an occupant under a written lease for a period of more than twelve consecutive months in any apartment, condominium, motel or hotel in the Town of Surfside.

- V. OPERATOR'S COMMISSION – Each operator shall deduct two percent (2%) of the amount of tax collected and/or due providing that the amount of tax collected and/or due is remitted to the Town Manager, Town of Surfside, on or before the last day of the month following the close of each calendar month.

- VI. REMITTANCE TO TOWN OF SURFSIDE – All resort taxes collected and/or due shall be remitted to the Town of Surfside Resort Tax Department, along with the original copy of the reporting form on or before the last day of the month following the close of each calendar month. Please make the check or money order payable to "Town of Surfside".

- VII. PENALTIES – That any person, person, firm or corporation violating any of the provisions of this ordinance shall, upon conviction thereof, be punished by a fine not to exceed \$1,000, or by imprisonment not to exceed ninety (90) days, or both such fine and imprisonment in the discretion of the Dade County Court. Each day that a violation is permitted to exist shall constitute a separate offense.

Additional penalties will be levied for late payment, fraud, and interest charges for delinquency.

RESORT TAX – INSTRUCTIONS

IMPORTANT:

Operator must file return even though no tax is due.

- Line A, Column 1 – Enter gross sales of all food and alcoholic beverages (except beer and malt products) consumed on premises.
- Line B, Column 1 – Enter all sales of food and alcoholic beverages exempt from resort tax (carry-outs).
- Line C, Column 1 – Subtract Line B from Line A
- Line C, Column 2 – Enter 2% of Line C, Column A
- Line D, Column 1 – Enter total rent collected in any Hotel, Motel, Apartment, Rooming House, Condominium or Boarding House.
- Line E, Column 1 – Enter total rent paid for 6 months periods or longer.
- Line F, Column 1 – Subtract Line E from Line D.
- Line F, Column 2 – Enter 4% of Line F, Column 1.
- Line G, Column 2 – Add Line C, Column 2 and Line F, Column 2.
- Line H, Column 2 – Enter 2% of Line G, Column 2 if your return is filed on time.
- Line I, Column 2 – Enter any debit or credit memos issued by the Town of Surfside.
- Line J, Column 2 – Line G, Column 2, minus Line H, Column 2 plus or minus Line I, Column 2 if this return is filed on time.
- Line K, Column 2 – Add 10% of Line G, Column 2 as your original month of delinquency, add an additional 10% of Line G, Column 2 as your continued month of delinquency if this return is not filed on time.
- Line L, Column 2 – Add ½% of Line G, Column 2 and multiply by number of months of delinquency if this return is not filed on time.
- Line M, Column 2 – Line G, Column 2, plus Line K, Column 2, plus Line L, Column 2 plus or minus Line I, Column 2 if this return is not filed on time.

CAUTION: Always put into the proper columns the figures relating to the type of items applying to or covered specifically by the particular column.

This return should be prepared on a typewriter or filled out legibly with blue ink only. Make all remittances payable by check or money order to Town of Surfside.

ORIGINAL – IMPORTANT

This return must reach the Town of Surfside before the last day of the preceding month for which the tax is due to avoid penalty and loss of 2% commission.

OPERATOR MUST FILE RETURN EVEN THOUGH NO TAX IS DUE.



TOWN OF SURFSIDE
 9293 Harding Avenue
 Surfside, Florida 33154

Be Sure!
 1. Form is filled out completely.
 2. Month covered is correct.
 3. Remittance is attached and signed.

RESORT TAX REPORT
4% ROOMS
2% FOOD AND BEVERAGES

If you close or sell your business, or if you change your business location, please immediately notify the Town of Surfside Resort Tax Department in writing.

COLUMNS	1	2
Enter figures for items below in appropriate column at right	Sales	Taxes
A. Gross food and beverage receipts		
B. Exempt Sales		
C. Taxable food and beverage sales (lines A-B)		
D. Gross rental receipts		
E. Exempt Sales		
F. Taxable rental sales (lines D-E)		
G. Total Taxes Collected (lines C+F)		
H. Deduct 2% of line G as your commission if this return is filed on time		
I. Debit or credit memos issued by Town of Surfside		
J. Total amount due (lines G-H plus or minus I) if this return is filed on time pay this amount to Town of Surfside		
K. Add 10% of line G as your original month of delinquency, add additional 10% of line G as your continued month of delinquency if this return is not filed on time		
L. Add ½% of line G and multiply by number of months of delinquency if this return is not filed on time		
M. Total amount due (lines G+K+L plus or minus I) if this return is not filed on time pay this amount to Town of Surfside		

I hereby certify that this return has been examined by me and to the best of my knowledge and belief is a true, correct and complete return.

_____ Date

_____ Signature of Operator

SEE DETAILED INSTRUCTIONS AND GENERAL INFORMATION ON INSIDE

ATTACHMENT 4

ATTACHMENT 4

Resort Tax Allocation According To Existing Ordinance

Food & Beverage: 2 %

45% to Tourist Bureau

5% to Town Facilities

50% to Town Facilities

Rooms: 4%

5% to Tax Collection

25% to Town Facilities

50% to Community Center & Tourism Facilities

The Breakdown By Fiscal Year

Note that the Tourist Bureau receives just over one third of the Resort Tax collected as the departments' annual budget.

2007/2008:

Total Resort Tax: \$391, 597.88

Tourist Bureau Portion: \$133, 933.71 (34%)

2008/2009:

Total Resort Tax: \$371, 221.08

Tourist Bureau Portion: \$130, 267.29 (35%)

2009/2010:

Total Resort Tax: \$388, 526.56

Tourist Bureau Portion: \$133,338.17 (34%)

ORDINANCE NO. 11- _____

AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA AMENDING CHAPTER 70 AND SPECIFICALLY ARTICLE IV "RESORT TAX" DIVISION 1 "RESORT TAX" AND DIVISION 2 "RESORT TAX BOARD" SPECIFICALLY AMENDING SECTIONS 70-106 THROUGH 70-111; AND CREATING SECTIONS 70-112 THROUGH 70-127, OF THE TOWN OF SURFSIDE CODE OF ORDINANCES PROVIDING FOR INCLUSION IN THE CODE; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the Town of Surfside ("Town") proposes to amend its Code of Ordinances to amend guidelines for imposition and collection of the resort tax and to create a Resort Tax committee.

WHEREAS, The Town Commission held its first public reading on April 12, 2011 and recommended approval of the proposed amendments to the Code of Ordinances having complied with the notice requirements by the Florida Statutes; and

WHEREAS, The Town Commission has conducted a second duly noticed public hearing on these regulations as required by law on May 10, 2011 and further finds the proposed change to the Code necessary and in the best interest of the community.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA as follows:

Section 1. Recitals. The foregoing "WHEREAS" clauses are ratified and confirmed as being true and correct and are made a specific part of this Ordinance.

Section 2. Code Amendment. The code of the Town of Surfside, Florida is hereby amended as follows:

Ordinance No. _____

ARTICLE IV. RESORT TAX*

*Charter references: Resort tax, § 69-A.

DIVISION I. Resort Tax.

Sec. 70-106. ~~Tax imposed.~~ Short title of article.

~~In addition to all other taxes of every kind imposed by law there is hereby imposed and levied a resort tax of four percent upon the rent of rooms in any hotel, motel or apartment house, as same are defined in F.S. ch. 212, and two percent upon the retail sale of all items of food, beverages and alcoholic beverages, other than beer or malt beverages, sold at retail for consumption on the premises of any place of business required by law to be licensed by the state division of hotels and restaurants or by the state division of alcoholic beverages and tobacco, provided that the tax shall not apply to sales which are less than \$0.50. Nothing contained in this section shall be construed to impose a tax upon, or be applicable to, the unexpired term of any bona fide written lease in effect prior to the effective date of the ordinance from which this article was derived, or any renewal thereof within the same hotel, motel or apartment house, which is otherwise exempt pursuant to subsection 70-110(5). This article shall be known as the Surfside Resort Tax Ordinance.~~

Sec. 70-107. ~~Payment and collection.~~ Definitions.

~~The resort tax imposed under this article shall be collected from the person paying the rent and the person purchasing food, beverages and alcoholic beverages for consumption on the premises. It shall be the duty of every person renting a room or rooms, and every person selling at retail for consumption on the premises, food, beverages and alcoholic beverages, other than beer or malt beverages, in acting as the tax collection medium or agency of the town, to collect from the person paying the rent or the retail sales price, for the use of the town, the tax imposed and levied under section 70-106.~~

~~The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning: Apartment House means any building or part thereof where separate accommodations for two or more families living independently of each other are supplied to transient or permanent Guests or tenants either owned or operated by an individual, trust, or corporate entity. The term "apartment house" shall include houses, condominium, bungalow courts, timeshare rentals, and all other dwellings or similar character.~~

~~Appeal is the process for requesting a formal change to an official decision.~~

~~Audit means an examination and verification of accounting records and supporting documents.~~

~~False or Fraudulent Return means a return that is filed with incorrect and/or incomplete information.~~

~~Guest means any person making a retail purchase of (a) food or beverages; or (b) alcoholic beverages sold at retail for consumption on the premises, at any Restaurant or other business premises required by law to be licensed by the State Hotel and Restaurant Commission or by the State Beverage Department.~~

~~Hotel and Motel mean every building or other structure kept, used, maintained, advertised as or held out to the public to be a place where sleeping accommodations are supplied for pay to transient or permanent Guests or tenants, whether or not there is, in connection with any of the~~

Ordinance No. _____

building, any dining room, cafe or other place where meals or lunches are sold or served to Guests.

Lawful means obeying or conforming to the law.

Occupancy means the use or possession or the right to the use or possession of any Room in a Hotel, Motel or Apartment House, or the right to the use or possession of the furnishings or to the services and accommodations accompanying the use and possession of such Room.

Occupant means a person who, for a consideration, uses, possesses or has the right to use or possess any Room in a Hotel, Motel or Apartment House under any lease, concession, permit, right of access, license to use or other agreement, or otherwise.

Operator means any person operating a Hotel, Motel, Apartment House or any person operating a Restaurant or other premises serving or selling at retail food or beverages, and of alcoholic beverages sold at retail for consumption on the premises, at any place of business required by law to be licensed by the State Hotel and Restaurant Commission or by the State Beverage Department in the Town, including but not limited to the Owner or Proprietor of such premises, the lessee, sublessee or mortgagee in possession, the licensee, or any other person otherwise operating such Hotel, Motel, Apartment House, Restaurant or other premises.

Person means an individual, partnership, society, association, joint stock company, corporation, estate receiver, trustee, assignee, referee or any other Person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise, and any combination of individuals.

Rent means the consideration received for Occupancy, valued in money, whether received in money or otherwise, including all receipts, cash, credits and Property or services of any kind or nature, and also any amount for which credit is allowed by the Operator to the Occupant, without any deduction therefrom whatsoever.

Restaurant means any business or place for the serving of food or beverages required by law to be licensed by the Hotel and Restaurant Commission of the State, or any premises required by law to be licensed by the State Beverage Department for the sale of alcoholic beverages.

Return means any return filed or required to be filed as provided in this article.

Room means any room of any kind in any part or portion of a Hotel, Motel or Apartment House, which is available for or let out for use or possession for any purpose other than as a place of public assembly.

Sales Price means the retail sales price charged by the Operator to a Guest, consumer or any other Person for each sale of food or beverages sold at retail, and of alcoholic beverages sold at retail for consumption on the premises.

Special master or special magistrate means a person appointed pursuant to this chapter.

Take Out means consumption away from and/or within the environs of the business.

Town Manager means the Town Manager of the Town or designee.

Unlawful means not obeying and not conforming to the law.

Sec. 70-108. Tax returns; due date; forms, etc. Violations of article generally

~~It shall be the duty of each person acting as the tax collection medium or agency of the town, as described in section 70-106, to make a return to the town manager on or before the last day of the month following the close of each calendar month, on forms provided by the town manager, of the total nonexempt rents or sales prices charged and received together with the amount of tax collected. Payment of the amount collected must accompany each report. All taxes collected by a~~

Ordinance No. _____

~~tax collection medium or agency shall be held in trust for the account of the town until actual payment thereof has been made to and receipted for by the town manager.~~

~~(a) Any Operator or other Person who fails or refuses to register as required in this article or to furnish any Return required to be made, or who fails or refuses to furnish a supplemental Return or other data required by the Town Manager, or who renders a false or fraudulent Return or claim shall be guilty of a violation of this article and shall be punishable as provided in section 1-8.~~

~~(b) Any Person required to make, render, sign or verify any report or claim who makes any false or fraudulent report or claim with intent to defeat or evade the determination of any amount due required by this article shall be guilty of a violation of this article and shall be punishable as provided in section 1-8.~~

~~(c) In addition to the foregoing the Town, in its sole discretion, may revoke all other licenses including, but not limited to, Certificate of Occupancy, Certificate of Use, and such other licenses as permitted by law.~~

Sec. 70-109. Use of tax revenue. Imposition; amount.

~~(a) Any and all funds received under and by virtue of the resort tax imposed by this article shall be used for no other purpose than as follows:~~

~~(1) *Tax collection expense.* Payment of necessary expenses of collecting, handling and processing of such tax.~~

~~(2) *Promotion of town.* For publicity, advertising, promotional events and tourist and convention bureau activities, including at least one annual publication listing all hotels, motels, apartment houses, business and community facilities with an outline of their accommodations, the information of which will be beneficial and necessary for the promotion of tourism.~~

~~(3) *Town facilities.* Any monies not expended for the items set forth above in subsections (1) and (2) of this subsection (a) shall be used for capital improvements and maintenance of the town's facilities, limited only to the community center, prevention of beach erosion and the enlarging, care, maintenance and beautification of the town's public beaches, all of the foregoing being necessary adjuncts to the promotion of tourism in the town.~~

~~(4) *Allocation.* In order to facilitate budget procedures and enunciate commission policy, the funds received shall be allocated and used in the following percentages:~~

~~a. Five percent of total resort tax for tax collection expense.~~

~~b. Forty five percent of resort tax attributable to retail sales and two percent on room rentals for promotion of town.~~

~~c. Fifty percent of resort tax attributable to retail sales and two percent on room rentals for town facilities.~~

~~d. One hundred percent of resort tax attributable to two percent on room rentals for community center and tourism related facilities.~~

~~(b) Anything in this section to the contrary notwithstanding, ultimate and final decision for appropriation of funds in the resort tax budget shall remain with the town commission for implementation upon adoption of the town budget.~~

~~(c) If the resort tax proceeds in any fiscal year exceed or are less than the budgeted amount, expenditures in the above three categories shall be adjusted proportionately in that fiscal year.~~

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(a) There is hereby levied and there shall be paid a tax of four percent (4%) on the Rent of every Occupancy of a Room in any Hotel, Motel or Apartment House in the Town, and also two percent (2%) upon the total Sales Price of all items of food or beverages sold at retail and of alcoholic beverages, including all refrigerated beverages, sold at retail for consumption on the premises or consumption away from and/or within the environs of the business (take out) of any Restaurant or business selling such items.

(b) As provided by Ordinance No. 1286, enacted on August 11, 1992, in lieu of the tax imposed and levied pursuant to section 70-109(a) above, there is hereby imposed and levied a municipal resort tax:

(1) Upon the Rent of every Occupancy of a Room or Rooms in any Hotel, Motel, Apartment House, as the same are defined in Part I, Chapter 212, Florida Statutes, in the Town, at the rate of four percent (4%) of the Rent received by the Person renting such Room or Rooms from the person paying such Rent; and

(2) Upon the retail sale price of all items of food or beverages sold at retail, and of alcoholic beverages, including all refrigerated beverages, sold at retail for consumption on the premises or consumption away from and/or within the environs of the business (take out) of any Restaurant or at any place of business selling such items in the Town required by law to be licensed by the State Hotel and Restaurant Commission or by the State Beverage Department, at the rate of two percent (2%) of such retail sales price.

(c) The tax shall constitute a debt owed by the Occupant or Guest to the Town which shall be extinguished only by payment to the Operator or to the Town. The Occupant or Guest shall pay the tax to the Operator of the Hotel, Motel, Apartment House or Restaurant at the time the Rent or the Sales Price is paid. If the Rent is paid in installments, a proportionate share of the tax shall be paid with each installment. The unpaid tax shall be due upon the Occupant's ceasing to occupy space in the Hotel, Motel or Apartment House. The Operator is solely responsible for payment to the Town regardless of the Operator's collection deficiencies and/or inability to collect from the Occupant or Guest.

Sec. 70-110. Exemptions, applicability.

~~The resort tax authorized in this article shall not be imposed or levied upon or collected from:~~

~~(1) Any person who shall reside continuously longer than six months at any one hotel, apartment house or roominghouse, and shall have paid the tax levied by this section for six months of residence in any one hotel, roominghouse or apartment house.~~

~~(2) Any federal, state, county or municipal government or agency thereof.~~

~~(3) Nonprofit religious, educational or charitable corporations or institutions when engaged in religious, educational or charitable activities within the purview of their nonprofit or charitable purposes.~~

~~(4) Transactions involving less than \$0.50.~~

~~(5) Any person who is or becomes an occupant under a written lease for a period of 12 consecutive months or more in any apartment, motel or hotel in the town.~~

(a) No municipal resort tax shall be imposed pursuant to this article upon:

(1) Federal, State or Town governments, or any agency thereof.

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(2) Any nonprofit religious, nonprofit educational or nonprofit charitable institution when engaged in carrying on the customary nonprofit religious, nonprofit educational or nonprofit charitable activities.

(3) Persons and transactions exempted as provided by section 4, chapter 67-930, Laws of Florida, 1967.

(b) No municipal resort tax shall be paid on any transaction involving Rent or a Sales Price of less than fifty cents (\$.50). No municipal resort tax shall be imposed or paid on any Rents collected under a written lease for a period longer than six consecutive months.

Sec. 70-111. Penalties and interest. Registration required; registration certificate.

~~In addition to any other penalties, the following are hereby levied and imposed upon each person acting as the tax collection medium or agency of the town, as described in section 70-106, for failure to follow and comply with this article:~~

~~(1) *Original delinquency.* Any person who fails to remit the resort tax imposed by this article within the time provided shall pay a penalty equal to ten percent of the amount of such tax, in addition to the full amount of such tax.~~

~~(2) *Continued delinquency.* Any person who fails to remit the resort tax imposed by this article on or before the 30th day following the date upon which such tax has become delinquent shall pay a second penalty equal to ten percent of the amount of such tax, in addition to the full amount of such tax and the first ten percent penalty.~~

~~(3) *Fraud.* If the town manager determines that the nonpayment of any resort tax imposed by this article is due to fraud, a penalty equal to 25 percent of the amount of such tax shall be paid in addition to the penalties imposed by this section.~~

~~(4) *Interest.* Any person who fails to remit the resort tax imposed by this article within the time provided shall pay interest at the rate of one half of one percent per month, or portion thereof, on the full amount of such tax, exclusive of penalties from the date upon which such tax first became delinquent until fully paid.~~

(a) Within 30 days after the effective date of the ordinance from which this article is derived, or within 30 days after commencing business, whichever is later, each Operator of any Hotel, Motel, Apartment House or Restaurant shall register the Hotel, Motel, Apartment House or Restaurant with the Town Manager and obtain a resort tax registration certificate, to be posted in a conspicuous place on the premises at all times. The certificate shall, among other things, state the following:

(1) The name of the Operator, mailing address and names of the corporate officials if applicable.

(2) The address of the Hotel, Motel, Apartment House or Restaurant.

(3) The date upon which the certificate was issued.

(b) Such certificate shall contain the following statement:

"This Resort Tax Registration Certificate signifies that the Person named on the face hereof has fulfilled the requirements of the Resort Tax Ordinance by registering with the Town Manager for the purpose of collecting from Occupants or Guests the Resort Tax and remitting said tax to the Town Manager. This certificate does not authorize any Person to conduct any unlawful business in an unlawful manner, nor to operate a Hotel, Motel, Apartment House or Restaurant without strictly complying with all local applicable laws, including but not limited to those requiring a

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permit from any board, commission, department or office of this Town. This certificate does not constitute a permit."

(c) Such registration certificate shall not be assignable or transferable, and each new Operator shall be required to obtain a new registration certificate.

(d) All businesses must secure an annual Business Tax Receipt, an annual Occupational License, Certificate of Occupancy and Certificate of Use. As permitted by law the issuing of these licenses is conditional upon payment of all outstanding Resort Tax Returns.

Sec. 70-112. Collection by Operator.

Each Operator shall collect the tax imposed by this article to the same extent and at the same time as the Rent or Sales Price is collected from every Occupant or Guest. No Operator shall advertise or state in any manner, whether directly or indirectly, that the tax or any part thereof will be assumed or absorbed by the Operator; that it will not be added to the Rent or Sales Price; or that, if added, any part will be refunded except in the manner provided in this article.

Sec. 70-113. Records to be maintained by Operator.

It shall be the duty of every Operator to keep all records as may be necessary to determine the amount of tax due pursuant to this article and to preserve such records for a period of three years. The Town Manager, or his/her designee including independent auditors, shall have the right to inspect such records at all reasonable times and to conduct an audit as deemed necessary. The following records shall be kept available for inspection/audit: invoices of product purchases, sales receipts, tax receipts submitted to the State of Florida, tax returns, and all other relevant documents.

Sec. 70-114. Refunds.

(a) Whenever the amount of any tax, interest or penalty has been overpaid or paid more than once or has been erroneously or illegally collected or received by the Town under this article, it may be refunded as provided in subsections (b) and (c) of this section, provided a claim in Writing therefore, stating under penalty of perjury the specific grounds upon which the claim is founded, is filed with the Town Manager within one year of the date of payment. The claim shall be on forms furnished by the Town Manager.

(b) An Operator may claim as a refund or take as credit against taxes collected and remitted the amount overpaid, paid more than once, or erroneously or illegally collected or received, or when it is established in a manner prescribed by the Town Manager that the Person from whom the tax has been collected was not an Occupant or Guest lawfully subject to the tax collected pursuant to this article; provided, however, that neither a refund nor a credit shall be allowed unless the amount of the tax so collected has either been refunded to the Occupant or Guest or credited to Rent subsequently payable by the Occupant or Guest to the Operator.

(c) An Occupant or Guest may obtain a refund of taxes overpaid, paid more than once, or erroneously or illegally collected or received by the Town, by filing a claim in the manner provided in subsection (a) of this section, but only when the tax was paid by the Occupant or Guest directly to the Town Manager or when the Occupant or Guest, having paid the tax to the Operator, establishes to the satisfaction of the Town Manager that the Occupant or Guest has been unable to obtain a refund from the Operator who collected the tax.

(d) No refund shall be paid under the provisions of this section unless the claimant establishes his right thereto by written records showing entitlement thereto with supporting documents as

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outlined in section 70-113. No refund or credit shall be allowed unless a signed affidavit and claim in writing is timely filed with the Town Manager as described in subsection (a) above.

Sec. 70-115. Operator's credit for collecting tax.

For the purpose of compensating the Operator for the keeping of prescribed records and the proper accounting and remitting of taxes by him, such Operator shall be allowed two percent of the amount due and accounted for and remitted to the Town, in the form of a deduction, in submitting his report and paying the amount due by him, and the Town Manager shall allow such deduction of two percent of the amount of the tax to the Person paying the tax for remitting the tax in the manner provided in this article and for paying the amount due to be paid by him. The amount of compensation is not to exceed \$50.00 per monthly remittance per registered business. The two percent allowance shall not be granted, nor shall any deduction be permitted, where the tax is delinquent at the time of payment or where there is a manifest failure to maintain proper records or make proper prescribed reports.

Sec. 70-116. Filing of Return; Remittance of tax.

Each Operator shall, on or before the 30th day of the month following the close of each calendar month, or at the close of any longer reporting period which may be established by the Town Manager, make a Return on forms provided by the Town Manager, of the total Rent or Sales Prices charged and received and the amount of tax collected. Operators shall file a Zero return if applicable. At the time the Return is due and filed, the full amount of the tax collected, less the applicable Operator's credit for collecting tax shall be remitted to the Town Manager. Applicable penalties will be applied for any late submittal of Returns and the Operator's credit will not qualify. The Town Manager may, establish shorter reporting periods for any certificate holder if he deems it necessary in order to ensure collection of the tax, and he may require further information on the Return. Returns and payments are due immediately upon cessation of business for any reason. All Returns shall be accompanied with copies of tax receipts filed with the County/State. The Town reserves the right to conduct a Resort Tax Audit of the participating businesses. All taxes collected by Operators pursuant to this article shall be held in trust for the account of the Town until payment thereof is made to the Town. The filing of Returns electronically is mandatory upon notification from the Town Manager.

Sec. 70-117. Delinquency penalties; interest.

(a) *Original delinquency.* Any Operator who fails to remit any tax imposed by this article within the time required shall pay a penalty of ten percent of the amount of the tax in addition to the amount of the tax.

(b) *Continued delinquency.* Any Operator who fails to remit such tax on or before the 30th day following the date on which the tax first became delinquent shall pay a second delinquency penalty of ten percent of the amount of the tax in addition to the amount of the tax, plus the ten percent penalty first imposed.

(c) *Fraud.* If the Town Manager determines that the nonpayment of any tax due under this article is due to fraud, a penalty of 25 percent of the amount of the tax shall be added thereto in addition to the penalties stated in subsections (a) and (b) of this section.

(d) *Interest.* In addition to the penalties imposed, any Operator who fails to remit any tax imposed by this article shall pay interest, at the rate of one percent per month or fraction thereof,

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on the amount of the tax, exclusive of penalties, from the date on which the tax first became delinquent until paid.

(e) Penalties and interest merged with tax. Every penalty imposed and such interest as accrues under the provisions of this section shall become a part of the tax required to be paid under this article.

Sec. 70-118, Failure to collect and report tax; determination of tax by Town Manager.

(a) If any Operator shall fail or refuse to collect the tax imposed by this article and to make, within the time provided in this article, any report and payment of the tax or any portion thereof required by this article, the Town Manager shall proceed in such manner as he may deem best to obtain facts and information on which to base his estimate of the tax due. As soon as the Town Manager shall procure such facts and information as he is able to obtain, upon which to base the assessment of any tax imposed by this article and payable by any Operator who has failed or refused to collect the tax and to make such report and payment, the Town Manager shall proceed to determine and assess against such Operator the tax, interest and penalties provided for by this article.

(b) If any operator charged in this section fails or refuses to make his records available for inspection so that no audit or examination has been made of the books and records of such operator or person, fails or refuses to register as an operator, or fails to make a report and pay the tax as provided by this division, or makes a grossly incorrect report, or makes a report that is false or fraudulent, it shall be the duty of the Town to make an assessment from an estimate based upon the best information then available to it for the taxable period of sales or rentals, together with interest, plus penalty, if such have accrued, as the case may be. Then the Town shall proceed to collect such taxes, interest and penalty on the basis of such assessment, which shall be considered prima facie correct; and the burden to show the contrary shall rest with the operator.

(c) The Town Manager may charge a reasonable fee for obtaining information which requires the ascertainment of the amount of any tax collected by the Operator or any prorations and any expenses entailed by the Town in determining the prorations of any amount collected or due upon any transfer.

(d) In case such determination is made, the Town Manager shall give a notice of the amount so assessed by serving it personally or by depositing it in the United States mail, postage prepaid, addressed to the Operator so assessed, at his last known address. Such Operator may, within five business days after the serving or mailing of such notice;

- (1) pay the amount due and any additional assessed fees in the manner and within the time indicated on the notice; or
- (2) Request an administrative hearing before a special master to appeal the decision of the Town Manager which resulted in the assessed tax, interest, and penalties.

(e) An appeal of the determination of the tax notice shall be accomplished by filing a request in writing setting forth the specific grounds of fact and in law for the appeal, at the address indicated on the tax determination notice, not later than five business days after the service of the tax determination notice. Failure of the named violator to appeal the decision of the Town Manager within the prescribed time period shall constitute a waiver of the violator's right to an administrative hearing before a special master. A waiver of the right to an administrative hearing shall be treated as an admission of the violation, and the penalties shall be assessed accordingly.

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(f) If the named violator, after service of the tax determination notice, fails to pay the tax assessed, interest, and penalties, or timely request an administrative hearing before a special master, the Town Manager shall prepare an affidavit of default. The affidavit must so reflect and must set forth a request that the special master issue an order finding the violator guilty of a continuing violation, imposing continuing delinquency penalties to be effective beginning on the date of the tax determination notice, and ending at the date the taxes, fees, and penalties are paid. The Town manager in consultation with a special master, shall set the matter down for hearing on the next regularly scheduled hearing date or as soon thereafter as practicable.

Sec. 70-119. Hearing procedures; enforcement of orders.

(a) Upon receipt of a named violator's timely request for an administrative hearing for any tax determination notice, or upon receipt of affidavit(s) of noncompliance from the Town Manager, the special master shall set the matter down for hearing on the next scheduled hearing date or as soon thereafter as possible.

(b) The manager shall send a notice of hearing by first class mail to the named violator at his last known address. The notice of hearing shall include, but not be limited to, the following:

(1) The name of the Town Manager or designee who issued the tax determination notice,

(2) The factual description of the alleged violation constituting reasonable cause,

(3) The date of alleged violation,

(4) The section of the Code allegedly violated,

(5) The place, date and time of the hearing,

(6) The right of a violator to be represented by an attorney,

(7) The right of violator to present evidence, witnesses and cross-examine witnesses, if not waived pursuant to section 70-118(e),

(8) Notice that failure of the violator to attend the hearing may result in a civil penalty and administrative hearing costs being assessed,

(9) Notice that requests for continuances will not be considered unless received by the special master at least five calendar days prior to the date set for the hearing, and absent a showing of good cause.

(c) If there are cases to be heard, the special master shall call hearings on a monthly basis or upon the request of the manager, no hearing shall be set sooner than ten calendar days from the date of service of the civil violation notice, excluding Saturdays, Sundays and holidays.

(d) A hearing date shall not be postponed or continued unless a request for continuance, showing good cause for such continuance, is received in writing by a special master and the manager at least five calendar days prior to the date set for the hearing.

(e) All hearings of a special master shall be open to the public. All testimony shall be under oath. Upon proper prior notice, a hearing shall proceed in the absence of the named violator or the special master may enter a default order.

(f) The proceedings at the hearing shall be recorded and may be transcribed at the expense of the party requesting the transcript.

(g) The town clerk shall provide clerical services and the manager shall provide administrative personnel as may be reasonably required by special masters for the proper performance of their duties.

(h) Each case before a special master shall be presented by the manager, his or her designee or the town attorney. The manager shall have the authority to retain legal counsel for the special

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master upon request.

(i) The hearing need not be conducted in accordance with the formal rules relating to evidence and witnesses, but fundamental due process shall be observed and shall govern the proceedings.

(j) Each party shall have the right to call and examine witnesses; to introduce exhibits; to cross-examine opposing witnesses on any matter relevant to the issues even though that matter was not covered in the direct examination; to impeach any witnesses regardless of which party first called that witness to testify; and to offer rebuttal of the evidence.

(k) A special master shall make findings of fact and conclusions of law based on evidence of record. In order to make a finding upholding the town manager's decision, a special master must find that a preponderance of the evidence indicates that the named violator was responsible for the violation of the relevant section of the Code.

(l) The fact-finding determination of the special master shall be limited to whether or not the violation alleged occurred, and, if so, whether the person named in the notice of violation may be held responsible for that violation. Based upon this fact-finding determination, a special master shall either affirm or reverse the decision of the town manager as to the responsibility of the named violator of the code violation. If a special master reverses the decision of the Town Manager and finds the named violator not responsible for the code violation in the alleged civil violation notice because the town did not present a preponderance of evidence to indicate that such violator is responsible for the violation, then, and in that case, the named violator shall not be liable for the payment of any civil penalty, absent reversal of the special master's findings pursuant to section 70-120 hereof.

(n) If the decision of the special master is to affirm the decision of the town manager, the following elements shall be included:

(1) The amount of tax, fees, and penalties in the tax determination notice and as otherwise provided for herein.

(2) Administrative costs of hearing in the amount of not less than \$200.00.

(3) The date by which the violation must be corrected to prevent resumption of continuing violation penalties, if any.

(o) If correction is not made within the period set by the special master, continuing violation penalties shall begin to accrue again after the time for correction has run and the Town Manager has filed an affidavit of noncompliance and a notice of continuing violation. The Town Manager shall serve on the violator a copy of the affidavit of noncompliance and a notice of continuing violation which shall include the following:

(1) Date of issuance.

(2) A reference to the order of the special master that continues to be violated.

(3) Notice of the right to request an administrative hearing before the special master and instructions on how to file the request.

(4) Notice that failure to request an administrative hearing within 5 business days after the date of the notice of continuing violation shall constitute a waiver of the right to a hearing.

(5) Notice that the hearing is strictly limited to whether and when the violator complied with the order of the special master.

(6) Notice that the violator shall be liable for the reasonable costs of the administrative hearing if the violator is unsuccessful at the hearing. At reasonable intervals, a violator may request an inspection to determine compliance with an order of the special master. After his inspection, the town manager shall issue an affidavit of noncompliance and notice of continuing violation or an affidavit of compliance, in recordable form, as appropriate.

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Sec. 70-120. Appeals.

(a) An aggrieved party, including the town, may appeal a final order of a special master to the circuit court. Such an appeal shall not be a hearing de novo but shall be limited to appellate review of the record created before the special master. An appeal shall be filed within 30 calendar days of the issuance of the order sought to be overturned. Failure to make such appeal within the prescribed 30-day period shall render the findings of the special master conclusive, binding and final.

(b) Unless the findings of a special master are overturned in a proceeding held pursuant to this section, the findings of the special master shall be admissible in any proceeding to collect unpaid penalties.

(c) No aggrieved party other than the town may apply to the court for relief unless such party has first exhausted all remedies provided for in this chapter and has taken all available steps provided in this chapter. It is the intention of the town that all steps provided by this chapter shall be taken before any application is made to the court for relief, and no application shall be made by any aggrieved party other than the town to a court for relief except from an order issued by a special master pursuant to this chapter. It is the intention of the town that, notwithstanding anything to this chapter to the contrary, the town shall retain all rights and remedies otherwise available to it to secure compliance with or prevent violations of the Code. For purposes of an appeal, the clerk shall make available, for public inspection and copying, the record upon which each final order of a special master is based. The clerk shall make a reasonable charge, commensurate with the cost for the preparation of the official record on appeal and transmittal thereof to the circuit court, for making certified copies of any record or portion thereof.

Sec. 70-121. Actions to collect, enforcement.

(a) Any tax required to be paid by any Occupant or Guest under the provisions of this article shall be deemed a debt owed by the Occupant or Guest to the Town. Any such tax collected by an Operator which has not been paid to the Town shall be deemed a debt owed by the Operator to the Town. Any Person owing money to the Town under the provisions of this article shall be liable to an action brought in the name of the Town for the recovery of such amount and all reasonable and applicable administrative and legal fees.

(b) The Town shall have the same duties and privileges as the Department of Revenue under F.S. Chapter 212, Part I, and may use any power therein granted to the Department of Revenue, including enforcement and collection procedures and penalties.

Sec. 70-122. Taxes to constitute special fund.

(a) The total receipts of the Resort Tax portion from the tax imposed and levied pursuant to this article shall be kept and maintained in a separate fund and shall in no event be transferred to the general fund. The use of this fund is subject to the budgetary process of the Town on a fiscal year basis. A budget for the utilization of this fund must be submitted for the Town Commission approval as a part of the budget adoption process. A minimum of thirty-four (34) percent of the fund shall be used for the promotion of the tourist industry under the annual Tourist Bureau budget, which shall include but not be restricted to the following: publicity, advertising, promotional events, tourist bureau activities.

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Division 2. Resort Tax Board.

Sec. 70-123. Created.

There is hereby established a Resort Tax Board as a governmental agency of the Town ("the Board").

Sec. 70-124. Composition; appointment; vacancies; compensation; removal from office, etc.

a) *Number, Term and Qualification of Members.* The Board shall consist of five members. Each Commissioner shall appoint one Board Member. All appointed Board members must be ratified by a vote of the Town Commission. Any newly elected Commissioner has the right to appoint a Resort Tax Board member unless the corresponding appointment has yet to reach the end of their two year term. Each of the five members shall be persons who either work or reside in Surfside and at least three of the five members shall be persons who have experience in tourism and/or tourism related activities. One Town Commissioner shall serve as a non-voting ex-officio member of the Board.

(c) *Vacancies.* Any vacancies occurring on the Board shall be filled at the earliest possible date by the Town Commission for the remainder of the unexpired term.

(d) *Reappointment.* Board members shall be eligible for reappointment and shall hold office until their successors have been duly appointed and qualified.

(e) *Compensation of Members.* Members of the Board shall serve without compensation but shall be reimbursed for necessary expenses occurred in the performance of the official duties, as shall be determined and pre-approved by the Town Commission.

(f) *Acceptance of Appointment;* Before entering upon the duties of office, each Board member shall file a written acceptance of appointment and take and subscribe to-- the oath of office prescribed by law, which shall be filed in the office of the Town clerk. Each appointed member is required to provide the Town Clerk with a Form 1-Statement of Financial Interests, within three business days of being appointed to the Board.

(g) *Removal of Members From Office; Attendance.* A Board Member may be removed from office only by a majority vote of the entire membership of the Town Commission; however, whenever a Board member shall fail to attend three consecutive meetings without prior notification to the Director or Town Manager, the chairman shall certify such non-attendance to the Town Commission, and, upon such certification, the Board member shall be deemed to have been removed and the Town Commission shall fill the vacancy pursuant to paragraph (c) above.

Sec. 70-125. Organization.

(a) [*Generally.*] The members of the Board shall select a chairman from among the members who shall serve at the pleasure of the Board, and such other officers as deemed necessary or desirable. A member of the Town Commission shall serve as a non-voting ex-officio member of the Board.

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(b) Staff. A Director, or other Town Manager designee, shall oversee the daily operation and administering of the Resort Tax Board and will work with the Board to achieve budgetary objectives. The Town manager shall provide adequate clerical and other administrative backup for the Board.

(c) Minutes. Minutes of each Board meeting shall be kept and prepared under supervision and direction of the Board. Copies of the minutes shall be filed with the Town clerk.

(d) Rules and Regulations. The Board shall make and prescribe such rules and regulations reasonably necessary and appropriate for the Board's activities.

Sec. 70-126. Power and Duties.

The Board shall have the following enumerated powers and duties.

(1) To adopt and/or amend procedures as it related to publicity, advertising, promotional events, Tourist Board activities.

(2) To expend resort tax funds collected pursuant to Chapter 70 of the Town Code. Specifically, those amounts allocated by the Commission during their annual budgetary process, the minimum being thirty-four (34) percent of the Resort Tax collected, to advertising promotion and special events as part of the Tourist Bureau budget.

(3) To employ or retain an advertising and/or public relations consultant and/or firm as it relates to specific Tourist Board activities. The Tourist Board shall designate a member to assist the Town Manager, upon request, in the process of selecting a Director for the department.

(4) To authorize placement of advertising in various media.

(5) To organize special events for the promotion of Surfside as a tourist destination.

(6) To submit an Annual Report to the Town Commission every May as part of the budgetary process.

Sec. 70-127. Compliance with applicable law.

The Board shall comply with all applicable provisions of state law, county ordinances and the Town Code, including but not limited to those pertaining to public records, open meetings, financial disclosure and those with respect to competitive bidding requirements for purchase of goods and services.

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Section 3. Severability. If any section, subsection, clause or provision of this Ordinance is declared invalid or unconstitutional by a court of competent jurisdiction, the remainder shall not be affected by such invalidity.

Section 4. Conflict. All sections or parts of sections of the Town of Surfside Code of Ordinances in conflict herewith are intended to be repealed to the extent of such conflict.

Section 5. Inclusion in the Code of Ordinances. It is the intention of the Town Commission, and it is hereby ordained that the provisions of this Ordinance shall become and made a part of the Town of Surfside Code of Ordinances, that the sections of this Ordinance may be renumbered or re-lettered to accomplish such intentions; and the word "ordinance" may be changed to "Section" or other appropriate word.

Section 6. Effective Date. This Ordinance shall be effective ten (10) days after adoption on second reading.

PASSED and ADOPTED on first reading this _____ day of _____, 2011.

PASSED and ADOPTED on second reading this ____ day of _____, 2011.

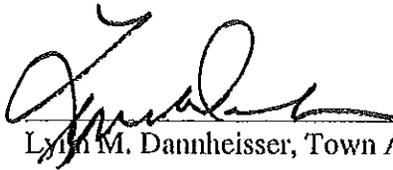
Daniel Dietch, Mayor

Attest:

Debra E. Eastman, M.M.C., Town Clerk

**APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:**

Ordinance No. _____


Lynn M. Dannheisser, Town Attorney

On First Reading Moved by: _____

On Second Reading Seconded by: _____

Vote:

Mayor Dietch	yes_____	no_____
Vice Mayor Graubart	yes_____	no_____
Commissioner Karukin	yes_____	no_____
Commissioner Kopelman	yes_____	no_____
Commissioner Olchyk	yes_____	no_____

Ordinance No. _____



Town of Surfside Commission Communication

Agenda Item # 4A2

Agenda Date: June 14, 2011.

Subject: Film And Print Production Ordinance Second Reading.

Change from First Reading to Second Reading: Upon first reading of the ordinance by the Town Commission at the May 10, 2011 Commission Meeting, Town Staff were directed to add an exception to the ordinance for second reading. The ordinance presented for second reading restricts film permits from being issued in the H-30 Districts including H-30 A, H-30 B, and those portions of the H-30 C District located west of Harding Avenue. However, print productions conducted within private property located in the H-30 districts including H-30 A, H-30 B, and those portions of the H-30 C District located west of Harding Avenue will be permitted in accordance with criteria set forth in the ordinance.

Background: The Town of Surfside, in an effort to balance diverse interests and concerns regarding the filming of movies, television shows and videos, as well as photo shoots, within the Town limits, should enact a series of procedures and requirements to regulate the activity. Presently there is only a basic Film Permit form (att A) with no guidelines or any advisory committee to help guide and enhance the process.

Filming at locations within Surfside has often occurred without notification to the Town. A series of procedures and requirements will serve as notice to the film and print production community that Surfside mandates it be an active agency in regulating film and print related matters when these occur in Town. Surrounding jurisdictions already have procedures in place. A number of movies, television programs, music videos and fashion shoots have taken advantage of our region's attributes and weather. The greater Miami Beach area continues to attract such endeavors evident by the news of a new Charlie's Angels television show presently being filmed here.

The following neighboring communities all have defined approaches to this matter:

- Bal Harbour Village: Only requires a Beach Access Permit, Indemnity Document and that the Village is named as an additional insured.
- Bay Harbor Islands: A dedicated ordinance outlining the requirements for a permit including applicability, permissible hours and fees.
- Miami Beach: Due to the extensive use of their locales by production companies, the City has the most comprehensive policies and procedures. Through their dedicated Film Division there is an application accompanied by a listing of prerequisites and guidelines. They also have a small incentive program to help sell their destination to production companies.
- Miami-Dade County: www.filmmiami.org is the dedicated website that production companies can access permitting processes for the county, City of Miami and Miami Beach.

Presently there is a simple procedure the Town has traditionally followed when a film company or photo shoot is interested in working in Surfside; assuming they contact the Town in advance. The Town's basic Film Permit is required. This is reviewed by the Building Official who discusses the application with the Town Manager. If Police assistance is needed there does exist, in their contract, an outline of related costs associated with the use of off-duty officers for special events. Based on the application, various requirements including appropriate fees paid in advance are identified. The Town Manager approves/modifies/denies the application once completed by the applicant.

The need to strengthen the Town's policy was recently made evident when a television production company wanted to film a reality series for seven weeks in a single family home on Biscaya Island. While meeting all of the requirements of the Town's existing film permit, including an addendum of additional items added by the Town Manager and Staff, the Town Commission instructed the Town Manager at the April 12, 2011 Town Commission Meeting to attempt to deny the permit subject to the Town Attorney's advice. Without clear direction from the Town Commission, in the form of an ordinance, ambiguities will continue to exist as to the direction the Town should take when presented with an application. Since these productions can substantially boost the local economy and improve our image, it is advisable to codify the rules so that there is an alignment between staff's regulatory role and Town Commission policy. Any potential impact to the quality of life of residents will also be addressed with such a process.

The Town would initiate an internal application review team consisting of the Town Manager, Chief of Police, Building Official and Tourism, Economic Development & Community Services Director. This team would work with a citizen's advisory committee, prior to the issuing of a permit, consisting of Peter Glynn, Andy LaBrada and Bera Kahn. All three have experience in the film and print production arena.

Analysis: The objective of the proposed Film and Print Production Ordinance is to outline clear policies and procedures to address interest in using Surfside as a production location. This will provide a clear path for interested production companies and for Town staff. These policies can reasonably accommodate a request while protecting the quality of life for Surfside's residents.

The frequency and longevity of the shoots has expanded recently. Research has revealed that "finders' fees" are being paid to neighbors who link homeowners to the production companies and second home owners essentially covering a large portion of their costs. This takes an infrequent event into the realm of a business in the single family neighborhood and justifies the need for clarity through regulation.

By conducting outreach to the Miami-Dade Office of Film & Entertainment, a more cohesive relationship can be achieved to address interest in Surfside as a production location. Other municipalities in the county have entered into an inter-local permitting agreement with the County concerning permitting. This form of cooperation will be presented as an interlocal agreement at the July 19, 2011 Town Commission Meeting if the ordinance is ratified on second reading at the June 14, 2011 Town Commission Meeting.

Further outreach could also be conducted with State's Governor's Office of Film and Entertainment (www.filminflorida.com). In essence, this will serve to inform these regional film agencies that the Town of Surfside has a process that they can identify to entities looking to film in Surfside.

Using Miami Beach as a model, the following will be developed:

- a) A comprehensive Film and Print Application for Surfside.
- b) A Film and Print Requirements and Guidelines document that will outline such issues as:
 - Permits required and corresponding fees.
 - Parking and traffic obstruction policies.
 - The use of off-duty police.
 - Code of conduct.
 - Permissible days/hour and guidelines for exceptions.
 - Residential neighborhood notifications and agreements.
 - Use of town property, facilities and services.
 - Promotional use of appropriate material through Town issued marketing materials.
- c) A required Indemnity Agreement.
- d) All documents will be available from Town Hall and on the Town and Tourist Bureau's websites. There will be a monthly report regarding Film and Print Production permits to the Town Commission and advance notice will be given in the event of a major production that could have impact on a neighborhood or the community at large.

These items will be brought before the Town Commission, as part of a resolution at the July 19, 2011 Commission Meeting, upon adoption of the ordinance on second reading on June 14, 2011.

Budget Impact: The Town would receive permit fees that become part of the General Fund. Total amount of fees generated per fiscal year unknown at this time.

Staff Impact: Existing staff will review and issue/deny the permits as part of their required duties.

Recommendation: Staff recommends that the Commission adopts the ordinance as amended and presented.



Department Head



Town Manager

ATTACHMENT A

Request for Filming Permit (cont)

This permit is subject to the following of Conditions:

- 1- _____
- 2- _____
- 3- _____
- 4- _____
- 5- _____
- 6- _____

Please be advised, any violation of anyone of the above conditions will prompt a courtesy violation notice, a second violation will cause the revocation of the permit.

For office use only:

Permit Expiration Date: _____ **Permit Issuance Date:** _____

Town Manager: _____

Police Chief: _____

Building Official: _____

ORDINANCE NO. 11- _____

AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA CREATING CHAPTER 11 "ARTS, CULTURE, AND ENTERTAINMENT" AND ARTICLE I "FILM AND PRINT PRODUCTIONS" AND SPECIFICALLY CREATING SECTION 11-1 "FILM AND PRINT PRODUCTION PERMITS", OF THE TOWN OF SURFSIDE CODE OF ORDINANCES PROVIDING FOR INCLUSION IN THE CODE; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the Town of Surfside ("Town") proposes to amend its Code of Ordinances to establish guidelines for film and print production permitting.

WHEREAS, The Town Commission held its first public reading on May 10, 2011 and recommended approval of the proposed amendments to the Code of Ordinances having complied with the notice requirements by the Florida Statutes; and

WHEREAS, The Town Commission has conducted a second duly noticed public hearing on these regulations as required by law on June 14, 2011 and further finds the proposed change to the Code necessary and in the best interest of the community.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA as follows:

Section 1. **Recitals.** The foregoing "WHEREAS" clauses are ratified and confirmed as being true and correct and are made a specific part of this Ordinance.

Section 2. **Code Amendment.** The code of the Town of Surfside, Florida is hereby amended as follows:

Ordinance No. _____

CHAPTER 11. ARTS, CULTURE, AND ENTERTAINMENT.

ARTICLE I. FILM AND PRINT PRODUCTIONS.

SECTION 11-1. Film and Print Production Permits.

Except in the H-30 Districts including H-30 A, H-30 B, and those portions of the H-30 C District located west of Harding Avenue, the town manager or the manager's designee, shall have the authority within the Town to issue, modify or revoke permits for film and print productions in accordance with criteria set forth in this section and the film and print regulations approved by separate resolution of the town commission. **Print productions conducted within private property located in the H-30 districts including H-30 A, H-30 B, and those portions of the H-30 C District located west of Harding Avenue are permitted in accordance with criteria set forth in this section.**

(1) [Unlawful without permit.] Except for filming by individuals for personal or educational use, and "professional journalists" collecting, photographing, recording, or reporting "news," as such terms are defined in F.S. § 90.5015, it shall be unlawful to engage in film and print production activities on public property, residentially zoned (private) property, or in film and print activities that require any town services, without a film and print permit.

(2) [Additional regulations and conditions may be imposed.] The town manager or the manager's designee may impose additional reasonable regulations and conditions to a specific permit to ensure the public health, safety and welfare, and peaceful enjoyment of surrounding residents and businesses, at any time.

(3) [Application needed.] Individuals or businesses wishing to conduct film, television, video and/or photography projects on public property, private residential property, or any location that impacts or requires town services, must apply in advance to the town, providing a completed application, including proof of insurance and indemnification, as required by the film and print regulations, and receive a permit, before any film or print production activity may commence;

(4) Town services. Upon receipt of a completed permit application, the permit will be reviewed to determine what, if any, town services will be required. Requirements may vary for each production. The town manager or the manager's designee, in their discretion, may require additional town services and/or monetary deposits not specifically listed or codified.

(5) Film and print regulations. The mayor and town commission may adopt by resolution film and print regulations and the town manager or the manager's designee will administer the regulations as they pertain to film and print productions working within the town. The manager may authorize amendments to the regulations proposed by the administration, and shall present such amendments to the town commission for approval, by resolution.

Ordinance No. _____

(6) Code of conduct. The town code of conduct for film and print productions shall be distributed with all notification and/or signature forms. Copies are available in the office of arts, culture and entertainment.

(7) Parking. All productions requiring prearranged parking must receive prior approval from both the police department and the town manager or the manager's designee before a permit may be issued. Unless prior approval is received for specific requests, all production vehicles must park legally at all times.

(8) Moratoria. The town manager or the manager's designee, in his sole discretion, is authorized to place a temporary moratorium on the issuance of film and print production permits for locations and/or neighborhoods which have experienced overuse as a result of high volume and/or heavy impact filming. The moratorium shall remain in effect for a maximum period of six months, but may be renewed for additional six-month periods if in the discretion of the manager, the impact of the prior filming activities in the area warrants extension.

(9) Conflict with noise provisions. The town manager or the manager's designee, may issue a permit that authorizes filming in conflict with Chapter 54, Article III, of this Town Code, or other applicable noise ordinance, only where the applicant has met all of the town's requirements for obtaining a permit as prescribed in this division and the film and print regulations, and the filming cannot be performed in compliance with the applicable noise ordinance. Such a permit must specify the precise manner by which the noise ordinance may be exceeded, by what duration, and at what locations. Such permit authorization may be modified or revoked if in the discretion of the manager, or designee, the authorization excessively negatively impacts the surrounding neighborhood. Having a permit shall not relieve the permit holder from compliance with all other applicable local, county, state or federal laws.

(10) Enforcement.

a. Permits shall be maintained at the site on which the photography or filming occurs. Upon the request of any police officer or code compliance officer of the town, the owner, lessee of the property or representative of the production company, shall produce such permit for inspection.

b. Persons engaged in film and print activities without a permit, or otherwise in violation of a permit, this section or the film and print regulations provided for herein, shall be subject to enforcement by town police or code compliance officers, through the issuance of immediate cease and desist orders, the violation of which may subject the offender to arrest, and/or enforcement as provided for in section 1-8 of this Code, and/or notices of violation referred to special masters, who have authority to issue fines or enforce compliance, as provided for herein. As an alternate and supplemental remedy, the town may enforce this section by injunctive relief in any court of competent jurisdiction, and in such circumstance the town shall be entitled to recover its reasonable attorneys' fees and costs. For repeat offenders, the manager or designee may decline to issue permits to such person or entity for one year, or such other period as the manager deems appropriate.

Section 3. Severability. If any section, subsection, clause or provision of this Ordinance is declared invalid or unconstitutional by a court of competent jurisdiction, the remainder shall not be affected by such invalidity.

Section 4. Conflict. All sections or parts of sections of the Town of Surfside Code of Ordinances in conflict herewith are intended to be repealed to the extent of such conflict.

Section 5. Inclusion in the Code of Ordinances. It is the intention of the Town Commission, and it is hereby ordained that the provisions of this Ordinance shall become and made a part of the Town of Surfside Code of Ordinances, that the sections of this Ordinance may be renumbered or re-lettered to accomplish such intentions; and the word “ordinance” may be changed to “Section” or other appropriate word.

Section 6. Effective Date. This Ordinance shall be effective ten (10) days after adoption on second reading.

PASSED and ADOPTED on first reading this 10th day of May, 2011.

PASSED and ADOPTED on second reading this ____ day of _____, 2011.

Daniel Dietch, Mayor

Ordinance No. _____

Attest:

Debra E. Eastman, M.M.C., Town Clerk

**APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:**



Lynn M. Dannheisser, Town Attorney

On First Reading Moved by: _____

On Second Reading Seconded by: _____

Vote:

Mayor Dietch	yes	_____	no	_____
Vice Mayor Graubart	yes	_____	no	_____
Commissioner Karukin	yes	_____	no	_____
Commissioner Kopelman	yes	_____	no	_____
Commissioner Olchyk	yes	_____	no	_____

Ordinance No. _____



TOWN OF SURFSIDE
Office of the Town Attorney

MUNICIPAL BUILDING
 9293 HARDING AVENUE
 SURFSIDE, FLORIDA 33154-3009

Lynn M. Dannheisser
 Town Attorney

Telephone: 305 993-1065

MEMORANDUM

TO: Town Commission

FROM: Lynn M. Dannheisser, Town Attorney *LD*

CC: Roger M. Carlton, Town Manager
 Debra E. Eastman, M.M.C., Town Clerk

DATE: June 14, 2011

SUBJECT: Repeal and Rescission of Temporary Moratorium on Non-Retail and Non-Restaurant Uses in Downtown Business District

Recommendation: It is recommended that the Commission adopt this Ordinance repealing the temporary moratorium in consideration of combined recommendations of the DVAC and with the proviso that a failure as determined by the Town Manager to come to final action may result in the re-imposition by the Town Commission of such moratorium.

Reasons: After years of discussion on the topic among the Planning and Zoning Board, the Town Commission, stakeholders in the Downtown Business District and Town staff, the Town Manager has convened a Downtown Vision Process Advisory Committee ("DVAC") which began to develop, study and create a vision and concept for the zoning district known as SD-B40 located between 96th and 94th Streets and Harding Avenue ("Downtown Business District") and develop a strategy for the revitalization of the District. Because of the need to study issues such as: aesthetic / branding for the downtown, creating a welcoming, pedestrian-friendly environment, streetscaping and landscaping, the creation of a Business Improvement District to help finance improvements and operations, as well as the potential combination of retail, commercial and residential land use that would revitalize and reinvigorate the presently licensed businesses housed in seventy buildings located on approximately six acres of the DBD, the Town Commission enacted on April 12, 2011 a temporary moratorium as a means for maintaining the status quo while problems were analyzed and remedial measures were

discussed and developed. The Town Commission directed the Staff to complete the initial phase of its work in order that the moratorium be removed within 90 days.

The DVAC as outlined in the attached memorandum prepared by Duncan Tavares is proposing a series of initiatives it developed during its eight formal meetings and it was agreed that the rescission of the moratorium could be recommended assuming these initiatives were progressing sufficiently as determined by the Town Manager and approved by the Town Commission.



Town of Surfside Commission Communication

Agenda Item

Agenda Date: June 14, 2011

Subject: Downtown Vision Advisory Committee (DVAC) recommendations regarding rescinding the Moratorium Ordinance and related vision initiatives for the Surfside business district.

Introduction: The release of the Miami Dade County Property Appraiser preliminary tax roll for 2011 on June 1, 2011, and the decrease in property values in Surfside by 6.3 percent and thirty nine percent decrease since 2008, supports the necessity for a proactive approach to diversifying Surfside's the tax base (Att A). The following vision, developed in a broad based community stakeholders' process, is a path to revitalize the downtown business district with the ultimate focus on supporting existing businesses, attracting new businesses and creating an environment that will support the diversification of the tax base.

Background: The Downtown Vision Advisory Committee was formed with Town Commission approval through Commission Memoranda presented at the December 14, 2010 (Att B) and January 18, 2011 (Att C) Commission meetings. Feedback from many residents, committee/board members and downtown business operators/owners formed the consensus that there is a need to reinvigorate the Surfside business district after years of conversation and little tangible action. Further, the Town Commission received and held a workshop regarding a Five Year Financial Plan that demonstrated the need to diversify the Town's source of property tax from the current 80/20 split (residential/commercial) to a more balanced distribution. If the commercial property base is not expanded and upgraded the split could be 90/10 in five years.

Fourteen of the initially proposed members of the DVAC consisted of a representative from each appropriate Town committee/board, a mixture of single family and condominium residents (including both full time and "snow bird" representation), Surfside business owners and operators, as well as representatives from such local organizations as the Surfside Civic Association and the Surfside Business Association. Due to the difficulty experienced in the past with establishing avenues of communication with the downtown property owners, outreach was conducted through existing Surfside business owners/operators. Eventually three names, and accompanying contact information, were recommended as possible members. Of the three repeatedly contacted, only one consistently attended the DVAC meetings. However, active and responsive communication with the downtown property owners has occurred since the inception of the Moratorium Ordinance which temporarily limited building permits to restaurant and retail uses on Harding Avenue from 96th Street to 94th Street.

As the need to strengthen Surfside's downtown as the social, cultural and economic center of the Town was established, the DVAC was directed to return to the Town Commission with a comprehensive vision for the district. Operating on the basis that a thriving downtown can enhance the quality of life for Surfside's residents and improve the visitor experience, the committee continually and passionately addressed such issues as:

- an overall aesthetic / branding for the downtown.
- creating a welcoming, pedestrian-friendly environment.
- streetscaping: landscaping, benches, newspaper vending racks.
- the creation of a Business Improvement District to help finance improvements and operations.
- the relationship of Surfside's downtown to The Bal Harbour Shops and the St. Regis.
- the impact of side walk cafes and the proper means for regulating the use of sidewalks through a Sidewalk Ordinance.
- installation of business locator and appropriate parking signs.
- code enforcement in an effort to improve the curb appeal of the area.
- the creation of a parking structure with focus on the Abbott Avenue lot.
- the potential combination of retail, commercial and residential land use.
- assisting businesses with marketing initiatives.
- retaining the one hundred presently licensed businesses and attracting businesses to the seventy building, six plus acre downtown through landlord and lease cooperation.
- the merits of major capital improvement projects and lessons from the Town's 2006/2007 Charrette.

It is important to note that many of these items are actionable items that the Town Staff are implementing (explained below) and all will be incorporated into a final report for the Town Commission. However, due to the remarkable and recent historic increase in communication involving the DVAC, downtown property owners and Town Staff, it is now appropriate and imperative that the Town Commission be presented with the following high level vision for analysis. These vision initiatives are being presented with unprecedented support of all stakeholders involved in the process to date and within the shortened time of three months as directed by the Town Commission instead of the six month time period established when the moratorium was enacted.

Analysis: The DVAC has met eight times since its inception in February 2011. At each meeting a number of agenda items are discussed with each meeting producing an Actionable Item for the Town Staff to address and return at the following meeting with a status report. Below are the Actionable Items that have been completed and/or are in process:

1) February 15, 2011: Downtown Code Enforcement:

From the very first meeting the DVAC has exhibited a unanimous displeasure in the public and private maintenance of Surfside's downtown. Based on consensus from the committee the Town Code Enforcement identified all external code violations in the downtown business district. Courtesy notices were sent to all applicable business owners/property owners. To date over two thirds of the issued notices are now in compliance or in the process of complying. The Town Manager has assured the committee that all violations would be addressed through the Code Enforcement process until full compliance is achieved. This means that penalties will soon be applied to non-responsive property owners and eventually the matter could go to Special Master. Violations that do not require permits such as clean windows, clean trash behind buildings, remove illegal signs and clean alleys behind stores are eighty percent complete. Violations that require permits such as painting the building, repairing windows and façades as well as exposed electrical wires (etc) are seventy five percent complete.

With the purchase of the Town Commission approved power washer, the gum has been removed by Public Works staff from the sidewalks in the downtown district and the overall appearance of the sidewalks has improved dramatically. All of the palm trees in the district have been pruned, and the parking lot on 95th Street and Collins Avenue, including the extension lot, has been repaved, striped and landscaped. These completed projects are a testament to the Town's response to the DVAC members concerns and to the overall commitment to enhancing the aesthetic of Surfside's downtown.

2) *March 10, 2011: Vacant Window Treatment Ordinance:*

In order to address the aesthetic look of the ground floor vacant property windows downtown, Town Staff were requested to amend the Town's ordinance that addresses vacant windows. The amended version went before the Planning & Zoning Board at their May 26, 2011 meeting and includes the committee's recommendations. The Planning and Zoning Board unanimously recommended approval of the Ordinance to the Town Commission. The Design Review Board will approve the final aesthetic of the screening and input from the Beautification Committee and DVAC will be provided. First reading is set for the June 14, 2011 Commission meeting. The Town would require downtown property owners to pay for the Town installation of a Town issued external decorative window covering when their ground floor properties are vacant.

3) *March 22, 2011: Upgrading Harding Avenue Alleys (please see below).*

4) *April 14, 2011: Moratorium Ordinance / Property Owners Meeting Update (please see below).*

5) *April 27 & May 12, 2011: Detailed Vision for Downtown (please see below).*

6) *May 25: Sidewalk Ordinance addressing café seating and the posting of menus outside.*

These initiatives are presented below, prioritized by achievable timelines, in an effort to establish a path forward as required by the Town Commission directive when the DVAC and its mission were established and as a strategy to implement the property tax equity and fairness principles envisioned in the Five Year Financial Plan. It is imperative to note that the following vision package needs further discussion and further vetting by the Planning & Zoning Board and the Town Commission. Nevertheless, there is clear consensus from the above mentioned meetings that these initiatives for downtown, taken as a package, would provide a beneficial blueprint for a revitalized downtown.

SHORT TERM INITIATIVES (six months or less):

Rescind the Moratorium Ordinance: The Town Commission adopted a Moratorium Ordinance on second reading at the April 12, 2011 Commission Meeting. The moratorium restricted the downtown property owners to only renting their ground floor spaces to retail and/or restaurant businesses for six months. The intent of the moratorium was to allow the DVAC enough time to discuss the issue of restricting service industries from the ground floors of downtown buildings and to return to the Town Commission with a recommendation. While the moratorium will sunset at the end of six months from inception, Town Staff were instructed by the Town Commission to return with recommendations from the DVAC within three months. This memorandum and its recommendations meet that time limit.

As a direct result from the enacting of the moratorium, the Town Manager was contacted by upset and concerned downtown property owners regarding the restrictions and a meeting was held with owners on April 26, 2011. Sixteen property owners, a number from the same family trust, representing approximately seventy percent of the buildings downtown were in attendance. During this meeting a series of conceptual initiatives were discussed and approved by consensus from the attendees in exchange for terminating the Moratorium Ordinance prior to its sunset date (Att D).

These initiatives were subsequently presented to the DVAC at the April 27, 2011 meeting and were approved in principle by consensus from those in attendance. Some members at that meeting still expressed their concern for giving up the restrictions on street level service businesses as they strongly felt that this was the only method to achieve the type of dynamic and vibrant downtown that all favor. The DVAC requested Town Staff to return at the next meeting, held on May 12, 2011, with a more specific written statement, including timelines, for ratification by the members so that this vision could be presented to the Town Commission for review at the June 14, 2011 meeting.

At the DVAC meeting on May 12, 2011 a memorandum listing the rescinding of the moratorium with corresponding initiatives to be taken as a package was presented (Att E). Designated representatives of the property owners, accompanied by some of their service oriented tenants and concerned residents, came to the meeting as a reflection of their commitment to the vision. Upon discussion of the initiatives, since approved in principle by the DVAC and the property owners, it became apparent to Town Staff that the division between the various stakeholders was deeper than expected. The DVAC voted six to three to adopt the vision, with the rescinding of the moratorium, but to revisit a plan for restricting ground floor uses to retail and/or restaurants with a distancing/grandfathering provision. As this is a non-negotiable action for the property owners to support all the elements of the DVAC vision, the owners left the meeting quite distressed. Upon further reflection and heated discussion amongst the DVAC it was decided that a second vote should be conducted regarding the vision. This second vote resulted in a seven to two vote in favor of rescinding the moratorium as soon as possible and to approve all of the initiatives presented as a package. The DVAC directed the Town Staff to return at the May 25, 2011 meeting with a more definitive plan of action, including specific timelines and commitment requirements from the various stakeholders, for ratification before presenting to the Town Commission for review at the June 14, 2011 meeting. The consensus from the DVAC members is that while the property owners have the threat of litigation on their side, the Town needed something to bind the property owners to all of the initiatives that they have presently committed to in good faith only.

The Planning & Zoning Board met on May 26, 2011 and thoroughly discussed rescinding the Moratorium Ordinance and the grand vision presented in this memorandum. Understanding that every item needs a multitude of research and discussion and must be vetted through the various Town Departments, Boards, Committees and Town Commission, the Planning & Zoning Board unanimously approved the rescinding of the Moratorium Ordinance and the acceptance of the package of vision initiatives previously approved by the downtown property owners and DVAC that are presented in this memorandum.

Upgrading Alleys: A study of the Town's parking lots and alleys is set to be awarded on June 14, 2011. By way of information, the proposals have already been ranked by the Town selection committee. This study would include the viability of upgrading the alleys, both privately and publicly owned, on both sides of Harding Avenue. The plan would also address the possibility of creating a breezeway from the east side of the Abbott Avenue parking lot through to the west side of Harding Avenue. Financing could be achieved by a joint venture with the property owners of the private alley and the utilization of parking funds. The key commitment suggested by the DVAC is that the study needs to rapidly begin. The next step would be the completion of the consultant selection process and the awarding of the contract by the Town Commission.

Business Improvement District: The Town Manager will continue to meet with the downtown property owners and tenants over the summer to develop a possible Business Improvement District (BID) for the Downtown District. The basic premise of a BID is that the Town agrees to continue to provide a basic level of service and that incremental services such as extra police protection for expanded special events, maintenance for specialty landscaping, downtown marketing programs, cleaning after special events (Att F), and the retention of consultants to secure tenants are funded with a self imposed charge on the owners which is generally passed on to the tenants. The use of these funds is governed by the board of the BID. The process for establishing the District and ensuring that funds are collected and property spent is governed by State law and an agreement with the Town Commission. This initiative will be detailed to the Town Commission in the Fall of 2011.

Facade Upgrading Program: The Town Manager will begin an effort to create a consortium of banks operating in the Downtown District over the summer to develop financing for a facade upgrading program for the district's property owners and businesses. Details regarding this proposal would go to the Town Commission in September, 2011. Proceeds from the Parking Fund could be utilized to reduce the interest on loans granted for facade improvements.

Abbott Avenue Parking Garage Feasibility Study: A feasibility study could address a garage project on the Abbott Avenue parking lot, an upgrade to the alley on the east side of the parking lot to facilitate a more pedestrian friendly environment and access to the Harding Avenue east side businesses, as well as the possibility of rezoning the west side of Abbott Avenue from 95th to 96th Streets to allow very limited commercial use and/or live/work use in the existing homes. An appropriate landscaping buffer on the west side of the Abbott Avenue homes would also be addressed. Upon the recommendation of the Mayor, Town Staff will update the 2007 staff study (Att G) to address whether there is sufficient data that suggests the need for a parking garage and, thus, a formal feasibility study. This updated study will be presented to Town Commission at the July 19, 2011 Commission Meeting. The timeline for this initiative is as follows:

- Seek approval from the Town Commission at the July 19, 2011 Commission Meeting to initiate an independent feasibility study for a parking garage on the Abbott Avenue parking lot if the updated Town Staff study recommends moving forward with this initiative.
- If approved, the Town Administration will utilize the Commission approved group of architects and engineers registered with the Town to compete for the feasibility study with completion expected in October, 2011. Funding would be provided from the Parking Fund and will have no financial effect on the General Fund or the residents of Surfside.

MID TERM INITIATIVES (six months to twelve months):

The Current Forty Foot Height Allowance and Amalgamation of Properties: Presently the buildings in the Downtown District can be forty feet in height. In an effort to encourage property owners to voluntarily seek larger national retail and restaurant tenants for their ground floor properties, buildings could be redeveloped to the maximum four stories presently allowed and would not include restriction regarding residential use. Property owners could voluntarily amalgamate buildings to achieve this initiative.

- Present to the Planning & Zoning Board on June 23, 2011 for discussion.
- Present to the Town Commission on July 19, 2011 for first reading.

Development of an East West Corridor on 95th Street from Abbott Avenue to the Beach: The Development Impact Committee is working on a design theme for this project which could see a significant contribution from the developers of the Beach House property on the west side of Collins Avenue. An improved linkage on both 94th Street to Harding Avenue and on 95th Street will help ensure that this project becomes an asset to downtown and increase business development as well as augment visitor satisfaction for guests of the hotel.

LONG TERM INITIATIVES (twelve months to thirty months):

Rebuilding of Harding Avenue Sidewalks: If the Town Commission determines the need for a garage on the Abbott Avenue parking lot, and the project moves forward to completion, then the Town Administration will address expanding the sidewalks on Harding Avenue between 94th and 96th Streets in the Downtown District by removing the existing parking spaces. This would be feasible as adequate parking would now be available in the new Abbott Avenue garage. A small number of spaces on Harding Avenue would remain for bus lay-bys and a valet parking service. The wider sidewalks would provide more space for outside café seating and enhanced landscaping and streetscaping. The financing of this project is yet to be determined but could be achieved through a joint venture with the Town and an assessment on the downtown properties.

94th Street Parking Garage Feasibility: A feasibility analysis will be accomplished over the summer relative to developing the 94th Street parking lot into a garage with the possible addition of the contiguous properties to the east along Collins Avenue. The intent of this project would be to provide additional parking for a southern anchor to the east side of Harding Avenue and to allow sufficient space for small scale national retail and restaurant opportunities.

Through the actions of the DVAC and the property owners, and with Town Commission support, Surfside's downtown is experiencing an increase in the upgrading and maintenance of the buildings and the public spaces within the district. The Town will continue with Code Enforcement to ensure that this mission achieves its goal of positively impacting the aesthetic environment and image of downtown Surfside. A plan for additional short-term aesthetic upgrades could also be continued as a mission of the DVAC while the mid and long term proposals are in process. The Town will also continue its efforts to increase maintenance of the area such as the steam cleaning of the sidewalks. The FDOT repaving project will also add new crosswalks at all intersections and at the mid-block pedestrian lights.

It is the clear intent of the property owners, DVAC and Town Administration that this Commission Communication reflects a package of ideas that justify the acceleration of the moratorium's termination. The majority of the stakeholders involved in this process to date agree that this represents a vision for an important cooperative approach to a better future for the downtown district. Any disagreement is not about the package presented, it is about the need for regulation to limit certain uses at the street level. Clearly the second vote of the DVAC, as documented earlier in this Commission Communication, reflects willingness to compromise in an effort to move forward.

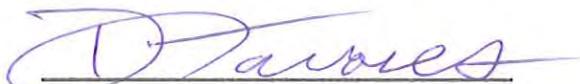
As your Town Manager, I want to personally thank the members of the DVAC, Tourism Director Duncan Tavares, Planning Director Sarah Sinatra Gould, and the property owners for coming together to vet this vision in a very short time frame as directed by the Town Commission and without the cost of consultants. The vision is a path to sensitively bring our downtown to a more contemporary place without losing its hometown feeling. The vision is also a necessary element of the Town Commission's stated goal of creating property tax equity and fairness through expansion of commercial uses without deteriorating our quality of life. We all look forward to the discussion of this plan perhaps in a joint public workshop of the Planning & Zoning Board and the Town Commission.

Budget Impact: TBD.

Staff Impact: TBD.

Recommendation: In a direct outcome from meeting with the downtown property owners on April 26, 2011 the property owners in attendance have been an active participant in the vision process. While the DVAC started with three downtown property owners as members, and every meeting has been conducted in a televised public forum with every attendee having the opportunity to opine on all discussion items, Town Staff recommends that the Town Commission approve the appointment to DVAC of Mr. Jack Stevens as a representative of the property owners from the April 26, 2011 meeting.

It is understood that this package of initiatives presented in this memorandum must be ratified by the Town Commission before any of the items can proceed. Upon the approval of any or the entire proposed vision package, the initiatives must then be vetted by the appropriate Town Departments before proceeding to the Planning & Zoning Board. The ultimate decision on subsequent implementation remains with the Town Commission. Therefore it is the recommendation of the DVAC and the owners of a majority of the downtown properties that the Town Commission approves the vision in principle to allow for Town Staff to proceed on each item with the intent of eventually returning to the Town Commission for vetting as outlined by the timelines presented. Town Commission will be kept apprised of the process on each initiative through the Town Manager's Points Of Light action document, minutes from the DVAC meetings as well as Planning & Zoning minutes and subsequent progress reports and ordinances.



Department Head



Town Manager

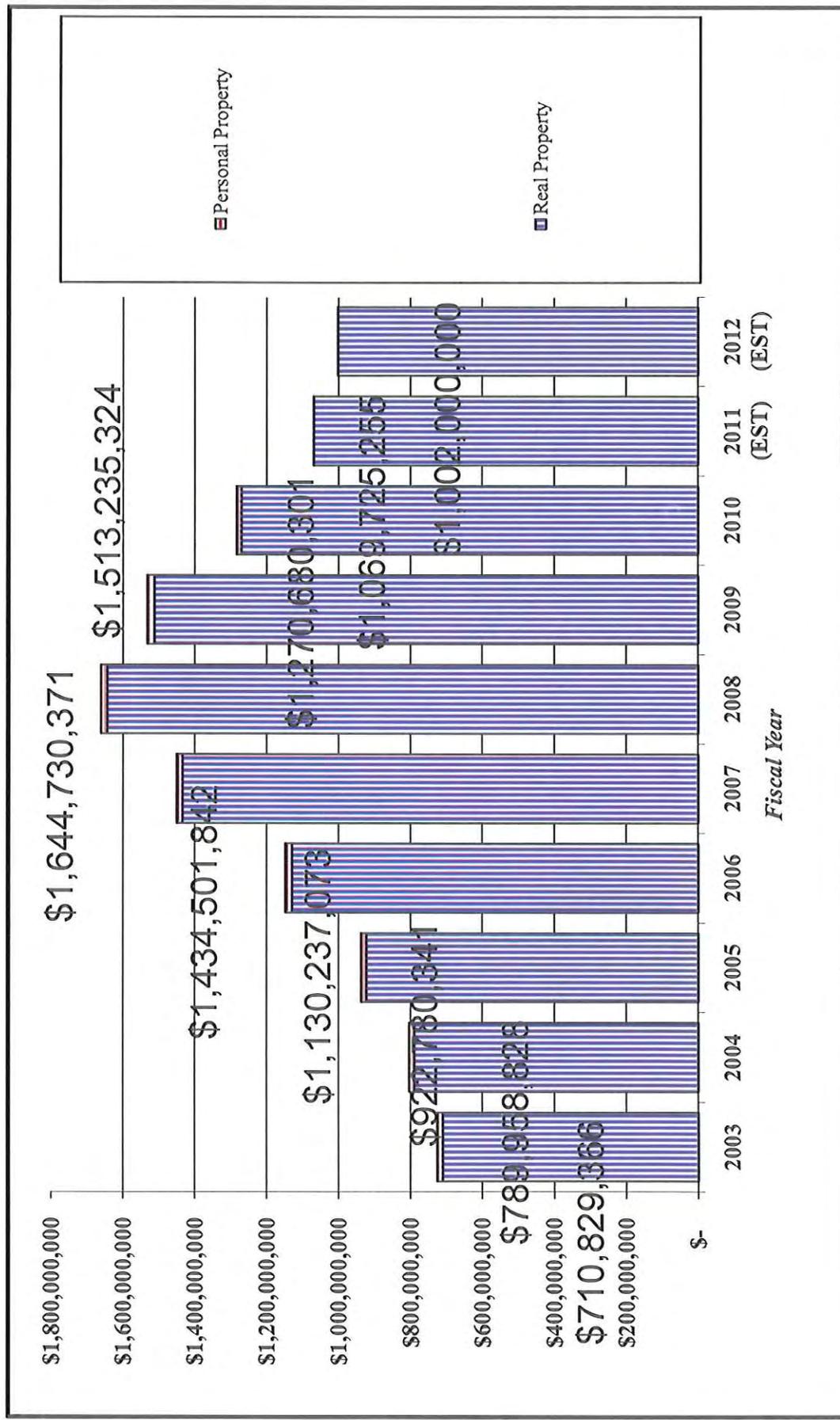
ATTACHMENT A

Town of Surfside, Florida

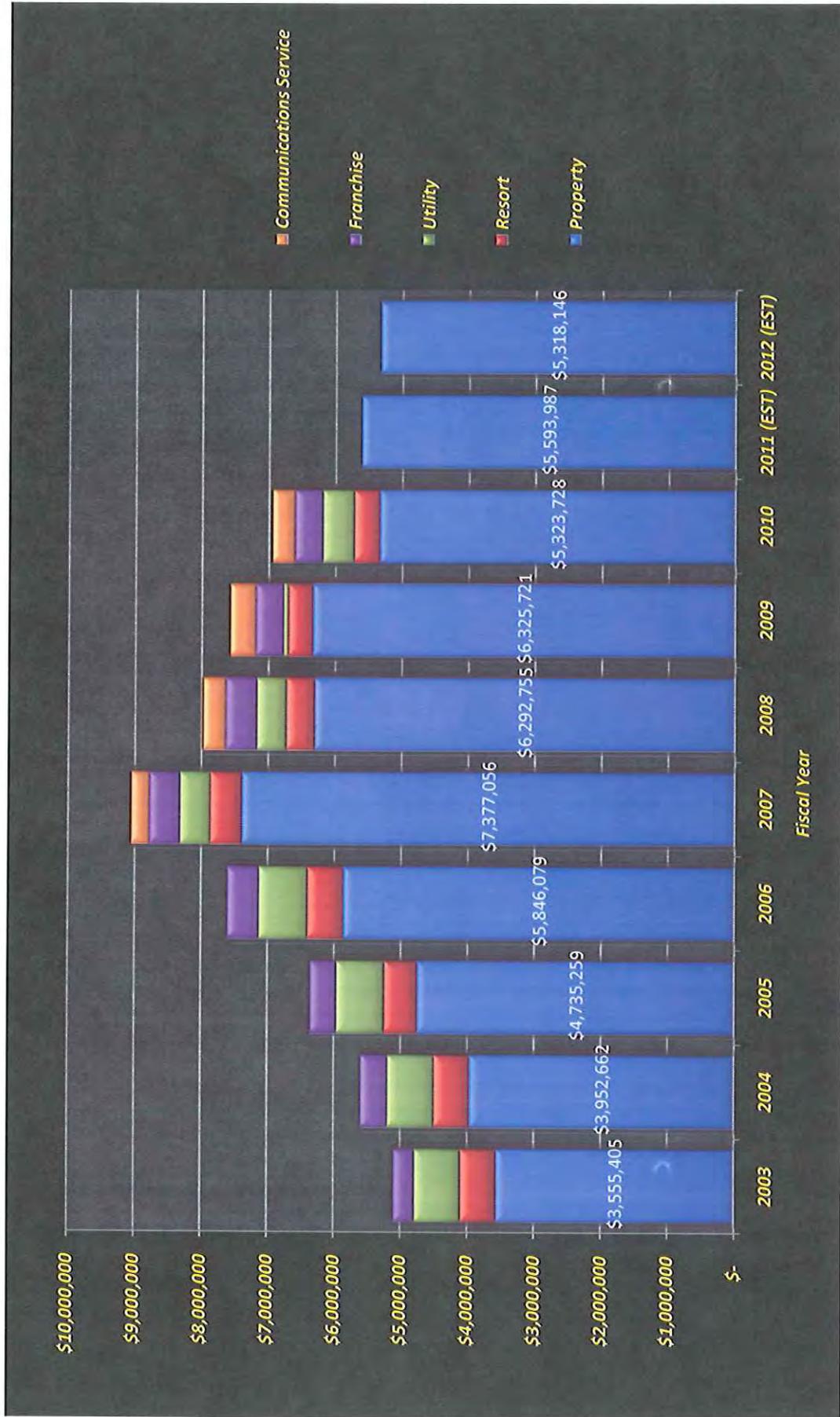
Chart-Total Assessed Value (Unaudited)

Last Ten Calendar Years

(modified accrual basis of accounting)



Town of Surfside, Florida
 Chart-Tax Revenues by Source - Governmental Funds (Unaudited)
 Last Ten Fiscal Years
 (modified accrual basis of accounting)



ATTACHMENT B



Memorandum

To: Elected Officials
From: Roger Carlton / Town Manager
Date: 12/6/2010
Re: Moving the Downtown Vision Process Forward

Introduction

During the past three months, substantial input has been given to the Town Manager regarding the need to reinvigorate the Downtown Vision process. This report outlines suggested parameters for the process and establishes a timeline for the Town Commission to review.

There exists a need to strengthen Surfside's downtown as the social, cultural and economic center of the Town. A thriving downtown can enhance the quality of life for Surfside's residents and improve the visitor experience.

Additional tax revenue from a thriving downtown, including increases in the Tourism Resort Tax, adds to the Town's tax base and helps alleviate the ad valorem (property) tax burden on residents.

In order to create a sense of place that encourages business retention and economic development, while retaining and enhancing the characteristics that attract residents and visitors, a plan that reflects the realities of the 21st Century is required.

Previous planning efforts and policies, as well as recent survey results, will be reviewed during this process. This will help avoid the cost of outside consultants.

Background

The Town's 2006/2007 Charrette, through extensive community input, recommended a number of improvements for the downtown area. A Committee comprised of Surfside residents, the Town Manager and a Commission liaison held a series of public meetings to engage the views and future aspirations for the Town as a whole. The final public meeting reviewed each section of the Charrette for detailed comment. The final report was not fully adopted and further direction was not given or implemented.

Many of the listed possible projects that pertain to the downtown district are still relevant discussion items. Of particular note is the desire to create a more pedestrian friendly downtown with mixed-use commercial buildings. Also, the possible need for a parking structure is still widely discussed to this day.

The two blocks on Harding Avenue from 94th to 96th Streets is approximately 6 ¾ acres with over 70 buildings and more than 100 licensed businesses.

Due to unprecedented changing and challenging economic conditions since the Charrette was produced, the necessity for a current shared vision and plan for the downtown district is a timely initiative.

Project Teams

Proposed Steering Committee: Town Manager, Building Official, Planning Manager and Tourist Bureau Director.

Proposed Advisory Committee: Planning & Zoning Chair, Surfside Business Association President/Tourist Bureau Chair, Beautification Chair, a hotelier, two retailers, a service oriented business operator, a single family residential representative and a condominium resident representative.

Timeline

- 1) December 2010/ January 2011 - Interview the Surfside Commissioners and members of the Surfside Business Association regarding their vision for the downtown district.
- 2) Conduct two workshops:
 - i) February 2011 - Steering Committee and Advisory Committee Workshop, open to the public, with the Planning & Zoning, Tourist Board and Beautification Committee in attendance.
 - ii) March 2011 – Public Workshop to present the ideas from the recent survey results, interviews and previous workshop.

Information from the Charrette, the Planning Department, and comparative models used elsewhere (eg Delray Beach) will also be presented.

The objective of the workshops is to incorporate the various stakeholders' vision for the downtown and to form a collective vision for the future.

Some of the discussion items would include, but not be limited to, the following:

- an overall aesthetic / branding
- creating a welcoming, pedestrian-friendly environment
- the installation of benches and bike racks

- the creation of a Business Improvement District to help finance improvements and operations
- the role of the Florida Department of Transportation (eg crosswalk replacement in 2011/2012)
- the role of Tourism funding as it relates to successful retail and restaurant establishments
- the relationship to Bal Harbour Shops and the St. Regis
- the impact of side walk cafes and the proper means for regulating the use of sidewalks
- newspaper vending rack regulation
- installation of business locator signs on each block
- code enforcement
- the potential combination of retail, commercial and residential land use
- assisting businesses with marketing initiatives, particularly the use of Social Media, and special events
- retaining and attracting businesses through landlord and lease cooperation

A report listing priorities and a timeline for implementation strategies will be produced from the workshops. This will be presented at the Town Commission Meeting in April 2011.

Cc: Paul Gioia, Building Official
Sarah Sinatra, Planning Manager
Duncan Tavares, Tourism Director

ATTACHMENT C

Memorandum

To: Roger Carlton / Town Manager
From: Duncan Tavares / Tourist Bureau Director
Date: 1/18/2011
Re: Downtown Vision Process Update

Advisory Committee:

- Scarlet Tenen, Planning & Zoning Chair
- Eli Tourgeman, Tourist Board Chair
- David Steinfeld, Beautification Committee Chair
- Ken Arnold, Former Chair Charrette Committee
- Sergio Castion, Surfside Business Association Representative / Condotti Mens Clothing Store Owner
- Ighal Goldfarb, 9520 Harding Avenue Building Owner
- Shep Edelstein, Best Western Oceanfront Resort Owner
- Andy LaBrada, Onarga Apartment Hotel and Event Company Owner
- Jenny Skordilis, The Greek Place
- Jessica Weiss, Serendipity Yogurt Cafe
- Leeann Roth, Luxe Skin Bar Store Owner
- Julia Magnani, Surfside Civic Association / Single Family Home Representative
- Sharon Levy, Home Business Operator / Single Family Home Representative
- Louis Cohen, President of Marbella Condominium Association
- Jackie Murphy, Condominium Resident
- Julie Gordon, Condominium Resident

Discussion of Initiatives for Downtown Success:

- 1) Forming a public-private partnership
 - Partnering with neighboring communities
- 2) Completing a downtown vision
- 3) Produce a market driven business plan
 - Identify your customer base and potential new customers
 - Identify their wants and needs today and in the future
- 4) Develop and market your downtown's unique niche
- 5) Attract new targeted businesses through outreach and hosting/site visits
- 6) Counsel existing businesses on their business plans

June 2, 2011

- 7) Conduct on-going focus groups to provide direction
- 8) Create small scale downtown housing
- 9) Create on-going formal marketing and public relations campaigns
- 10) Incorporate management techniques from the malls – managing a downtown as a business:
 - Forge partnerships
 - Assign someone as a liaison
 - Produce a leasing plan including minimum standards for hours of operation
 - Focus on maintenance issues
 - Identify funding sources
 - Provide sufficient parking and other public services

Design Preferences Discussion Points:

Buildings: What is attractive? What to change?

Colors

Signage

Landscaping / Pedestrian friendly additions

Side walks

Crosswalks

Create a central theme or brand

Are there motivational factors to assist in compliance?

Should a “demonstration” building façade be created?

Forging a partnership with neighboring communities

Pedestrian friendly vs high visibility

Traffic calming

Economic Development Objectives for Downtown:

- Stimulate new activity / Encourage new businesses that will generate Resort and Sales Tax for the Town
- Preserve and stimulate existing businesses
- Diversify the economic base
- Evaluate barriers for change/growth and create sensible and sensitive regulations
- Encourage new businesses that broaden the service offering
- Create an organization that is well funded to enhance the vision



ATTACHMENT D



Downtown Property Owners

Meeting Minutes

April 26, 2011

The meeting started at 6:05pm in the Commission Chambers, 2nd Floor Town Hall.

In Attendance:

Property Owners: Jack Stevens, Dr. Michael Stevens, Helen P. Stevens, Charlotte Stevens, Merry Stevens, Carol Penson, Carol Leinwand, Alex Leinwand, David Kahn, Donald Kahn, Harry Breiter, Estelle Breiter, Sharlane Packar, Christine Justice, Dr. Ilonka Schwartz, Dr. Asher Paoeh.

Town Staff: Roger Carlton, Town Manager; Duncan Tavares, TEDACS Director.

Meeting Discussion:

Jack Stevens thanked the Town Manager for all of his outreach to the property owners and his willingness to hold this meeting.

The Town Manager updated the attendees on the Downtown Vision Advisory Committee's formation, mission and diversity of viewpoints. The fact that the most businesses are voluntarily complying with their code violation notices, seen in such actions as buildings being painted, is a direct result from feedback from this committee. He also discussed the Moratorium's commencement and objectives; while in effect for six months from the April 12, 2011 Commission Meeting, it is expected to sunset within three months. There was a review of Surfside's good financial status and the five year plan with the need for hotel product as the present high tax burden on the residents is only set to increase. The consensus is that downtown must be more contemporary, attractive, lively and a profitable place to conduct business.

The following are ideas that the Town Manager wanted the attendees to discuss*:

- Grandfather existing service oriented businesses on the ground floor for ten years. Property owners would have a six month window of opportunity to exercise this option upon the sun setting of the Moratorium.
- The number of non retail and restaurant spaces on the ground floor will be limited by distance requirements.
- Property owners could build up to four stories with the option of having residential units on the upper floors.

- Property owners could amalgamate their holdings by a Unity of Title to increase the building frontage to 200 feet so that additional floors, with the elevators and ADA compliance, could be achieved. The larger ground floor space would then be attractive to national retailers and restaurants.
- The Town would build a garage on the Abbott Street lot. With easements from the property owners, the alley would then be upgraded with utilities buried underground. This would create an attractive area to access the businesses on that block of Harding Avenue. The ground floor of the garage would have retail space.
- Eliminate Harding Avenue street parking, leave bus lay-bys, and add a valet parking option. The sidewalks could then be widened for sidewalk cafés. This would create a better pedestrian environment with better landscaping and streetscaping.
- Initiate a façade upgrading program.
- Form a Business Improvement District (BID) with commitments from the business owners and the Town.

*N.b. these ideas are not the expressed views of the Commission, Planning & Zoning Board or any other committee.

Comments:

- Do not approve of the “grandfathering” item as all of my tenants would go out of business after 10 years.
- The restrictions should not be implemented in the present economic situation. The Town Manager stated that this is the time to help downtown. In a better economy no one is interested in these matters.
- The demographics of the area do not support the existing types of retail. “Mon & Pops” can barely survive and they are the best bet for the area.
-

Jack Stevens made a presentation, with photos of various downtown buildings, highlighting their inability to host service businesses due to lack of available space and lack of ADA compliance. There are thirty one existing ground floor tenants that would need to close if the ten year “grandfathering” is imposed. The property owners would never agree to Unity of Title. He also stated that the property owners were never given due process to represent their views to the Town Commission when the Moratorium was on the agenda due to conflicting information received from the Town.

Donald Kahn concluded for the group, that in the spirit of working together, the attendees support the following:

- The formation of a BID.
- A downtown façade upgrading program.
- The building of a garage at Abbott.
- Allowing for four stories with residential and possible other uses.
-

He stated that the group does not support the following:

- The “grandfathering”/ten year lease requirement.
- Managing types of businesses by distance limitations.

These are non-starters for the group and are contentious issues. If these items are removed from the equation then there exists a co-operative environment to achieve a better downtown.

The Town Manager confirmed that the following are supported by the attendees:

- Limit parking on Harding Avenue (as outlined above) with wider sidewalks once a garage is built on Abbott as mentioned above. Jack Stevens dissented on the limited Harding Avenue parking.
- A focused marketing effort for retail and restaurants financed by BID and/or parking funds.
- A 94th Street garage with retail on the ground floor.
- 95th Street enhancement project from Abbott to the beach.

All attendees agreed to a quarterly meeting as a means of keeping informed and as a method to achieve common goals.

The meeting adjourned at 8:15 pm.

ATTACHMENT E



Memorandum

To: Downtown Vision Advisory Committee Members
From: Roger Carlton / Town Manager
Date: 5/12/2011
Re: Proposed initiatives from downtown property owners and DVAC members

Following the adoption of the Moratorium Ordinance by the Town Commission on April 12, 2011, the Town Manager met with downtown property owners on April 26, 2011. From this meeting a series of conceptual initiatives were discussed and approved by general consensus from the attendees in exchange for terminating the Moratorium Ordinance prior to its sunset date. These initiatives were subsequently presented to this committee at the April 27, 2011 meeting and were approved in principle by general consensus from those in attendance. They are presented here for summary purposes in an effort to establish a path forward as required by the Town Commission directive when the Downtown Vision Advisory Committee (DVAC) and its mission were established.

1) Moratorium Ordinance:

The Town Attorney will provide a "Letter of Intent" document, for acceptance by the downtown property owners and DVAC members, outlining the conceptual items (listed below #2- 7). This conditional document will be presented by the Town Manager to the Town Commission at the June 14, 2011 meeting with the recommendation to rescind the Moratorium Ordinance before its sunset date in October 2011 and before the Town Commission's mandate to return with a recommendation by July 2011.

2) Abbott Street Parking Garage Feasibility:

The Town Manager will seek approval from the Town Commission at the June 14, 2011 Commission Meeting to initiate a feasibility study for a parking garage on the Abbott Avenue parking lot. If approved, the Town Administration will utilize the Commission approved group of architects and engineers registered with the town to compete on a feasibility study by August 2011. The feasibility study will address the garage project, the alley upgrade as well as rezoning the west side of Abbott Avenue from 95th to 96th Streets to allow commercial use in the existing homes. An appropriate landscaping buffer on the west side of Abbott Avenue homes would also be addressed.

3) Rebuilding of Harding Avenue Sidewalks:

If the Town Commission determines the need for a garage and the project moves forward to completion, the Town Administration will address expanding the sidewalks on Harding Avenue between 94th and 96th Streets in the Downtown District by removing the existing parking spaces. This would be feasible as adequate parking would now be available in the new Abbott Avenue garage. A small number of spaces on Harding Avenue would remain for bus lay-bys and a valet parking service. The wider sidewalks would provide more space for outside café seating and enhanced landscaping and streetscaping. The financing of this project is yet to be determined but could be achieved through a joint venture with the Town and an assessment on the downtown properties.

4) Upgrading Alleys:

A study of the Town's parking lots and alleys is set to be awarded on June 14, 2011. By way of information, the proposals have already been ranked by the Town selection committee. This study would include the viability of upgrading the alleys, both privately and publicly owned, on both sides of Harding Avenue. The plan would also address the possibility of creating a breezeway from the east side of the Abbott Avenue parking lot through to the west side of Harding Avenue. Financing could be achieved by a joint venture with the property owners of the private alley and the utilization of parking funds.

5) Support the Forty Foot Height Allowance:

Presently the buildings in the Downtown District can be forty feet in height. In an effort to encourage property owners to voluntarily seek larger national retail and restaurant tenants for their ground floor properties, buildings could be redeveloped to the maximum four stories presently allowed and would not include any restrictions regarding residential use. Property owners could voluntarily amalgamate buildings to achieve this initiative. This discussion is presently on-going with the DVAC and would need to go to before the Planning & Zoning Board and Town Commission.

6) Facade Upgrading Program:

The Town Manager will begin an effort to create a consortium of banks operating in the Downtown District over the summer to develop financing for a facade upgrading program for the district's property owners and businesses. Details regarding this proposal would go to the Town Commission in September, 2011. Proceeds from the Parking Fund could be utilized to reduce the interest on loans granted for facade improvements.

7) Business Improvement District:

The Town Manager will continue to meet with the downtown property owners over the summer to develop a possible Business Improvement District for the Downtown District. This initiative will be presented to the Town Commission in the Fall of 2011.

8) 94th Street Parking Garage Feasibility:

A feasibility analysis will be accomplished over the summer relative to developing the 94th Street parking lot into a garage with the possible conjunction of the contiguous properties along Collins Avenue. The intent of this project would be to rent additional parking for a southern anchor to the east side of Harding Avenue and to allow sufficient space for small scale national retail and restaurant opportunities.

While it is important to note that many of the above proposed initiatives have multiyear timelines for completion, if approved by the Town Commission, there are other initiatives that have had an immediate and on-going impact in the Downtown District. Through the actions of this committee, Surfside's downtown is experiencing an increase in the upgrading and maintenance of the buildings in the district. The Town will continue with Code Enforcement to ensure that this mission achieves its goal of positively impacting the aesthetic environment and image of downtown Surfside. A plan for additional short-term aesthetic upgrades could also be continued as a mission of this committee while the long-term proposals are in process.

It is the clear intent of the property owners, DVAC and Town Administration that this memorandum reflects a package of ideas that justify the acceleration of the Moratorium's termination. While these ideas are not contractual between those involved in formulating this conceptual action plan, all of the mentioned stakeholders agree that this represents a good faith vision of an important cooperative approach to a better future for the Downtown District. It is understood that all of these initiatives must be reviewed by the Town Commission. Upon the approval of any or all of the proposed ideas must then be vetted by the appropriate Town Departments before proceeding to the Planning & Zoning Board. The ultimate decision on subsequent implementation remains with the Town Commission.

ATTACHMENT F

Coconut Grove Business Improvement District Makes Innovative Changes in Operations

Grove BID Becomes First Florida Client of Nationally Recognized Provider "Block by Block"

BY MELISSA NOBLES

Beginning June 1, Coconut Grove will be the first improvement district within Florida to welcome the successful Block by Block operations management company to its streets. The announcement of the partnership comes as the Coconut Grove Business Improvement District (BID) celebrates its two-year anniversary.

Block by Block, a complete service provider managing safety, cleaning and hospitality programs for improvement districts, currently serves 33 communities throughout the U.S. It attends exclusively to improvement districts and has branded a concept unlike any other in the operations business: "Downtown Ambassadors."

The Downtown Ambassadors team is carefully selected and trained to exceed in both security and sanitation services. However, unlike many other workers in such fields, the Downtown Ambassadors are also trained as hospitality agents, creating a friendly environment for neighborhood visitors.

Manny Gonzalez, Director of Operations for the Coconut Grove BID, cites Block by Block's BID-focused approach and impressive set of references as a major contributor to their hiring. Particularly, Block by Block's work with the Waterfront Partnership of Baltimore, MD is a success story the Grove is looking to model after.

"Since hiring Block by Block, Downtown Ambassadors have achieved promoting the Waterfront as a destination for local and regional visitors," said Gonzalez. "Like the Grove, they also established events to attract and entertain

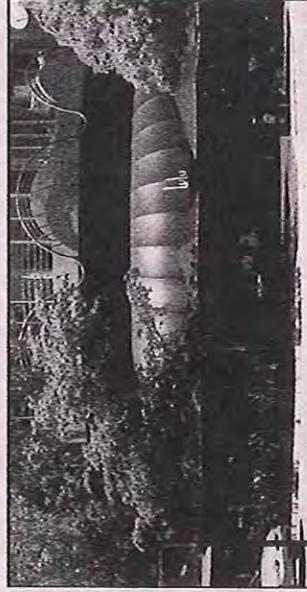
visitors while maintaining operation programs in the core business center."

Sanitation ambassadors will be on hand to sweep, collect litter, remove graffiti and weeds, and clean public fixtures. Simultaneously, security ambassadors will be stationed at the Grove's three information kiosks, on bike and on foot to patrol the area and visit local merchants to maintain constant communication. Ambassadors will be identified by exclusively branded Coconut Grove BID uniforms.

Yet, regardless of position, the unique service provided by all ambassadors will be their knowledge and enthusiasm to engage the public, by providing directions or even recommendations for restaurants, alongside their duties.

"There are a lot of great companies in South Florida, but what Block by Block is going to do here is going to change the way improvement districts do business."

"Where else could you find a company that trains its security and sanitation workers to also provide cordial services and educate tourists with community messages right on the street,"



said David Collins, executive director of the Coconut Grove BID. "This is truly an evolutionary step up for Coconut Grove, and truly the City of Miami."

Keeping up that progressive spirit, the Coconut Grove BID has built on the strong foundation it laid back in 2009. This past April the group celebrated its two year anniversary and the series of new business that has resulted from those efforts.

Leading the list is Paragon Grove 13, Miami's newest cinema complex. It was recently rated the best theater in Miami by AOL and The Miami Heat's Chris Bosh's proclaimed it as his theatre of choice in a recent Ocean Drive Magazine issue.

Also shining examples of the "new Grove" are restaurants Peacock Garden Café and Lulu. Both come as result of their respective owners deciding to expand their businesses inside the Grove Business District, instead of elsewhere. Arquitectonica, an international brand name in architecture, joins the list of creative heavyweights that have returned to what is commonly becoming known as "Miami's Silicone Valley of design and arts firms."

The Coconut Grove BID attributes success stories like these as strong indicators of the benefits merchants and prospective tenants see in the BID's individual programs. By adding the components offered by Block by Block to existing programs, like the current partnership with City of Miami Police Department and its direct radio communication system, it won't be long before the Grove begins to see more recognition and accolades similar to that of "Safest Neighborhood in Miami."

"There are a lot of great companies in South Florida, but what Block by Block is going to do here is going to change the way improvement districts do business," said Collins. "Instead of just going through the motions, Block by Block offers a truly personal touch translating into more and happier visitors."

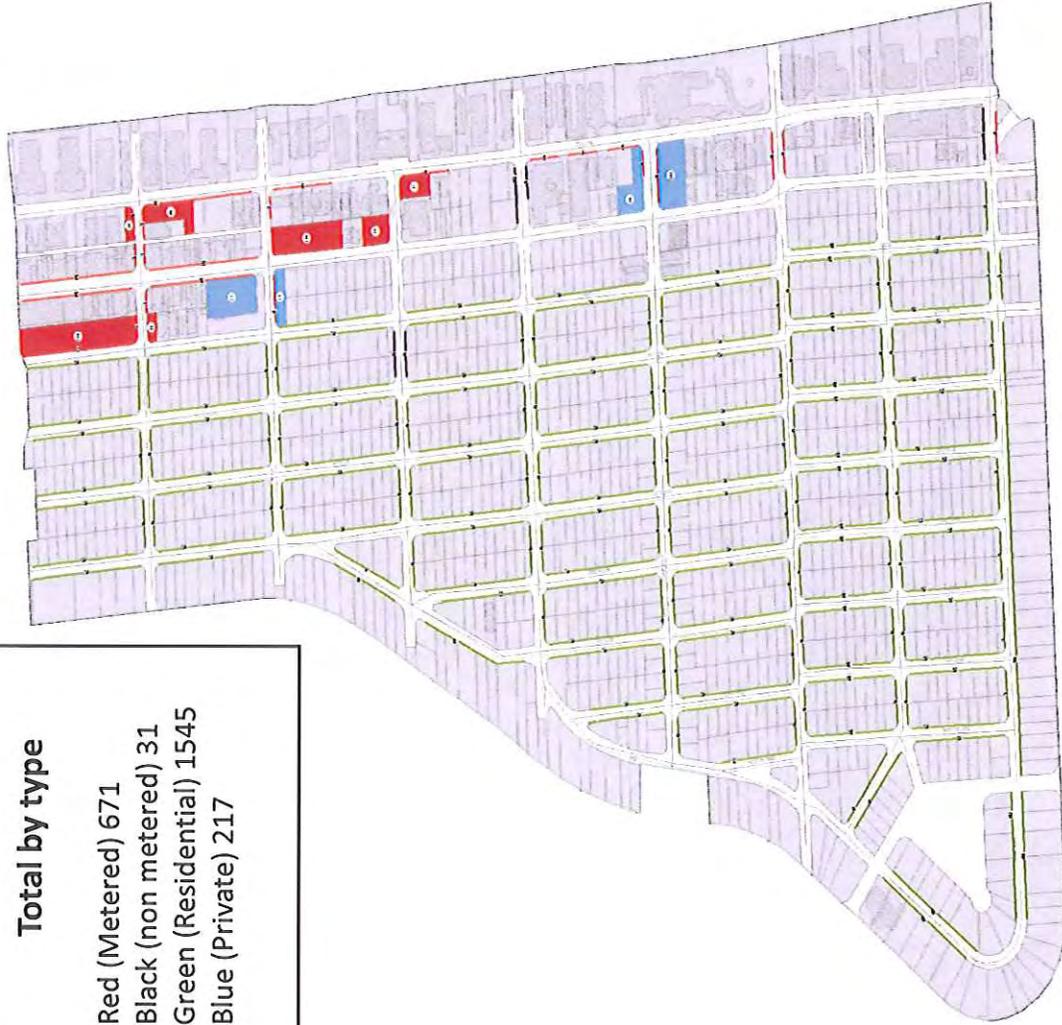
The Coconut Grove BID exists to improve the quality and financial success of the Grove's commercial core. It enhances Grove parking, lighting, sanitation, marketing, and safety, as well as supporting special events. For more information on the Coconut Grove BID, visit www.coconutgrove.com or call 305-461-5506.

ATTACHMENT G

Parking Inventory

Total by type

- Red (Metered) 671
- Black (non metered) 31
- Green (Residential) 1545
- Blue (Private) 217



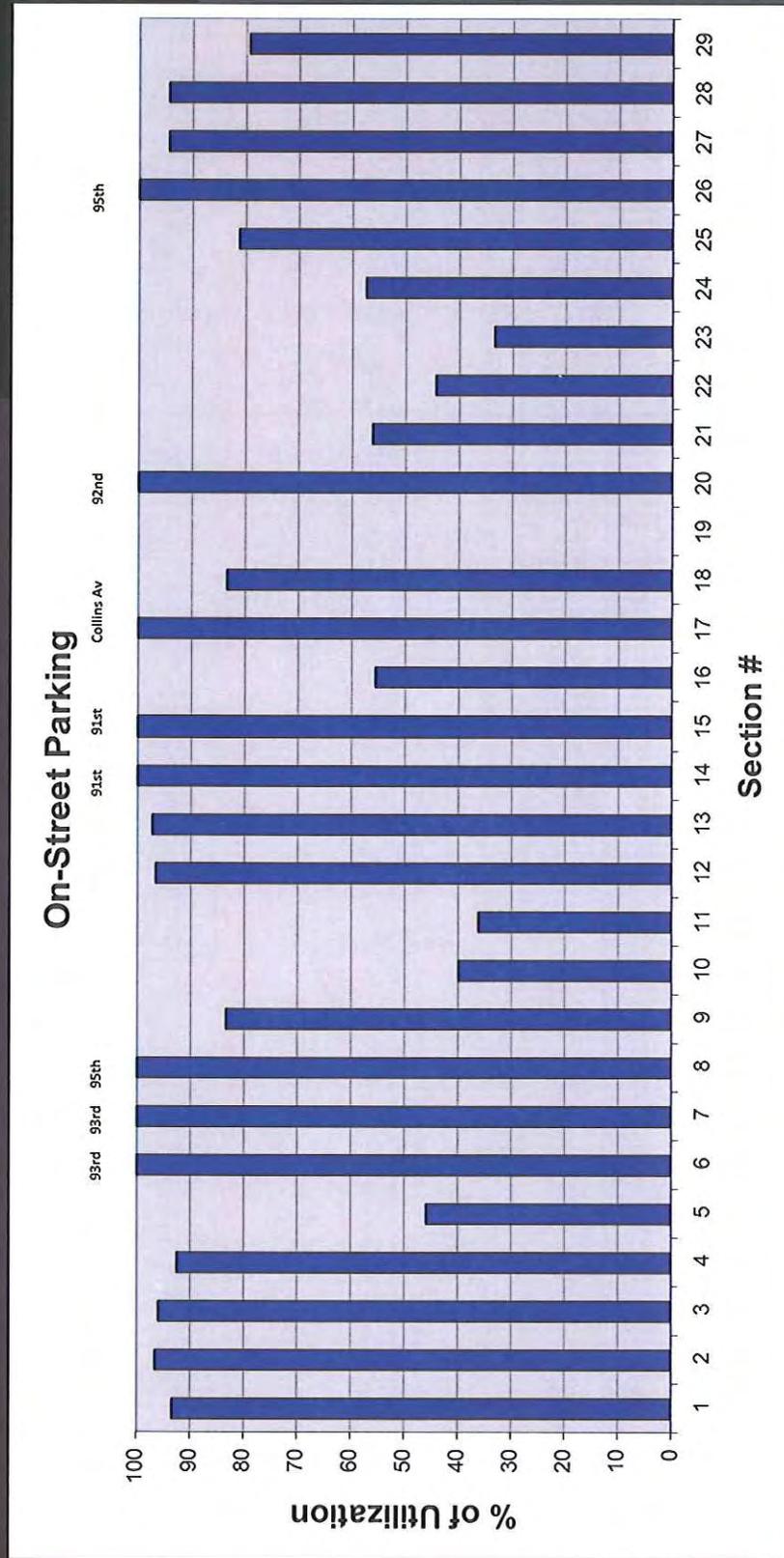
Legend

- Residential parking (Green line)
- Metered parking (Red line)
- Non-metered parking (Black line)
- Private parking (Blue line)

Parking Inventory On-Street Sections



On-Street Parking Utilization



April 20, 2007 between 1:00 pm and 3:00 pm

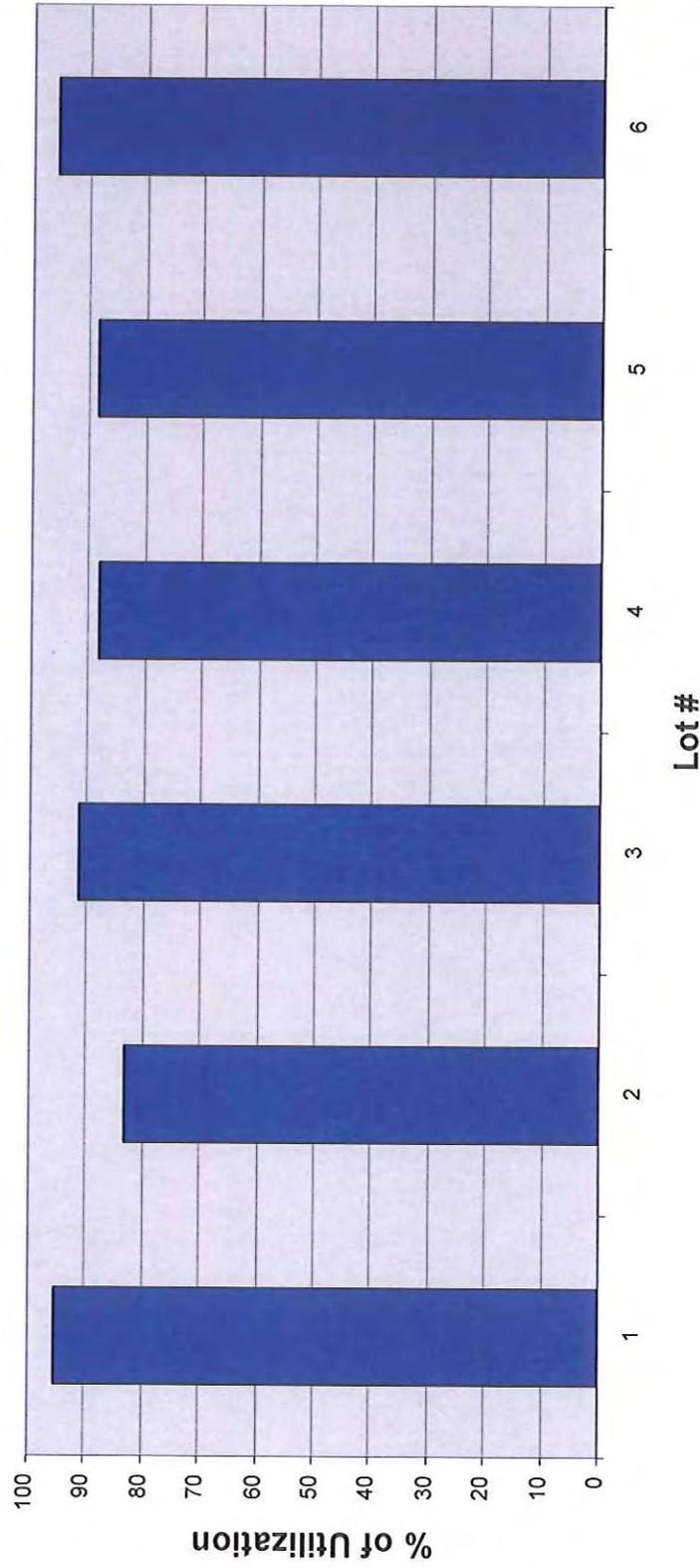
Parking Inventory Off-Street Sections



- Parking supply is mainly located on the North-East quadrant of the town (Commercial Area)

Off-street Parking Utilization

Off-Street Parking



April 12, 2007 Between 2:00pm and 5:00 pm

ORDINANCE NO. 2011 _____

AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, REPEALING ORDINANCE 2011-1571 “TEMPORARY MORATORIUM ON THE PROCESSING OF SITE PLANS, BUILDING PERMITS, AND THE ISSUANCE OF CERTIFICATES OF USE OR OCCUPANCY FOR NON- RETAIL, NON-RESTAURANT USES FOR THE PROPERTIES GENERALLY LOCATED BETWEEN 96TH AND 94TH STREET AND HARDING AVENUE” AS WAS FURTHER DELINEATED IN THE MAP ATTACHED AS EXHIBIT “A” TO ORDINANCE 2011-1571; REPEALING ALL ORDINANCES IN CONFLICT; PROVIDING A SEVERABILITY CLAUSE; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Town of Surfside (“Town”), pursuant to ordinance 2011-1571, imposed a temporary moratorium for the purpose of developing a strategy for the revitalization of the SD-B40 located between 96th and 94th Streets and Harding Avenue (hereinafter referred to as the “Downtown Business District” or “DBD”); and

WHEREAS, the Downtown Vision Advisory Committee (“DVAC”) together with staff including the Town Planners and interested property owners and after eight (8) formal meetings have developed an working agreement on several initiatives to address the need to revitalize and reinvigorate the DBD that includes the vision for an appropriate mix of retail, restaurant and non-retail uses as well as other projects; and

WHEREAS, the Town Manager, the Town Attorney, Town Planner and other staff shall begin the work associated with these initiatives for the Downtown Business District and assuming the progress and implementation of these initiatives, once approved by the Town Commission, Staff no longer sees the necessity for a temporary moratorium so long as these initiatives continue to progress;

WHEREAS, the Planning and Zoning Board on May 26, 2011 recommended this rescission and repeal of the downtown moratorium to the Town Commission;

WHEREAS, it is now in the best interest and welfare of the Town to so rescind the imposed temporary moratorium; and

NOW THEREFORE, THE COMMISSION OF THE TOWN OF SURFSIDE HEREBY ORDAINS AS FOLLOWS:

Section 1. Recitals Adopted. That each of the above stated recitals is hereby adopted and confirmed as being true, and the same are hereby made a specific part of the Ordinance.

Section 2. Temporary Moratorium Repealed. Ordinance 2011-1571 is hereby repealed and the temporary moratorium rescinded.

Section 3. Severability. If any section, subsection, clause or provision of this Ordinance is declared invalid or unconstitutional by a court of competent jurisdiction, the remainder shall not be affected by such invalidity.

Section 4. Conflict. All sections or parts of sections of the Town of Surfside Code of Ordinances in conflict herewith are intended to be repealed to the extent of such conflict.

Section 5. Effective Date. This Ordinance shall be effective ten (10) days after adoption on second reading.

PASSED and ADOPTED on first reading this 14th day of June, 2011.

PASSED and ADOPTED on second reading this ____ day of _____, 2011.

Daniel Dietch, Mayor

Attest:

Debra E. Eastman, M.M.C., Town Clerk

**APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:**



Lynn M. Dannheisser, Town Attorney

On First Reading Moved by: _____

On Second Reading Seconded by: _____

Vote:

Mayor Dietch	yes_____	no_____
Vice Mayor Graubart	yes_____	no_____
Commissioner Karukin	yes_____	no_____
Commissioner Kopelman	yes_____	no_____
Commissioner Olchyk	yes_____	no_____



4B2

TOWN OF SURFSIDE
Office of the Town Attorney

MUNICIPAL BUILDING
9293 HARDING AVENUE
SURFSIDE, FLORIDA 33154-3009

Lynn M. Dannheisser
Town Attorney

Telephone: 305 993-1065

MEMORANDUM

TO: Town Commission
FROM: Lynn M. Dannheisser, Town Attorney 
CC: Roger M. Carlton, Town Manager
Debra E. Eastman, M.M.C., Town Clerk

DATE: June 14, 2011

SUBJECT: Special Events Permit Ordinance

RECOMMENDATION: It is recommended the Commission adopt this ordinance on special event permitting.

REASONS: Special events such as fairs, arts, art-centered performances, festivals, concerts, marathons, downtown promotions, sporting and beach activities that bring citizens and tourists together in the Town to share a day, a week or an hour of community fun are encouraged since they create opportunities for neighbors and others to interact, celebrate, enrich people's lives, promote inclusiveness, promote tourism and business development, and in general help weave together the fabric of the community.

These events, however, have the potential to create certain health, safety, and welfare issues for the community if not properly planned for. The Town has been issuing special event permits on an ad hoc basis but Staff now recommends a more formalized and uniform process applicable to all. This ordinance purports to codify the special permitting process. This will allow the Town to address such issues that might include planning for additional staffing and/ or police services, having proper insurance coverage and/or bonds in place from the sponsors of the events, and having the town indemnified, providing necessary traffic co-ordination, and noise and crowd control issues. This process allows the Town to become aware of the event, plan for it so that it minimizes potential adverse impacts and recoups costs, as necessary. It also requires an event sponsor to coordinate with

the Police Chief and grants the Town Manager the authority to promulgate reasonable rules and procedures relating to the issuance and revocation of permits.

ORDINANCE NO. 11- _____

AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA CREATING CHAPTER 35 “EVENTS” AND ARTICLE I “SPECIAL EVENTS” AND SPECIFICALLY CREATING SECTIONS 35-1 “PERMITS FOR SPECIAL EVENTS”, SECTION 35-2 “EXEMPTIONS”; SECTION 35-3 “ENFORCEMENT”; AND 35-4 “COORDINATION WITH TOWN POLICE DEPARTMENT” OF THE TOWN OF SURFSIDE CODE OF ORDINANCES PROVIDING FOR INCLUSION IN THE CODE; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, special events such as fairs, arts, art-centered performances, festivals, concerts, marathons, downtown promotions, sporting and beach activities and others, bring citizens and tourists together in the Town to share a day, a week or an hour of community fun and help weave the fabric of our community by creating opportunities to interact, celebrate, enrich people's lives, promote inclusiveness, and promote tourism.

WHEREAS, the Town of Surfside (“Town”) proposes to amend its Code of Ordinances to establish guidelines for special event permitting in order to address health safety and welfare issues including but not limited to planning for additional staffing and/ or police services, having proper insurance coverage in place from the sponsors of the events, and having the town indemnified, providing necessary traffic co-ordination, and noise and crowd control issues.

WHEREAS, The Town Commission held its first public reading on June 14, 2011 and recommended approval of the proposed amendments to the Code of Ordinances having complied with the notice requirements by the Florida Statutes; and

Ordinance No. _____

WHEREAS, The Town Commission has conducted a second duly noticed public hearing on these regulations as required by law on July 12, 2011 and further finds the proposed change to the Code necessary and in the best interest of the community.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA as follows:

Section 1. Recitals. The foregoing “WHEREAS” clauses are ratified and confirmed as being true and correct and are made a specific part of this Ordinance.

Section 2. Code Amendment. The code of the Town of Surfside, Florida is hereby amended as follows:

Chapter 35. Events

Article I. Special Events.

Section 35-1. Permits for special events.

- a) Authorized. Upon written application to the Town Manager or designee submitted a minimum of ten days prior to an event at which noise levels are expected to violate Chapter 54 of this Code, the prohibitions or hour restrictions contained herein may be modified subject to such conditions as the Town Manager may impose. The decision of the Town Manager shall be final and not subject to appeal, except by writ of certiorari in accordance with law.
- b) Application. The application for a permit under this section shall contain the following information:
 - 1) The name, date of birth, address and telephone number of the person who will be in charge of the activity or event for which a permit is requested;
 - 2) The name of the person or entity seeking the permit;
 - 3) The exact date and time or period of time for which the permit is sought;
 - 4) The exact location of the activity or event for which a permit is requested; and
 - 5) A description of the activity or event for which a permit is requested.
- c) Contents. Permits issued under this section shall specify the date and time during which the activity or event authorized by the permit may be conducted.

Ordinance No. _____

- d) Administrative procedures. The Town Manager is hereby authorized to promulgate reasonable rules and procedures for application for, issuance and revocation of such permits. These rules and procedures shall serve to implement the intent and purpose of this article so that necessary and beneficial activities may occur while providing for protection of the public.
- e) Criteria for issuance; bond. Issuance of a permit under this section shall be based on a determination by the Town Manager or designee that the activity or event for which a permit is requested does not constitute a threat to public safety, constitute a danger or impediment to the normal flow of traffic, or constitute a potential disturbance of the peace and quiet of persons outside the premises where the activity or event is located. A permit application indicating the use of a temporary structure shall comply with the terms of Section 90-36.1 of the Code. The Town Manager or his designee may require that a bond be posted in an amount sufficient to secure the costs of cleanup, repair or replacement of damage or destruction of property, and the bond shall be subject to forfeiture for purposes of paying any such costs.
- f) Person designated as being in charge to be present at event. The person designated in the permit application required in this section as being the person in charge of the activity or event for which the permit is sought must remain at the location of the activity or event during the entire time stated in the permit. It shall be unlawful and a violation of this section for the designated person in charge to fail to remain in attendance at the location of the activity or event authorized by the permit for the entire time specified in the permit.
- g) Indemnification. The applicant for a permit to hold a special event shall agree to indemnify and hold harmless the Town, its agents and employees, for any and all claims caused by or arising out of the activities permitted. In certain potentially hazardous situations, as determined by the Town Manager, the applicant shall provide an appropriate policy of insurance to protect the Town from liability policy of insurance to protect the Town from liability that may result from the special event.

Section 35-2. Exemptions.

The terms and prohibitions of this article shall not be applied to or enforced against:

- a) Any motor vehicle, motorboat or other vehicle of the Town, the County or the State or licensed public utility vehicle within the Town while engaged in necessary public business.
- b) Excavation or repairs of streets, sidewalks, highways, streetlights or utilities, by or on behalf of the Town, the County or the State, or performance of such work during the night if the public welfare and convenience renders it impossible to perform such work during the day.
- c) A reasonable use of amplifiers or loudspeakers in the course of public addresses or gatherings which are noncommercial in character, noise generated in the course of a special activity or event which has obtained a permit pursuant to section 35-1, noise generated for

the purpose of alerting persons to the existence of an emergency, or noise generated in the performance of emergency work.

- d) Government sponsored special events.

Section 35-3. Enforcement.

- a) Permits shall be maintained at the site on which the special event occurs. Upon request of any police officer or code compliance officer of the Town, the owner, lessee of the property or other representative of the special event, shall produce such permit for inspection.
- b) Persons engaged in a special event without a permit, or otherwise in violation of a permit, this section or the special events requirements and guidelines provided for herein, shall be subject to enforcement by Town police or code enforcement officers, through the issuance of immediate cease-and-desist orders, the violation of which may subject the offender to arrest, and/or enforcement as provided under the Town Code, and/or notices of violation referred to special masters, who have authority to issue fines or enforce compliance, as provided for in Chapter 15 of this Code. Police or code enforcement officers will coordinate enforcement with Town departments as deemed necessary. As an alternate and supplemental remedy, the Town may enforce this section by injunctive relief in any court of competent jurisdiction, and in such circumstance the Town shall be entitled to recover its reasonable attorneys' fees and costs. For repeat offenders, the Town manager or designee may decline to issue permits to such person or entity for one year, or such other period as the Town Manager deems appropriate.

Section 35-4. Coordination with Town Police Department.

- a) For the safety of participants, volunteers, etc., police may be necessary for the special event. If within the judgment of the Town Manager, police presence is required, a special event permit applicant shall be required to coordinate scheduling of the special event in advance with the Town of Surfside Police Department.
- b) If a private security firm or individuals associated with the event are acting as security guards, the event promoter shall indicate same in the special event application. The Police Department will also coordinate with each promoter how many Town police officers the promoter will need to hire for street closure and other responsibilities. All races/walks will be required to hire Town police officers in order to help close the roads and monitor street closings.
- c) The cost for providing off-duty police services will vary based on whether the event is a Town-sponsored event or a privately sponsored event. For privately sponsored events, the applicant will contact the Police Chief's Office and speak to the Police Chief or his designee. The Police Chief will determine the number of officers needed and will provide the applicant with an off-duty police detail contract, which must be completed and turned in as quickly as possible. The estimated fee for off-duty police services will be determined when the Police Chief receives a finalized site map. Payments will be billed by the Chief's Office according to the off-duty police detail contract.

Ordinance No. _____

Section 3. Severability. If any section, subsection, clause or provision of this Ordinance is declared invalid or unconstitutional by a court of competent jurisdiction, the remainder shall not be affected by such invalidity.

Section 4. Conflict. All sections or parts of sections of the Town of Surfside Code of Ordinances in conflict herewith are intended to be repealed to the extent of such conflict.

Section 5. Inclusion in the Code of Ordinances. It is the intention of the Town Commission, and it is hereby ordained that the provisions of this Ordinance shall become and made a part of the Town of Surfside Code of Ordinances, that the sections of this Ordinance may be renumbered or re-lettered to accomplish such intentions; and the word "ordinance" may be changed to "Section" or other appropriate word.

Section 6. Effective Date. This Ordinance shall be effective ten (10) days after adoption on second reading.

PASSED and ADOPTED on first reading this 14th day of June, 2011.

PASSED and ADOPTED on second reading this ____ day of _____, 2011.

Daniel Dietch, Mayor

Attest:

Debra E. Eastman, M.M.C., Town Clerk

**APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:**



Lynn M. Dannheisser, Town Attorney

Ordinance No. _____

On First Reading Moved by: _____

On Second Reading Seconded by: _____

Vote:

Mayor Dietch	yes _____	no _____
Vice Mayor Graubart	yes _____	no _____
Commissioner Karukin	yes _____	no _____
Commissioner Kopelman	yes _____	no _____
Commissioner Olchyk	yes _____	no _____

Ordinance No. _____



Town of Surfside Commission Communication

Agenda Item #: 4B3

Agenda Date: June 14, 2011

Subject: Vacant Storefront Ordinance

From: Roger M. Carlton, Town Manager
Sarah Sinatra Gould, Town Planner

Background: The Downtown Vision Advisory Committee (DVAC) has been tasked by the Town Commission with reviewing issues of concern in the business district. One of the initial ideas for improving the business district was to change the negative look and impact of vacant storefronts. The Committee spent considerable time discussing techniques to improve the overall look of these storefronts and to minimize the impact of vacant businesses, which has resulted in the proposed ordinance.

The ordinance requires a window covering to be installed on the exterior of the storefronts within seven days of vacancy of a business. The Town will hire a licensed and insured contractor to complete the installation. The Town will bill the property owners for the installation, but the window covering itself will be complimentary.

At the request of landlords and rental agents, decorative displays of merchandise or signage advertising the future tenant are also permitted, but cannot extend more than three feet into the vacant store. These items may be located in displays or a cut out of the window-screening not to exceed more than 25% of the store front. The remainder of the storefront shall consist of the Town approved screening. Real estate signs that meet the Town's code criteria will continue to be permitted.

The following is an example of the draft template that the Town is considering:



Recommendation: The Planning and Zoning Board heard this ordinance at their May 26, 2011 meeting and unanimously recommended approval of the Ordinance to the Town Commission. The Design Review Board will approve the final aesthetic of the screening and input from the Beautification Committee will be provided.

Budget Impact: The Town will hire an outside contractor to complete the installation and bill the property owners for the cost of the contractors work. Therefore, no impact to the budget is anticipated. While this is an operational program, the reimbursement process is similar to the cost sharing program in which property owners fund the cost of the installation and the Town funds the cost of the material.

Growth Impact: The proposed Ordinance does not encourage growth. Instead, it provides an attractive appearance for the business district when vacancies occur. See attached articles for information on similar programs in other jurisdictions.

Staff Impact: N/A



Sarah Sinatra Gould, Town Planner



Roger M. Carlton, Town Manager

Big cover-up downtown: Firm aims to hide empty stores behind ad glitz

BY CATHERINE LACKNER

If the concept takes off, vacant storefronts downtown will soon sport colorful, high-end advertising. Directors of Miami's Downtown Development Authority like the idea, but they want to reduce other types of advertising they consider unattractive.

"We didn't invent the concept," said Ray Lee, managing partner of Inwindow Outdoor, a company that sells and installs the advertising panels. "You can see it in old photos of New York City."

The company sells advertising to upmarket clients like BMW, Dom Perignon, Lufthansa and others. The landlord makes money, the City of Miami collects a permit fee and the buildings are less likely to be defaced, Mr. Lee said. He estimates the city could take in as much as \$600,000 per year.

"These are challenging times for landlords," he told the authority's directors Friday. "The property is vacant, but you still have your carrying costs. You have to make sure the asset doesn't depreciate. The neighbors have a hard time being next to a vacant storefront."

The panels would be installed only at the ground level and the

still be some sort of cover.

"Half of these absentee landlords' properties look horrendous," he said.

"What can we do about taking the pay phones and newspaper boxes off the streets?" Mr. Hollo asked. "You can't walk on some of the sidewalks, and that's important if we want to be the pedestrian-friendly city we say we want to be."

"And what about the hot dog carts?" quipped Mr. Goyanes, a restaurant owner.

"I can support this," said Marc Sarnoff, authority chairman and Miami city commissioner. "There are a ton of unused newsstands. They don't even get serviced."

The board decided that a new urban design standards ordinance addressing those advertising issues — and attempting to clear the sidewalks — should be presented to the city commission.

"But," warned Mayor Tomás Regalado, who attended the meeting, "you know how the commission works. You have to finish this by the June meeting. The commission doesn't meet regularly [during the summer] and in September, forget about anything but the budget."



'Half of these absentee landlords' properties look horrendous.'

Jose Goyanes

maximum advertising term would be 90 days.

"How are we going to police it?" asked board member Jerome Hollo.

"We know when their 90 days are up," said Dakota Hendon, a project manager with Miami's Building and Zoning Department. "It's code enforcement."

"We all know that doesn't happen," Mr. Hollo replied.

Director Jose Goyanes suggested, and the board agreed, that the downtown authority install its own covering on the inside of the windows so that, after the exterior ad's term has expired, there would

The last word

High streets paper over the recession with the help of fake shop fronts

Emma Jacobs looks at a solution to the scourge of vacant stores

Fake businesses such as this one are springing up in city centres across the UK. Local authorities hope that the colourful, plastic designs taped inside the windows or screwed to the fascia and featuring a range of shop types - from hairdressers to delicatessens - will conceal the impact of the recession and restore vitality to increasingly derelict high streets.

But, 39, a salesman at Computers, says empty because high streets mean high streets becoming gloomy and less enticing to shoppers. "Over time, more and more small shops are going into administration," he says. "People aren't spending money because of the recession and, if they are, they tend to shop online. The high street in general is in decline. The percentage of shops lying vacant in Gillingham is 16.9 per cent, according to a survey by the UK Company above the national average of 14.6 per cent, which has risen considerably from just over 5 per cent at the end of 2008. Matthew Hopkinson, LDC director, says: "The sad reality is that the number of vacant shops is

increasing. In certain areas of the country, high streets may die." This week, it was announced that Mary Forster, the British TV retail guru, has set up a review aimed at halting the decline of the high street. Announcing the appointment, David Cameron, prime minister, said: "The high street should be at the very heart of every community, bringing people together, providing essential services and creating jobs and investment; so it is vital that we do all that we can to ensure they thrive. I have set up a review, which will look at ways in which virtual tea shops says it has received expressions of interest from a number of retailers wanting to occupy the space. Paul Murphy, a chartered

surveyor and co-founder of Shopocket, which installs fake shop fronts, has spent two days with a US company looking to roll out the idea there. He believes the shop fronts, which cost from £1,700 and are made from wood, vinyl or aluminium, show customers they are not alone and someone recognises there is a problem". He adds: "We always get a rough ride from traders initially. But, at the very least, it attracts publicity." Neil Wilson, a co-founder of Shopocket who oversees design, says the shop fronts are a "cheap and easy way to get interest from the private as well as the public sector. Shopocket is working with DMW on a fake showroom front. Elizabeth Cox, head of connected economy at the

new Economics Foundation, a think-tank, and author of a report called "Clone Towns", says fake shops are an interesting initiative but to be more creative. The high vacancy rate, she says, is a symptom of an opportunity to re-energise the high street. "City centres can be about more than just shopping," she says. "The recession provides opportunities for locals to engage with the town through recycling shops or festivals." Mr Hopkinson agrees: "People are slowly coming back to the high street, but we have too many shops. It might be worth permanently shutting down shops in high streets and concentrating retail in smaller areas."



Before and after: local authorities hope life-size pictures can help mask dereliction and restore vitality to shopping districts

ORDINANCE NO. 11- _____

AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA AMENDING THE TOWN OF SURFSIDE CODE OF ORDINANCES BY AMENDING CHAPTER 14 BUILDINGS AND BUILDING REGULATIONS; SECTION 14-52 COMMERCIAL STANDARDS ESTABLISHED RELATING TO THE APPEARANCE OF VACANT STOREFRONTS; PROVIDING FOR INCLUSION IN THE CODE; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Commission has attempted to create regulations to address the specific needs of the this unique community and continues to amend these regulations as they may best suit the needs of the community; for the health, safety and welfare of the Town including the fact that in this economic environment, the Town may be experiencing an increase in vacancies in the downtown business district which will adversely impact the exterior appearance of these properties and this ordinance is an attempt to remediate this issue; and

WHEREAS, The Planning and Zoning Board, as the local planning agency for the Town, has held a public hearing on May 26, 2011 and recommended approval of the proposed amendments to the Code of Ordinances and also found the proposed Code amendments to be consistent with the Comprehensive Plan; and

WHEREAS, The Town Commission has conducted a second duly noticed public hearing on these regulations as required by law on June 14, 2011 and further finds the proposed change to the Code necessary and in the best interest of the community.

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

Section 1. Recitals. The foregoing “WHEREAS” clauses are ratified and confirmed as being true and correct and are made a specific part of this Ordinance.

Section 2. Code Amendment. The code of the Town of Surfside, Florida is hereby amended as follows:

Sec. 14-52. Commercial standards established.

(a) The exterior appearance of all commercial property shall be maintained so as to prevent deterioration or blight.

(1) All exterior building surfaces shall be free of chipping, pitting, cracking, discoloration, peeling or fading.

(2) All exterior signs shall be in good repair and free of chipping, pitting, cracking, peeling, fading or discoloration. Lighted signs shall have all lights working. All signs shall be maintained in a safe, presentable and good structural condition, which shall include the replacement of defective parts, repainting, cleaning and other acts required for the maintenance of the sign. The area around the base of the sign shall be kept free of weeds and debris. If a sign does not comply with the above standards, the town manager or designee may require its removal.

(3) Doors and windows shall be free of cracked or discolored glass or corroded frames. All doors and windows shall be maintained in a safe, presentable and good structural condition, which shall include the replacement of defective parts, repainting, cleaning and other acts required for maintenance of the doors and/or windows.

(4) All awnings shall be without tears or holes and be free of dirt, discoloration, fading or cracking. Any lettering or painted surface on awnings shall conform to subsection (a)(2) of this section. All hardware, supports and poles shall be straight, free of rust, and in good condition.

(5) If any property is vacant for more than 45 7 days, all glass surfaces visible to the public shall be clean and the interior of such vacant store shall be screened from public view in one of the following two ways until property is occupied:

a. All glass surfaces visible to the public shall be covered with a Town approved window exterior screening white-colored, 60-pound-weight paper, which is available at the Town’s Building Department. (sample of acceptable material on file with the building department). This provision does not preclude the placing of a real estate sign on the premises, pursuant to the requirements in Section 90-74.1. The Town will utilize a licensed and insured installer to attach the screening to the glass of the said property and request reimbursement for the installation from the property owner; or

b. Decorative displays of merchandise currently available within the town, merchandise of the future tenant of the vacant store, signage advertising the future tenant, public service displays or festival and current holiday displays extending as much as three feet into the vacant store shall may be located in displays or a cut out of the windows screening not to exceed more than 25% of the store front which shall have approval from the Town Manager. A copy of the lease shall be provided when seeking Town Manager approval to advertise the future business. The remainder of the storefront shall consist of the Town approved screening. Such screening shall consist of ~~white-colored, 60-pound weight paper~~ the Town approved window exterior screening that is available in the

Town's Building Department. The Town will utilize a licensed and insured installer to attach the screening to the glass of the said property and request reimbursement for the installation from the property owner. Such screening shall be mounted on a freestanding partition, attached to a wood frame or affixed by other temporary means.

- (6) If any property is vacant for more than ~~15~~ 7 days, appropriate exterior nighttime lighting shall be provided.
- (7) All sidewalk overhangs attached to commercial buildings shall be structurally sound and free of rust, discoloration, peeling, chipping, cracking, fading, sagging or dirt. All lettering or signage on overhangs shall conform to the requirements provided in subsection (a)(2) of this section.
- (8) No air conditioner or heating or cooling device shall be installed so as to be visible from the street, or so as to discharge condensation onto the sidewalk or street.
- (9) Every merchant, storekeeper or operator of a business in the ~~city~~ Town shall sweep, hose down or cause to be swept and hosed down the sidewalks adjoining his respective place of business ~~and shall remove gum and other sticky substances from the sidewalks,~~ and continuing such actions as often as necessary thereafter to keep the area clean, on each day such business shall be operated. The sweepings shall be picked up and not swept into the gutter.
- (10) Every restaurant shall provide a cigarette disposal receptacle permitted by law. The cigarette receptacle shall be kept clean and sanitary. The contents shall be regularly emptied and the contents shall not be swept into the gutter.
- (b) The town manager is empowered and authorized to require compliance with this section within 30 days of written notice. Failure to comply shall be punishable as provided in section 1-8.

Section 3. Severability. If any section, subsection, clause or provision of this Ordinance is declared invalid or unconstitutional by a court of competent jurisdiction, the remainder shall not be affected by such invalidity.

Section 4. Conflict. All sections or parts of sections of the Town of Surfside Code of Ordinances in conflict herewith are intended to be repealed to the extent of such conflict.

Section 5. Inclusion in the Code of Ordinances. It is the intention of the Town Commission, and it is hereby ordained that the provisions of this Ordinance shall become and made a part of the Town of Surfside Code of Ordinances, that the sections of this Ordinance may be renumbered or re-lettered to accomplish such intentions; and the word "ordinance" may be changed to "Section" or other appropriate word.

Section 6. Effective Date. This Ordinance shall be effective ten (10) days after adoption on second reading.

PASSED and ADOPTED on first reading this ____ day of _____, 2011.

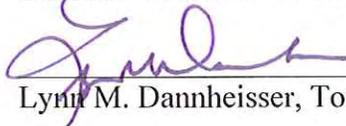
PASSED and ADOPTED on second reading this ____ day of _____, 2011.

Daniel Dietch, Mayor

Attest:

Debra E. Eastman, M.M.C., Town Clerk

**APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:**



Lynn M. Dannheisser, Town Attorney

On First Reading Moved by: _____

On Second Reading Seconded by: _____

Vote:

Mayor Dietch	yes	_____	no	_____
Vice Mayor Graubart	yes	_____	no	_____
Commissioner Karukin	yes	_____	no	_____
Commissioner Kopelman	yes	_____	no	_____
Commissioner Olchyk	yes	_____	no	_____



TOWN OF SURFSIDE
Office of the Town Attorney

MUNICIPAL BUILDING
 9293 HARDING AVENUE
 SURFSIDE, FLORIDA 33154-3009

Lynn M. Dannheisser
 Town Attorney

Telephone: 305 993-1065

MEMORANDUM

TO: Town Commission

FROM: Lynn M. Dannheisser, Town Attorney

CC: Roger M. Carlton, Town Manager
 Debra E. Eastman, M.M.C., Town Clerk

DATE: June 14, 2011

SUBJECT: Newsrack Ordinance

RECOMMENDATION: This ordinance has been transmitted and recommended by the Planning & Zoning Board (as well as the Downtown Vision Advisory Committee).

REASONS: This ordinance addresses the placement, type, appearance, servicing, and insuring of newsracks on public rights-of-way as a means of improving the overall aesthetics of the Town and addressing the visual blight from unsightly newsracks.

In addition to carrying out part of the vision adopted by the DVAC, making newsracks uniform in size and placement, also provides for pedestrian and driving safety by allowing for proper width on sidewalks to conform to handicapped and other town, state, and federal regulations. It reduces unnecessary exposure to personal or property damage including from hurricanes by regulating the strength of the specs for newsracks while at the same time addressing potential legal claims by the publications by treating all newspaper publications equally regardless of their size, content, circulation, or frequency of publication.

This ordinance is modeled upon the Coral Gables ordinance which has withstood several court challenges. A copy of that decision is attached for convenient reference and reflects the legal issues which had to be considered in creating this regulation.

In this ordinance, the public works director is responsible for review and approval of these devices. Each newspaper who wishes to utilize a rack must make application and secure approval for site location, provide insurance, and select and utilize equipment that meet certain specifications including size, use of certain materials and color (black), installations standards, and removal requirements.

ORDINANCE NO. 11-_____

AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA AMENDING CHAPTER 14 “BUILDINGS AND BUILDING REGULATIONS” AND SPECIFICALLY ARTICLE III “PROPERTY MAINTENANCE STANDARDS”; CREATING SECTION 14-57 “NEWSRACKS ON PUBLIC RIGHTS-OF-WAY” OF THE TOWN OF SURFSIDE CODE OF ORDINANCES PROVIDING FOR INCLUSION IN THE CODE; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, The Town of Surfside (“Town”) proposes to amend its Code of Ordinances to address a recognized need to regulate the placement, type, appearance, servicing, and insuring of newsracks on public rights-of-way for the health, safety and welfare of the Town ; and

WHEREAS, the Planning and Zoning Board, as the local planning agency for the Town, held its hearing on the proposed amendments to the fence, walls and hedges regulations on May 26, 2011 with due public notice and input; and

WHEREAS, the Town Commission held its first public hearing on June 14, 2011 having complied with the notice requirements required by Florida Statutes; and

WHEREAS, the Town Commission shall have conducted a second duly noticed public hearing on these regulations as required by law on July _____, 2011.

**NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND THE TOWN
COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA:**

Section 1. Recitals. The foregoing “WHEREAS” clauses are ratified and confirmed as being true and correct and are made a specific part of this Ordinance.,

Section 2. Code Amendment. The code of the Town of Surfside, Florida is hereby amended as follows:

Sec. 14-57. Newsracks on Public Rights-of-Way.

(a) Scope. The provisions of this section shall govern the placement, type, appearance, servicing, and insuring of newsracks on public rights-of-way. No newsracks shall be permitted except in accordance with the provisions of this article.

(b) Purpose. The purpose of this section is to promote the public health, safety and welfare through the regulation of placement, type, appearance, servicing, and insuring of newsracks on public rights-of-way so as to:

- (1) Provide for pedestrian and driving safety and convenience.
- (2) Restrict unreasonable interference with the flow of pedestrian or vehicular traffic including ingress into or egress from any residence or place of business, or from the street to the sidewalk by persons exiting or entering parked or standing vehicles.
- (3) Provide for public and property safety during hurricane conditions.
- (4) Provide reasonable access for the use and maintenance of poles, posts, traffic signs or signals, hydrants, mailboxes and access to locations used for public transportation purposes.
- (5) Relocate and/or replace newsracks which result in a visual blight and/or excessive space allocation on the public rights-of-way or which unreasonably detract from the aesthetics of store window displays, adjacent landscaping and other improvements, as well as to have abandoned newsracks removed.
- (6) Maintain and protect the values of surrounding properties.
- (7) Reduce unnecessary exposure of the public to personal injury or property damage.
- (8) Treat all newspapers equally regardless of their size, content, circulation, or frequency of publication.
- (9) Maintain and preserve freedom of the press.
- (10) Cooperate to the maximum extent with newspaper distributors.

(c) Definitions. The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Equivalent newsrack: Any newsrack of the same size, dimensions and style of the specified newsrack.

If demand warrants or warranted demand: When the measured newspaper stack height needed to meet the newspaper publisher's or distributor's peak annual distribution at the requested newsrack location, as proven by the newspaper publisher or distributor, exceeds 14 inches.

Newsrack: Any type of unmanned device for the vending or free distribution of newspapers or news periodicals.

Public right-of-way: Any public street, highway, sidewalk, parkway or alley.

(d) Certificate of Compliance Required. No person shall place, affix, erect, construct or maintain a newsrack without first obtaining a one-time only certificate of compliance for each newsrack in accordance with the provisions of this article.

(e) Application and Issuance of Certificate of Compliance.

(1) Issuing Authority. The issuing authority and coordinator shall be the public works director. The public works director is responsible for fairly coordinating and administering the physical placement of newsracks of the type and location herein specified, and upon compliance herewith is responsible for issuing the certificates of compliance.

(2) Approving Authorities. The approving authorities shall be the public service director, the parking director and the public works director. The public service director shall provide review and approval only as to compliance with section 62-162(8). The parking director shall provide review and approval only as to compliance with section 62-162(10). The public works director shall provide review and approval coordination with the public service director and the parking director, as well as review and approval only as to comply with subsections (c), (e) through (g) of this section, and sections 62-156 through 62-161, and 62-162(1) through (7), (9).

(3) Applications. The applicant shall file with the public works director a written application for an installation certificate of compliance that shall contain the following information:

(i) The name, address and telephone number of the applicant who is the owner and/or principal in responsible charge of the newsrack.

(ii) The name, address and telephone number of a responsible person whom the Town may notify or contact at any time concerning the applicant's newsracks.

(iii) The number of newsracks and the proposed location of each shown on a drawing provided by public works as in subsection (4) of this section.

(iv) Names of newspapers or periodicals to be contained in each newsrack.

(v) Type or brand of newsracks, including an illustration and description of the newsrack and mount if other than a single pedestal, TK-80PM or K-80PM SHORACK or FN-80SP (with or without equivalent coinbox attachment) with special pedestal mount and 14-inch square base plate (mandated) or TK-80 or K-80 SHORACK or FN80LB (with or without equivalent coinbox attachment) with special pedestal mount and 14-inch square base plate (allowed only if demand warrants at the installation location), or equivalent, as per subsection (j).

(4) Procedure. The public works department shall:

- (i) Develop a map of a large enough scale to show general town-wide locations of newsracks by each publisher or distributor.
- (ii) Request a list of proposed newsrack locations, marked on the above map, from each distributor.
- (iii) Prepare a scale drawing or aerial photograph of each newsrack location showing the position and name of each newsrack at that location.
- (iv) Obtain approvals of the above newsrack drawings from the parking director and the public service director.
- (v) Obtain confirmation approvals of the above approved newsrack drawings from each distributor.
- (vi) Have the public works survey crew, following certificate of compliance issuance, then mark placement locations with a template so that installation crews will have no problem.

(5) Issuance of Certificate of Compliance. Upon a finding by the public works director that the applicant is in compliance with the provisions of this section and having received the required approvals from the parking director and public service director, the public works director shall cause to be issued a certificate of compliance for installation by the newspaper publishing company. Such issuance shall be made within five working days of the Town's receipt of the completed application.

(6) Denial of Certificate of Compliance. If a certificate of compliance for some newsrack location applied for shall be denied, the applicant shall be notified within five working days of the Town's receipt of the completed application. The applicant shall be advised of the specific cause of such denial by the public works director, who will suggest alternative locations therefor. The applicant may reapply for substitute alternative location at no additional certificate of compliance fee.

(7) Additional Certificate of Compliance. If at any time initial application for an installation certificate of compliance a publisher wishes to install additional newsracks, then subsections (3) and (4) of this section are to be repeated in accordance with the provisions of this section. Under subsection (f), any additional returnable bond deposit required will credit any amount still on account. Additional certificate of compliance fees shall be in accordance with subsection (g), except that the \$50.00 publisher's fee is waived if previously paid.

(f) Insurance.

(1) Prior to the issuance of a certificate of compliance by the public works director, the applicant shall furnish to the public works director a certificate of insurance and a one-

time only returnable bond deposit, both in specific accordance with the terms of section 14-30, except that returnable bonding amounts for newsrack installations shall be:

TABLE INSET:

TOTAL PROPOSED NEWSRACKS	TOTAL RETURNABLE BOND
1 to 4	\$150.00
5 to 10	\$300.00
11 to 20	\$500.00
21 and up	\$700.00

(2) Reasonable evidence of equivalent self-insurance coverage may be substituted by the applicant for the above certificate of insurance.

(3) Insurance under subsection (f) shall run continuously with the presence of the applicant's newsrack in town rights-of-way, and any termination or lapse of such insurance shall be a violation of this section, subject to appropriate remedy by the code enforcement division

(g) Fees. There shall be a one-time only certificate of compliance fee in the amount established by the town commission for each newspaper publisher. Failed inspections are subject to a re-inspection fee in the amount established by the town commission. All of the above fees will be used to defray administrative expenses relating to this section only, and any revenues over expenses remaining after the implementation of this section will be returned to the newspaper publishers in proportion to their respective contributions.

(h) Appeals. Any applicant who has been denied a certificate of compliance pursuant to the provisions of this section may file an appeal with the town commission by requesting in writing to the town manager appearance before the commission to review such denial. The appeal shall be heard by the commission within 30 days of the filing of the appeal or at the next regularly scheduled agenda, whichever occurs first. The decision of the commission on appeal is subject to judicial review as provided by the laws of the state.

(i) Placement Generally. Subject to the prohibitions set forth in subsection (l), newsracks shall be placed parallel to and not less than 18 inches nor more than 24 inches from the edge of the curb. Newsracks placed near the wall of a building must be placed parallel to and not more than six inches from the wall

(j) Installation and Maintenance.

(1) Newsracks shall be single pedestal TK-80PM or K-80PM SHORACK or FN-80SP (with or without equivalent coinbox attachment) with special pedestal mount and 14-inch square base plate (mandated) or TK-80 or K-80 SHORACK or FN-80LB (with or without equivalent coinbox attachment) with special pedestal and 14-inch square base plate (allowed only if demand warrants at the installation location) or equivalent.

(2) Newsrack equipment shall be in gloss black. The height of the cabinet top of all newsracks shall be 39 inches above the finished grade level.

(3) Newsracks shall carry no cardholders or advertising, but may display the name, with lettering and background of any colors, of the newspaper being dispensed, in spaces in the locations and sizes set forth below:

(i) On the front of the newsrack, the lettering size shall not exceed 1 3/4 inches height. The lettering shall be placed within a colored-band space not exceeding 2 1/2 inches in height above the door hinge.

(ii) On the sides and back of the newsrack, the lettering size shall not exceed 2 1/2 inches in height. The lettering shall be placed within a colored-band space not exceeding 4 1/2 inches in height and beginning one inch from the top of the newsrack.

(4) Newsracks for free newspapers may omit the coinbox and may have the pull bar welded to the door to produce an "honor rack."

(5) Newsracks shall be maintained in good working order at all times, freshly painted and with unbroken hoods.

(6) Mounts shall be bolted in place through four standard holes in the base plate in accordance with standards provided in subsection (k). Newsrack cabinet tops shall be installed and checked for level; a water-soluble, paintable, ten-year calk of gloss brown color shall be applied and wiped to seal around the base plate and the mounting surface.

(k) Newsrack Mounting Standards. The following standards shall be applicable to the mounting of newsracks in this town:

(1) Foundation four-inch minimum concrete, 2,500 psi (28-day strength), class I.

(2) Two-inch minimum concrete edge distance for bolts.

(3) One-half-inch chamfer all concrete edges.

(4) Three-eighths-inch diameter hot-dipped galvanized hex bolt mounts, three-inch minimum imbedding, threads down, through four corners of the pedestal base.

(l) Specific Prohibitions. No newsrack shall be placed, installed, used or maintained:

(1) Within five feet of any marked crosswalk.

(2) Within ten feet of any unmarked crosswalk.

(3) Within ten feet of any fire hydrant, fire callbox, police callbox or other emergency facility.

(4) Within five feet of any driveway.

(5) Within five feet ahead of, and 15 feet to the rear of any sign marking a designated bus stop, measured along the edge of pavement.

(6) Within two feet of any bus bench, or plaza bench.

(7) At any location whereby the clear space for passageway of pedestrians is reduced to less than six feet.

(8) Where a vertically protruding member of the newsracks is on or within 12 inches of any area improved with lawn or hedges or within three feet of flowers or trees.

(9) Within three feet of any display window of any building abutting the sidewalk or parkway or in such a manner as to impede or interfere with the reasonable use of such window display purpose, or within five feet of a building entrance.

(10) On or within two feet of signs, parking meters, street lights or utility poles

(m) Enforcement Procedures – Nonconforming Newsracks. Within 150 days of the effective date of the ordinance from which this article is derived and at any time thereafter, any newsrack in violation of any provision of this section shall be subject to remedy and due process under the code enforcement board.

(n) Enforcement Procedures – Abandoned Newsracks.

(1) If any newsrack installed pursuant to this section does not contain the publication specified therefor within a period of forty-eight (48) hours after release of the current issue, the code enforcement division may deem the newsrack abandoned and take appropriate action for an ordinance violation. In addition, a newsrack shall be deemed abandoned when no publication is in the newsrack for a period of more than seven consecutive days.

(2) In the event a newspaper publishing company or its distributor desires to voluntarily abandon a newsrack location, the distributor shall notify the public works director, completely remove the newsrack and mount, and restore the public right-of-way to a safe condition, leaving no holes or projections in the mounting surface.

Section 3. Severability. If any section, subsection, clause or provision of this Ordinance is declared invalid or unconstitutional by a court of competent jurisdiction, the remainder shall not be affected by such invalidity.

Section 4. Conflict. All sections or parts of sections of the Town of Surfside Code of Ordinances in conflict herewith are intended to be repealed to the extent of such conflict.

Section 5. Inclusion in the Code of Ordinances. It is the intention of the Town Commission, and it is hereby ordained that the provisions of this Ordinance shall become and made a part of the Town of Surfside Code of Ordinances, that the sections of this Ordinance may be

renumbered or re-lettered to accomplish such intentions; and the word "ordinance" may be changed to "Section" or other appropriate word.

Section 6. Effective Date. This Ordinance shall be effective ten (10) days after adoption on second reading.

PASSED and ADOPTED on first reading this _____ day of _____, 2011.

PASSED and ADOPTED on second reading this ____ day of _____, 2011.

Daniel Dietch, Mayor

Attest:

Debra E. Eastman, MMC
Town Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:



Lynn M. Dannheisser, Town Attorney

On Second Reading Moved by: _____

On Second Reading Seconded by: _____

Vote:

Mayor Dietch	yes _____	no _____
Vice Mayor Graubart	yes _____	no _____
Commissioner Karukin	yes _____	no _____
Commissioner Kopelman	yes _____	no _____
Commissioner Olchyk	yes _____	no _____



Commission Communication

Agenda #: 4B5

Date: June 14, 2011

Subject: Amending Section 2-171 of the Code Relating to Charter Officers Ability to Opt out of the Pension Plan

Background: The Town of Surfside sponsors a defined benefit retirement plan for Town employees. There are two sources of contributions for the Plan... the Town and employee contributions. The Town is required to contribute amounts as mandated by State Statute and determined by an actuary. The employee contribution for General employees is 5% if contributing 5% prior to February 1, 2003 – otherwise 6% and for Police Officers 8% of their covered compensation (basic salary or wages paid by the Town for services rendered including regular longevity pay and Section 457 deferred compensation, if any, but excluding any bonuses, overtime or any other non regular payment).

Contributions from all sources are deposited in a special trust fund. The employees and their dependents are the beneficiaries. The money in this trust fund is set aside to pay benefits and expenses of the plan. The assets of the trust fund are invested by the Pension Board. The plan is significantly more than 100 percent funded as of the March quarterly report.

In order to be an eligible member of the Plan you must be a Police Officer or other employee of the Town. Your employment must be full-time, as determined by the Town. Part time, temporary and employees under contract for a defined period or for a particular service are not eligible to participate. Charter Officers (Town Manager and Town Attorney) have been permitted to participate in the plan; however, both current Charter Officers do not participate in the plan and receive their retirement to their own defined compensation plans.

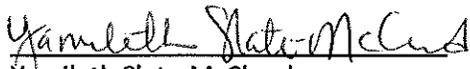
Budget Impact: There is a timing difference in regards to employer contribution. An opt out requires an immediate contribution by the Town. To not opt out provides the Town with a one year delay in employer contribution as determined by the actuary for the prior fiscal year. Additionally the amount of opt out is based on the negotiated contract, where the not opt out is based on a Town wide blended rate.

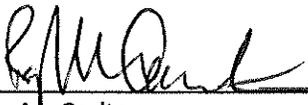
Analysis: The proposed amendment provides for further clarification to the *employee* definition providing Charter Officers with the right to opt out of the plan at any time as described in Section 2-174. If a Charter Officer elects to opt out of the plan, all of his/her contributions shall be refunded at the applicable interest rate applied by the Board. Employee contributions may be rolled over into another tax qualified plan.

The proposed amendment is necessary because there is no specific authorization to allow the opt out although the practice has been allowed based on the Employment Agreements for the two Charter Officers. The ordinance amendment has been reviewed by the Pension Board attorney and is recommended by the Pension Board.

Staff Impact: N/A

Recommendation: Adopt the ordinance amendment to codify and existing practice.


Yamileth Slate-McCloud
Human Resources Director


Roger M. Carlton
Town Manager

ORDINANCE NO. _____

AN ORDINANCE AMENDING THE CODE OF THE TOWN OF SURFSIDE; RELATING TO THE RETIREMENT PLAN FOR EMPLOYEES OF THE TOWN OF SURFSIDE; AMENDING SECTION 2-171 OF THE CODE TO REVISE THE DEFINITION OF EMPLOYEE TO PERMIT CHARTER OFFICERS TO OPT OUT OF THE PLAN; AMENDING SECTION 2-174 TO CREATE A MECHANISM FOR CHARTER OFFICERS TO OPT OUT OF THE PLAN; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Town of Surfside sponsors a defined benefit retirement plan for town employees;

WHEREAS, Charter Officers have been permitted to participate in the Plan;

WHEREAS, not all Charter Officers necessarily want to participate in the Plan;

WHEREAS, the Pension Board and the Commission of the Town of Surfside have concluded that the adoption of this amendment is in the best interests of the citizens and taxpayers of the Town;

NOW, THEREFORE, BE IT ORDAINED by the Town Commission of the Town of Surfside:

Section 1. SECTION 2-171, Definitions, is hereby amended and to be read as follows:

Sec. 2-171. Definitions.

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Employee means any regular officer or employee who is employed by the Town on a full-time basis whose customary employment is for 32 hours or more per week and for six months or more per year. Employees serving on a part-time basis and persons employed under contract for

Ordinance No. _____

a definite period or for the performance of a particular special service shall not be eligible for participation in the plan. Charter officers (the Town Manager and Town Attorney) shall have the right to opt out of the Plan, as described in Section 2-174.

Section 2. SECTION 2-174, Membership, is hereby amended and to be read as follows:

Sec. 2-174. Membership.

(a) Any person who becomes an employee shall become a member of the plan as a condition of employment. Contributions required by such employee shall begin with the first payroll period after he becomes an employee. Each person who is an employee of the town as of June 1, 1996 and whose membership in the plan had been prohibited because he was over 52 years of age at the time he became an employee, shall have an irrevocable option to become a member of the plan on June 1, 1996. Such employee who elects to become a member shall begin contributing to the plan with the first pay period beginning after May 31, 1996 and shall earn creditable service after May 31, 1996. No credit shall be given for service prior to June 1, 1996.

(b) Upon withdrawal from service, upon request of the member his accumulated contributions shall be refunded to him and he shall thereupon cease to be a member of the plan.

(c) As Charter Officers, the Town Manager and Town Attorney shall have the right to opt out of the Plan at any time. If a Charter Officer elects to opt out of the plan, all of his or her employee contributions shall be refunded at the applicable interest rate applied by the Board. Employee contributions may be rolled over into another tax qualified plan.

Section 3. All sections or parts of sections of the Town Code, all ordinances or parts of ordinances, and all resolutions or parts of resolutions in conflict herewith, be and the same, are hereby repealed to the extent of such conflict.

Section 4. Should this ordinance or any part thereof be declared invalid by a Court of competent jurisdiction, the invalidity of any part of this ordinance shall not otherwise affect the validity of the remaining provisions of this ordinance, which shall be deemed to have been enacted without the invalid provision.

Section 5. It is the intention of the Commission of the Town of Surfside that the provisions of this ordinance shall become and be made a part of the Code of the Town of Surfside, and that the word "ordinance" may be changed to "section," "article," or such other appropriate word or phrase in order to accomplish such intentions.

Ordinance No. _____

Section 6. This ordinance shall become effective upon final passage.

PASSED AND ADOPTED ON FIRST READING, this ____ day of _____, 2011.

PASSED AND ADOPTED ON SECOND READING, this ____ day of _____, 2011.

DANIEL DIETCH, MAYOR

ATTEST:

Debra Eastman, MMC
Town Clerk

**APPROVED AS TO FORM AND
LEGAL SUFFICIENCY**

Lynn M. Dannheisser, Town Attorney

Moved by: _____
Second by: _____

Vote:

Mayor Dietch	yes__ no__
Vice Mayor Joe Graubart	yes__ no__
Commissioner Marta Olchyk	yes__ no__
Commissioner Michael Karukin	yes__ no__
Commissioner Edward Kopelman	yes__ no__

Ordinance No. _____



Town of Surfside Commission Communication

Agenda Item # 5A

Agenda Date: June 14, 2011

Subject: Water/Sewer/Storm Drainage Contract Award and Related Matters

Objective: To address the following elements of the Water/Sewer/Storm Drainage Project

1. Award the Construction Contract to the low bidder Ric Man International or to the second low bidder, Southeast Engineering if certain legal matters regarding Ric Man International are not resolved prior to June 14, 2011.
2. Determine if any of the Additive Alternatives should be awarded at this time. These include replacement of street signs, a street tree program, upgrades to traffic calming devices and upgrades to street ends.
3. Commit to an FPL study that will allow underground conduit to be installed at intersections so that a future undergrounding project would not need to break the pavement.
4. Agree to participate with Bal Harbour in the construction and ownership of a sewer force main to be built along 96th Street and Collins Avenue to 72nd Street in Miami Beach. This project will provide a back-up or replacement for the 60 year old force main located on Byron Avenue.
5. Begin the process of obtaining Building Better Communities Bond funds in the amount of \$2 million allocated as Surfside's share (\$6 million for Bal Harbour) of a sewer force main to allow Surfside and Bal Harbour to interconnect to the North Dade Treatment plant as either an alternative or a back up to our Miami Beach connection.
6. Determination of location for construction staging area.

Background: The need for replacement/upgrade to the Town's Water/Sewer/Storm Drainage system has been a subject of much debate over the past twenty years. The result has been the deterioration of the system, extreme infiltration/inflow wasting nearly \$230,000 per year in water and excess sewage treatment surcharges during the rainy season and the potential for a disaster similar to what happened recently in Miami Beach where a nearly 70 year old sewer force main burst, causing great inconvenience and environmental risk.

To resolve this situation, the Town Commission took a variety of actions including authorizing the completion of the design for the project by CGA, retention of bond counsel Bryant Miller Olive, retention of financial advisor Public Financial Management, updating the Tishler-Bise rate study, short listing firms who were prequalified to bid on the project after extensive research by Staff and CGA, authorizing bids to be advertised which were received in late April 2011, issuing revenue bonds in the amount of \$16 million to fund the project, acceptance of near \$2 million in grants, completion of a first stage study by FPL regarding undergrounding the above ground lines, authorizing discussions with Bal Harbour regarding a new sewer force main on Collins Avenue, authorizing discussions with Miami Dade County to accelerate the Building Better Communities bond program project to allow our sewage to flow north to the Miami Dade Treatment Plant as well as south through Miami Beach to the Virginia Key Plant, establishing an interactive project website and appointing a citizen's oversight committee comprised of seven expert Surfside residents.

Analysis: The underlying philosophy of the contract award is to select the lowest priced responsible and responsive bidder. Of the seven prequalified bidders who received plans, six submitted a bid. Ric Man International submitted the lowest bid for the base project and Southeast Engineering is the second lowest bidder. Both firms were investigated as to capacity and correctness of the bid by CGA and found to meet all requirements. Staff also directed our independent investigator Patrick Franklin to review both firms for any other issues such as litigation. In that process, litigation was discovered regarding Ric Man. Town Attorney Lynn Dannheisser is reviewing that litigation which should come to closure in a hearing in Broward County before the June 14, 2011 Town Commission meeting. If the outcome of the litigation gives Staff and the Town Attorney any concern, we will suggest award to the second bidder whose price is approximately \$225,000 more.

Analysis of Funding Available: There is \$17,927,500 available for the project. The elements of the sources include:

Revenue Bond Issue	\$16,000,000	Revenue Bond Issued
FDEP Grant	\$873,500	in place
FDEP Grant	\$125,000	in place
FDEP Grant	\$100,000	in place
Building Better Communities	\$829,000	in place
Miami Dade County GOB		
TOTAL	<u>\$17,927,500</u>	

The base bid for the project plus remaining or already expended costs total \$16,999,938 including the following:

Ric Man base bid	\$15,905,938
Remaining project administration	\$784,000
BBC Previous Payments	\$145,000
FDEP Previous Payments	\$115,000
Bond Issuance Costs	\$50,000
TOTAL	<u>\$16,999,938</u>

The base bid from Ric Man includes complete replacement/repair/upgrade of the water/sewer/storm drainage system as well as the cost to hook up homes to the new system. Therefore, there will be no additional charge to our homeowners as originally projected.

The impact of the available funding less the base project cost to complete is that \$927,562 is available for the additive alternatives and the Bal Harbour force main project that which the Town Commission authorized negotiations to begin during the May 10, 2011 Town Commission meeting.

Analysis of Additive Alternatives and Bal Harbour Force Main Project: The total cost for the additive alternatives and the Bal Harbour force main is as follows:

Decorative Street Signs	\$328,125 **
Street End Improvements Six Street Ends	\$210,642 **
Street Tree Program	\$179,827 **
End of Road Street Sign Upgrade	\$10,000 **
FPL Engineering for Underground Future Project	\$69,000 *
Installation of FPL provided Conduit (estimate)	\$300,000 *
Bal Harbour Force Main 50% Share	\$1,500,000 *
TOTAL POTENTIAL COST	<u>\$2,597,594</u>

Clearly we do not have the necessary funds in hand to complete the very desirable mix of additive alternates. Given that there is \$927,562 available, we are \$1,670,032 short. Herein begins the policy discussion of what to do.

*Alternative 1 is to complete the Bal Harbour force main (\$1,500,000) and the FPL conduit (\$369,000) for a total additional cost of \$1,869,000. We have \$927,562 available requiring \$941,438 additional funding. It would be the Administration's recommendation to fund this shortfall with \$210,000 from the People's Transportation Program available funds, \$200,000 from the \$800,000 water/sewer/storm drainage project contingency and the balance of \$531,438 from Water and Sewer Fund reserves. This would mean that the Bal Harbour force main and the FPL conduit program would require no additional borrowing.

**Alternative 2 incorporates all or a portion of the unfunded additive alternatives. The funding source would be to utilize the "project completion" bonds potential for the existing Regions Bank bond issue. The trust indenture (bond ordinance) allows up to ten percent of the project

cost (\$1.6 million) to be borrowed to complete the defined project which includes the additive alternates. If all the additive alternates listed above were funded in this manner, annual debt service would increase by \$8000 per year per \$100,000 borrowed. This means the entire balance of the projects (\$728,594) could be funded for approximately \$60,000 per year for the remainder of the term of the debt. If the Town Commission wishes, all or a portion of the list could be funded in this manner. We seek your guidance regarding the additive alternatives during the June 14, 2011 Town Commission meeting so that the contract award can be made with the correct scope of work.

Village of Bal Harbour/Town of Surfside Cost Allocation for the New Force Main: Staff has reviewed with Bal Harbour officials a number of formulae for allocating the cost of the force main. The best approach is to review sewage flows over the recent past years. This review demonstrates that Surfside's use of the existing force main is approximately 59% and the Village of Bal Harbour's is 41 percent. Offsetting this is the fact that Surfside will fund the interconnect to the existing force main on Byron Avenue and Bal Harbour funded the initial engineering costs. All in all a 50/50 share of the construction cost and joint ownership of the line is reasonable.

Discussion of Building Better Communities (GOB) Bond for the linkage to the North Dade Treatment Plant: This project is critical to providing the Town with an alternative process for moving sewage in the event of a major problem in Miami Beach. Staff, with the assistance of Miami Dade County Commissioner Sally Heyman, is working to accelerate the \$8 million funding in the BBC GOB to be able to start design in FY 11/12 rather than FY 16/17 as currently projected. We will continue to report on this project as information becomes available.

Discussion of Staging Area for the Water/Sewer/Storm Drainage Project: Due to the large amount of pipe that will be required as well as construction equipment, a staging area is necessary. The proposed area is the northern two lanes of 91st from Collins Avenue to Harding. These two lanes would be closed and fenced. The southern two lanes would remain open to two way traffic. This site was chosen because no residences abut the area. To the north are the Surf Club tennis courts and to the south is the Surf Club parking lot. The previous Surf Club manager and board president were supportive of this, however, both parties have left. If this alternative is acceptable to the Town Commission we will pursue the location. If not, we will attempt to use one of the undeveloped Miami Beach parcels west of Collins near North Shore Park.

The Documents: There are three documents which make up the agreement between the Town of Surfside and Ric Man International which are being presented in substantial form for Town Commission approval. These include the Standard Form of Agreement Between Owner and Contractor on the Basis of a Stipulated Price; the General Conditions of the Construction Contract and the First Amended Supplementary Conditions. These agreements are used as the norm in the industry for similar projects. The highlights include:

1. The term of the agreement (completion) is 450 calendar days or 18 months. There is an extra six weeks for a total of 495 days for making the final payment assuming all issues have been worked out.

2. There is an early completion bonus of \$50,000 for each of the three phases of construction if the phase is completed in less than 5 months the process to earn the bonus is tightly defined.
3. There are liquidated damages in the amount of \$1500 per day for late completion.
4. The base contract price is \$15,905,938 which includes all the work required for a complete system including the cost of providing service to customer's homes. There is an \$800,000 contingency included in the \$15,905,938. There is also a 10% retainer on all progress payments as the project progresses.
5. There is a performance bond which protects the Town if the contractor fails to complete.
6. There are insurance and indemnity requirements.
7. The materials, design, performance requirements for the completed system, inspections/certifications, required Davis Bacon wage rates, method for settling claims, method for settling disputes are all established in the Standard General Conditions of the Construction Contract and further clarified in the First Amended Supplemental Agreement.
8. These documents have been reviewed by the Town Attorney.

Staff Impact: Properly managing the project to budget and time will require a significant portion of the Public Works Director and the Town Manager's time. There will also be a full time experienced construction manager representing the Public Works Department and an experienced CGA employee on-site. It is the Administration's intention to keep the Oversight Committee in place to meet monthly and to hold weekly staff project meetings with the contractor as was done with the Community Center.

Recommendation: After eight months, we are at the end of a long journey and the beginning of a new one. Town Commission approval of the contract award and related matters, will complete the planning, design, financing and bidding phases of the project. We will then move on to completing the construction in a timely manner and within budget with the least impact possible on community residents.



Department Head



Roger M. Carlton, Town Manager

**STANDARD FORM OF AGREEMENT
BETWEEN OWNER AND CONTRACTOR
ON THE BASIS OF A STIPULATED PRICE**

**EJCDC
STANDARD FORM OF AGREEMENT
BETWEEN OWNER AND CONTRACTOR
ON THE BASIS OF A STIPULATED PRICE**

THIS AGREEMENT is dated as of the _____ day of _____ in the year 20____ by and between **TOWN OF SURFSIDE** (hereinafter called **OWNER**) and _____ (hereinafter called **CONTRACTOR**).

OWNER and **CONTRACTOR**, in consideration of the mutual covenants hereinafter set forth, agree as follows:

Article 1. WORK.

CONTRACTOR shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

Article 2. ENGINEER.

The Project has been designed by:

Calvin, Giordano & Associates, Inc.
1800 Eller Drive, Suite 600
Fort Lauderdale, FL 33316
(954) 921-7781

who is hereinafter called **ENGINEER** and who is to act as **OWNER'S** representative, assume all duties and responsibilities and have the rights and authority assigned to **ENGINEER** in the Contract Documents in connection with completion of the Work in accordance with the Contract Documents.

Article 3. CONTRACT TIMES.

3.1. The Work will be substantially completed within 450 calendar days after the date when the Contract Times commence to run completed and ready for final payment in accordance with paragraph 14.07 of the General Conditions within 495 calendar days after the date when the Contract Times commence to run.

3.2 Incentive - Disincentive: The Town desires to expedite construction on this Contract to minimize the inconvenience to the public and to reduce the time of construction. In order to achieve this, an incentive - disincentive provision is established for the Contract.

The Town will pay the Contractor an "incentive payment" in the amount of \$50,000.00, for each milestone the actual completion date precedes the phase Contract Time(each phase has a milestone of 5 month to complete all work up to first lift of asphalt) and subject to the conditions precedent set forth below. The term "Original Contract Time" as used in this Article will mean the number of calendar days established for completion of the work in the Contract on the date the Contract was executed. The term "calendar day" as used in this Article will mean every day shown on the calendar. Calendar days will be consecutively counted from commencement of Contract Time regardless of weather, weekends, holidays, suspensions of Contractor's operations, delays or other events as described herein. For purposes of the calculation and the determination of entitlement to the "incentive payment" stated above, the Original Contract Time will not be adjusted for any reason, cause or circumstance whatsoever, regardless of fault, save and except in the instance of a catastrophic event (i.e., hurricane or a declared state of emergency).

The parties anticipate that delays may be caused by or arise from any number of events during the course of the Contract, including, but not limited to, work performed, work deleted, change orders, supplemental agreements, delays, disruptions, differing site conditions, utility conflicts, design

changes or defects, time extensions, extra work, right of way issues, permitting issues, actions of suppliers, subcontractors or other contractors, actions by third parties, shop drawing approval process delays, expansion of the physical limits of the project to make it functional, weather, weekends, holidays, suspensions of Contractor's operations, or other such events, forces or factors sometimes experienced in construction work. Such delays or events and their potential impacts on performance by the Contractor are specifically contemplated and acknowledged by the parties in entering into this Contract, and shall not extend the Original Contract Time for purposes of calculation of the "incentive payment" set forth above. Further, any and all costs or impacts whatsoever incurred by the Contractor in accelerating the Contractor's work to overcome or absorb such delays or events in an effort to complete the Contract prior to expiration of the Original Contract Time, regardless of whether the Contractor successfully does so or not, shall be the sole responsibility of the Contractor in every instance.

In the event of a catastrophic event (i.e., hurricane or a declared state of emergency) directly and substantially affecting the Contractor's operations on the Contract, the Contractor and The Town shall agree as to the number of calendar days to extend the Original Contract Time so that such extended Original Contract Time will be used in calculation of the "incentive payment". In the event the Contractor and Department are unable to agree to the number of Calendar Days to extend the Original Contract Time, The Town will unilaterally determine the number of calendar days to extend the Original Contract Time reasonably necessary and due solely to such catastrophic event and the Contractor shall have no right whatsoever to contest such determination, save and except that the Contractor establishes that the number of calendar days determined by The Town were arbitrary or without any reasonable basis.

No modification of this "Incentive-Disincentive" provision will be considered by the Town for any impacts, whatsoever, beyond the reasonable control of the Contractor, for which the effect results in a time extension of less than 15% of the time remaining in the period from the first day of occurrence of such impact to the expiration of the "Original Contract Time". Furthermore, as to any such impact, for which the effect results in a time extension of 15% or more of the time remaining in the period from the first day of occurrence of such impact to the expiration of the "Original Contract Time," no modification of this "Incentive-Disincentive" provision will be considered by the Town unless the Contractor clearly establishes that it has continuously from the beginning of the project aggressively, efficiently and effectively pursued the achievement of the "incentive payment". This would include the utilization of any and all reasonably available means and methods to overcome all impacts and accelerate the work so as to still achieve the "incentive payment", and that, but for this impact, the Contractor would have otherwise earned the "incentive payment" provided in the original Contract. Also, to the extent the request is not submitted in writing to the Town within not less than twenty (20) calendar days prior to the expiration of the "Original Contract Time," the Contractor must also continue to aggressively, efficiently, and effectively pursue the completion of the "Incentive-Disincentive" work. This would include the utilization of any and all reasonably available means and methods to overcome all impacts and accelerate the work, until a determination is made by the Town or twenty (20) calendar days has expired since such written request was received by the Town. There shall be no right of any kind on behalf of the Contractor to challenge or otherwise seek review or appeal in any forum, of any determination made by the Town under this provision.

The Contractor shall have no rights under the Contract to make any claim arising out of this incentive payment provision except as is expressly set forth in this Article.

As conditions precedent to the Contractor's entitlement to any "incentive payment" the Contractor must:

- (1) Deliver in-hand to The Town any and all claims, in full accordance with Article 10.05 and subject to the limitations therein, no later than 10 calendar days after completion of the work on which such claim is based. Furthermore, as to any such Article 10.05 claims for which the the Town has determined entitlement, but both parties have not reached an agreement on monetary compensation prior to final acceptance, and also as to those Article 10.05 claims pending at final acceptance, tentatively schedule a Town hearing within 10 calendar days after the final acceptance date while awaiting Department review and response to any such claim. The sole forum for final determination as to both entitlement and amount of monetary compensation, if not otherwise mutually resolved or otherwise agreed, shall be the Town.
- (2) Actually complete the Contract and obtain final acceptance by The Town prior to expiration of the Original Contract Time.

(3) No later than 10 days after final acceptance by The Town, the Contractor must either (a) elect to be paid the "incentive payment" pursuant to (4) below, or (b) notify The Town in writing that the Contractor is electing to be paid the "incentive payment" and is reserving one or more outstanding Article 10.05 claims for final and fully binding determination by the Town. The determinations of the Town as to any such Article 10.05 claims will be fully binding on both The Town and the Contractor, with no right of any kind of challenge, review or appeal, in any forum, by either party. Further, under (b) herein, any previous Town determinations on any such Article 10.05 claims issues shall then be fully binding and not subject to reconsideration by the Town, regardless of whether either party has previously rejected or otherwise not accepted one or more such recommendations at the time such were rendered.

(4) The Contractor shall notify The Town in writing, within 10 days after final acceptance of the Contract by The Town, that the Contractor elects to be paid the "incentive payment" which the Contractor is eligible to be paid based on the actual final acceptance date, and such written notice shall constitute a full and complete waiver, release and acknowledgment of satisfaction by the Contractor of any and all claims, causes of action, issues, demands, disputes, matters or controversies, of any nature or kind whatsoever, known or unknown, against The Town, its employees, officers, agents, representatives, consultants, and their respective employees, officers and representatives, the Contractor has or may have, including, but not limited to, work performed, work deleted, change orders, supplemental agreements, delays, disruptions, differing site conditions, utility conflicts, design changes or defects, time extensions, extra work, right of way issues, permitting issues, actions of suppliers or subcontractors or other contractors, actions by third parties, shop drawing approval process delays, expansion of the physical limits of the project to make it functional, weather, weekends, holidays, suspensions of the Contractor's operations, extended or unabsorbed home office or job site overhead, lump sum maintenance of traffic adjustments, lost profits, prime mark-up on subcontractor work, acceleration costs, any and all direct and indirect costs, any other adverse impacts, events, conditions, circumstances or potential damages, on or pertaining to, or as to or arising out of the Contract. This waiver, release and acknowledgment of satisfaction shall be all-inclusive and absolute, save and except any routine Department final estimating quantity adjustments.

Should the Contractor fail to actually complete the Contract and obtain final acceptance by The Town prior to expiration of the Original Contract Time, or should the Contractor, having timely completed the Contract and obtained final acceptance by The Town prior to expiration of the Original Contract Time but having failed to timely request the "incentive payment" for any reason, and including but not limited to the Contractor choosing not to either reserve one or more outstanding Article 10.05 claims for final and fully binding determination by the Town as set forth in (3)(b) above, or to fully waive, release and acknowledge satisfaction as set forth in (4) above, the Contractor shall have no right to any payment whatsoever under this Article. Notwithstanding the Contractor's election or non-election of the "incentive payment" under this provision, the disincentive provision applies to all circumstances where the work in the Contract is not finally accepted by the Allowable Contract Time.

Completion and acceptance of the Contract for purposes of this Article shall be in accordance with the General, Supplemental Conditions and Agreement.

Should the Contractor fail to complete the Contract on or before expiration of the Allowable Contract Time, as adjusted in accordance with the provisions of Supplemental Conditions and Agreement, The Town shall deduct \$50,000.00 for each milestone / phase that the completion exceeds the Allowable Contract Time (Milestone of 5 month per phase), from the monies otherwise due the Contractor. The term "Allowable Contract Time" as used in this Article shall mean the Original Contract Time plus adjustments pursuant to Supplemental Conditions and Agreement. This deduction shall be the disincentive for the Contractor's failing to timely complete the Contract. Article 3.2 relating to liquidated damages remains in effect and is applicable.

In the event the Contractor elects to exercise this "incentive payment" provision, should this provision conflict with any other provision of the Contract, the Contract shall be interpreted in accordance with this provision.

3.2. LIQUIDATED DAMAGES. OWNER and CONTRACTOR recognize that time is of the essence of this Agreement and that OWNER will suffer financial loss if the Work is not completed within the times specified in paragraph 3.1 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. They also recognize the delays, expense and difficulties involved in proving the actual loss suffered by OWNER if the Work is not completed on time.

Accordingly, instead of requiring any such proof, OWNER and CONTRACTOR agree that as liquidated damages for delay (but not as a penalty) CONTRACTOR shall pay OWNER One Thousand Five Hundred dollars and 00/100 dollars (\$1,500.00) for each day that expires after the time specified in paragraph 3.1 for each Substantial Completion date until the Work is substantially complete. If CONTRACTOR shall neglect, refuse or fail to complete the project by the project completion date within the time specified in paragraph 3.1 for completion and readiness for final payment or any proper extension thereof granted by OWNER, CONTRACTOR shall pay OWNER Two Thousand dollars and 00/100 dollars (\$2,000.00) for each day that expires after the time specified in paragraph 3.1 for completion and readiness for final payment.

Article 4. CONTRACT PRICE.

OWNER shall pay CONTRACTOR for completion of the Work in accordance with the Contract Documents an amount in current funds equal to the sum of the amounts determined pursuant to paragraphs 4.1 below:

FOR A LUMP SUM CONTRACT OF:

TOTAL BASE BID (Lump sum, Unit prices, and contingency items)

(use words) (\$ _____)
figures

As provided in paragraph 11.03 of the General Conditions estimated quantities are not guaranteed, and determinations of actual quantities and classification are to be made by ENGINEER as provided in paragraph 9.08 of the General Conditions. Unit prices have been computed as provided in paragraph 11.03.B of the General Conditions.

Article 5. PAYMENT PROCEDURES.

CONTRACTOR shall submit Applications for Payment in accordance with Article 14 of the General Conditions. Applications for Payment will be processed by ENGINEER as provided in the General Conditions.

5.1. Progress Payments; Retainage. OWNER shall make progress payments on account of the contract Price on the basis of CONTRACTOR's Applications for Payment as recommended by ENGINEER, on or about the last day of each month during construction as provided in paragraphs 5.1.1. and 5.1.2. below. All such payments will be measured by the schedule of values established in paragraph 2.07 of the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no schedule of values, as provided in the General Requirements.

5.1.1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below, but, in each case, less the aggregate of payments previously made and less such amounts as ENGINEER shall determine, or OWNER may withhold, in accordance with paragraph 14.02 of the General Conditions.

90 % of Work completed (with the balance being retainage). If Work has been 50% completed as determined by ENGINEER, and if the character and progress of the Work have been satisfactory to OWNER and ENGINEER, OWNER, on recommendation of ENGINEER, may determine that as long as the character and progress of the Work remain satisfactory to them, there will be no additional retainage on account of Work completed, in which case the remaining progress payments prior to Substantial Completion will be in an amount equal to 100% of the Work completed.

90 % (with the balance being retainage) of materials and equipment not incorporated in the Work (but delivered, suitably stored and accompanied by documentation satisfactory to **OWNER** as provided in paragraph 14.02 of the General Conditions and within Section 9-6.5 partial payments as provided in FDOT Standard Specifications for Road and Bridge Construction.

5.1.2. When circumstances beyond the **CONTRACTORS** control arise (as determined by the **OWNER**) the **OWNER** may allow the total payment to the **CONTRACTOR** to increase to 98% of the contract price (with the balance being retainage), less such amounts as **ENGINEER** shall determine, only after receipt of the final as-builts and upon substantial completion of the project and in accordance with Paragraph 14.02 of the General Conditions.

5.2. *Final Payment.* Upon final completion and acceptance of the Work in accordance with paragraph 14.07 of the General Conditions, **OWNER** shall pay the remainder of the Contract Price as recommended by **ENGINEER** as provided in said paragraph 14.07.

Article 6. INTEREST. (Not Applicable)

Article 7. CONTRACTOR'S REPRESENTATIONS.

In order to induce **OWNER** to enter into this Agreement **CONTRACTOR** makes the following representations:

7.1. **CONTRACTOR** has examined and carefully studied the Contract Documents (including the Addenda listed in paragraph 8) and the other related data identified in the Bidding Documents including "technical data."

7.2. **CONTRACTOR** has visited the site and become familiar with and is satisfied as to the general, local and site conditions that may affect cost, progress, performance or furnishing of the Work.

7.3. **CONTRACTOR** is familiar with and is satisfied as to all federal, state and local Laws and Regulations that may affect cost, progress, performance and furnishing of the Work.

7.4. **CONTRACTOR** has carefully studied all reports of explorations and tests of subsurface conditions at or contiguous to the site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the site (except Underground Facilities) which have been identified in the Supplementary Conditions as provided in paragraph 4.2.1. of the General Conditions. **CONTRACTOR** accepts the determination set forth in paragraph SC-4.2 of the Supplementary Conditions of the extend of the "technical data" contained in such reports and drawings upon which **CONTRACTOR** is entitled to rely as provided in paragraph 4.2 of the General Conditions. **CONTRACTOR** acknowledges that such reports and drawings are not Contract Documents and may not be complete for **CONTRACTOR's** purposes. **CONTRACTOR** acknowledges that **OWNER** and **ENGINEER** do not assume responsibility for the accuracy or completeness of information and data shown or indicated in the Contract Documents with respect to Underground Facilities at or contiguous to the site. **CONTRACTOR** has obtained and carefully studied (or assumes responsibility for having done so) all such additional supplementary examinations, investigations, explorations, tests, studies and data concerning conditions (surface, subsurface and Underground Facilities) at or contiguous to the site or otherwise which may affect cost, progress, performance or furnishing of the Work or which relate to any aspect of the means, methods, techniques, sequences and procedures of construction to be employed by **CONTRACTOR** and safety precautions and programs incident thereto. **CONTRACTOR** does not consider that any additional examinations, investigations, explorations, tests, studies or data are necessary for the performance and furnishing of the Work at the contract Price, within the Contract Times and in accordance with the other terms and conditions of the Contract Documents.

7.5. **CONTRACTOR** is aware of the general nature of work to be performed by **OWNER** and others at the site that relates to the Work as indicated in the Contract Documents.

7.6. **CONTRACTOR** has correlated the information known to **CONTRACTOR**, information and observations obtained from visits to the site, reports and drawings identified in the Contract Documents and all additional examinations, investigations, explorations, tests, studies and data with the Contract Documents.

7.7. **CONTRACTOR** has given **ENGINEER** written notice of all conflicts, errors, ambiguities or discrepancies that **CONTRACTOR** has discovered in the Contract Documents and the written resolution thereof by **ENGINEER** is acceptable to **CONTRACTOR**, and the Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

Article 8. **CONTRACT DOCUMENTS.**

The Contract Documents which comprise the entire agreement between **OWNER** and **CONTRACTOR** concerning the Work consist of the following:

- 8.1. This Agreement (pages 1 to 12, inclusive).
- 8.2. Exhibits to this Agreement (page) inclusive).
- 8.3. Performance, Payment, and other Bonds, identified as exhibits 00600 and 00601 and consisting of 4 pages.
- 8.4. Notice to Proceed.
- 8.5. General Conditions (pages 1 to 44, inclusive).
- 8.6. Supplementary Conditions (pages 800-1 to 800-A-FDEP-45, inclusive) and any amendments thereto.
- 8.7. Specifications bearing the title Specifications and consisting of 16 divisions.
- 8.8. Drawings consisting of a cover sheet and sheets numbered as specified in the Drawing Index INX-1.
- 8.9. Addenda No. X through X inclusive.
- 8.10. **CONTRACTOR's** Bid.
- 8.11. Documentation submitted by **CONTRACTOR** prior to Notice of Award (pages N/A to N/A inclusive).
- 8.12. The following which may be delivered or issued after the Effective Date of the Agreement and are not attached hereto: All Written Amendments and other documents amending, modifying or supplementing the Contract Documents pursuant to paragraph 3.04 of the General Conditions.
- 8.13. Amendments and Additions to the Standard General Conditions of the Construction Contract and the Supplementary Conditions, identified as exhibits N/A and N/A and consisting of 0 pages.

The documents listed in paragraphs 8.2 et seq. above are attached to this Agreement (except as expressly noted otherwise above).

There are no Contract Documents other than those listed above in this Article 13. The Contract Documents may only be amended, modified or supplemented as provided in paragraph 3.04 of the General Conditions.

Article 9. MISCELLANEOUS.

- 9.1. Terms used in this Agreement which are defined in Article 1 of the General Conditions will have the meanings indicated in the General Conditions.
- 9.2. No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party thereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.
- 9.3. **OWNER** and **CONTRACTOR** each binds itself, its partners, successors, assigns and legal representatives to the other party hereto, its partners, successors, assigns and legal representatives in respect to all covenants, agreements and obligations contained in the Contract Documents.
- 9.4. Any provisions or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon **OWNER** and **CONTRACTOR**, who agree that the Contract Documents shall be reformed to replace such stricken provisions or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

9.5. OTHER PROVISIONS.

9.5.1. DRAWINGS

See Index Sheet on Drawings

9.5.2. In accordance with the indemnification provision contained in the General Conditions, the **CONTRACTOR** agrees to indemnify and save harmless the **TOWN OF SURFSIDE, and their agents and employees**, from or on account of any injuries or damages received or sustained by any person or person during or on account of any operations connected with the construction of all Work; or by or in consequence of any negligence in connection with the same; or by use of any improper materials or by or on account of any act or omission of the said Contractor, subcontractor, agents, servants, or employees; and

9.5.3. The **CONTRACTOR** agrees to maintain in force at all times during the life of the construction, public liability insurance, by separate certificate, in an amount not less than \$1,000,000 for injuries, including willful death, to any one person and subject to those same limits for each person, in an amount not less than \$1,000,000 for damages as a result of each occurrence and property damage insurance and in an amount not less than \$1,000,000 for damages on any one occurrence. Such policy shall specifically protect the **TOWN OF SURFSIDE, AND their agents and employees**, by making them an additional insured, and shall not be modified or canceled without thirty (30) days written notice to the **TOWN OF SURFSIDE**.

9.5.4. Should the final completion and acceptance of the work herein embraced together with any modification or additions be delayed beyond the time herein set because of lack of performance by the Contract, it is understood and agreed that aside from any other liquidated damage per day for such delay from such time until the work is completed and accepted as herein provided, all costs of engineering and inspection on behalf of the Owner will be charged to the contractor and deducted from any estimate or payment otherwise due and payable to him from time to time. The costs of engineering and inspection which may be charged to the Contractor by the Owner under this article shall be equal to the Engineer's charges to the Owner.

IN WITNESS WHEREOF, OWNER and CONTRACTOR have signed this Agreement in Five (5) parts. One counterpart each has been delivered to OWNER, CONTRACTOR and ENGINEER. All portions of the Contract Documents have been signed, initialed or identified by OWNER and CONTRACTOR or identified by ENGINEER on their behalf.

This Agreement will be effective on _____, 20__ (which is the Effective Date of the Agreement).

ATTEST:

By _____

[CORPORATE SEAL]

[CORPORATE SEAL]

Address for giving notices

License No. _____

Agent for service of process

(If CONTRACTOR is a corporation, attached evidence of authority to sign).

**SIGNATURE PAGE FOR CONTRACTS/AGREEMENTS
TOWN EXECUTIONS**

IN WITNESS WHEREOF, the parties hereto have made and executed this (Agreement or Contract) on the respective dates under each signature: Town of Surfside through its Town Commission, signing by and through its Mayor, authorized to execute same by Commission action on the ____ day of _____, ____; and CONTRACTOR authorized to execute same.

TOWN OF SURFSIDE, through its
Town Commission

ATTEST:

By: _____
Daniel Dietch, Mayor

____ day of _____, 2011

Town Clerk

Approved as to form and legality by
Office of the Town Attorney

By: _____
Town Manager

____ day of _____, 2011

By: _____
Town Attorney

____ day of _____, 2011

(TOWN SEAL)

CERTIFICATE AS TO CORPORATE PRINCIPAL

I, _____, certify that I am the _____ of _____, and that _____, who signed the Bid with Town of Surfside, Dade County Florida for _____, Town Bid No. _____, is _____ of said Corporation with full authority to sign said Bid on behalf of the Corporation.

Signed and sealed this ____ day of _____, 20__.

(SEAL)

Signature

Typed w/Title

STATE OF FLORIDA
COUNTY OF DADE

SWORN TO AND SUBSCRIBED before me this ____ day of _____, 20__.

My Commission Expires:

Notary Public

CERTIFICATE AS TO AUTHORIZED CORPORATE PERSONNEL

I, _____, certify that I am the _____ of _____, who signed the Bid with Town of Surfside, Dade County Florida for the project titled _____, Consultant Project No. _____, and that the following persons have the authority to sign payment requests on behalf of the Corporation:

_____	_____
(Signature)	(Typed Name w/Title)
_____	_____
(Signature)	(Typed Name w/Title)
_____	_____
(Signature)	(Typed Name w/Title)

Signed and sealed this ____ day of _____, 20__.

(SEAL)

Signature

Typed w/Title

STATE OF FLORIDA
COUNTY OF DADE

SWORN TO AND SUBSCRIBED before me this ____ day of _____, 20__.

My Commission Expires:

Notary Public

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**STANDARD GENERAL CONDITIONS
OF THE
CONSTRUCTION CONTRACT**

This document has important legal consequences; consultation with an attorney is encouraged with respect to its use or modification. This document should be adapted to the particular circumstances of the contemplated Project and the Controlling Law.

STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

Prepared by

ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE

and

Issued and Published Jointly By



PROFESSIONAL ENGINEERS IN PRIVATE PRACTICE
a practice division of the
NATIONAL SOCIETY OF PROFESSIONAL ENGINEERS

AMERICAN COUNCIL OF ENGINEERING COMPANIES

AMERICAN SOCIETY OF CIVIL ENGINEERS

This document has been approved and endorsed by



The Associated General Contractors of America



Construction Specifications Institute

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National Society of Professional Engineers
1420 King Street, Alexandria, VA 22314

American Council of Engineering Companies
1015 15th Street, N.W., Washington, DC 20005

American Society of Civil Engineers
1801 Alexander Bell Drive, Reston, VA 20191-4400

These General Conditions have been prepared for use with the Suggested Forms of Agreement Between Owner and Contractor Nos. C-520 or C-525 (2002 Editions). Their provisions are interrelated and a change in one may necessitate a change in the other. Comments concerning their usage are contained in the EJCDC Construction Documents, General and Instructions (No. C-001) (2002 Edition). For guidance in the preparation of Supplementary Conditions, see Guide to the Preparation of Supplementary Conditions (No. C-800) (2002 Edition).

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GENERAL CONDITIONS

ARTICLE 1 - DEFINITIONS AND TERMINOLOGY

1.01 *Defined Terms*

A. Wherever used in the Bidding Requirements or Contract Documents and printed with initial capital letters, the terms listed below will have the meanings indicated which are applicable to both the singular and plural thereof. In addition to terms specifically defined, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.

1. *Addenda*--Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Requirements or the proposed Contract Documents.

2. *Agreement*--The written instrument which is evidence of the agreement between Owner and Contractor covering the Work.

3. *Application for Payment*--The form acceptable to Engineer which is to be used by Contractor during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract Documents.

4. *Asbestos*--Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.

5. *Bid*--The offer or proposal of a Bidder submitted on the prescribed form setting forth the prices for the Work to be performed.

6. *Bidder*--The individual or entity who submits a Bid directly to Owner.

7. *Bidding Documents*--The Bidding Requirements and the proposed Contract Documents (including all Addenda).

8. *Bidding Requirements*--The Advertisement or Invitation to Bid, Instructions to Bidders, bid security of acceptable form, if any, and the Bid Form with any supplements.

9. *Change Order*--A document recommended by Engineer which is signed by

Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Times, issued on or after the Effective Date of the Agreement.

10. *Claim*--A demand or assertion by Owner or Contractor seeking an adjustment of Contract Price or Contract Times, or both, or other relief with respect to the terms of the Contract. A demand for money or services by a third party is not a Claim.

11. *Contract*--The entire and integrated written agreement between the Owner and Contractor concerning the Work. The Contract supersedes prior negotiations, representations, or agreements, whether written or oral.

12. *Contract Documents*-- Those items so designated in the Agreement. Only printed or hard copies of the items listed in the Agreement are Contract Documents. Approved Shop Drawings, other Contractor's submittals, and the reports and drawings of subsurface and physical conditions are not Contract Documents.

13. *Contract Price*--The moneys payable by Owner to Contractor for completion of the Work in accordance with the Contract Documents as stated in the Agreement (subject to the provisions of Paragraph 11.03 in the case of Unit Price Work).

14. *Contract Times*--The number of days or the dates stated in the Agreement to: (i) achieve Milestones, if any, (ii) achieve Substantial Completion; and (iii) complete the Work so that it is ready for final payment as evidenced by Engineer's written recommendation of final payment.

15. *Contractor*--The individual or entity with whom Owner has entered into the Agreement.

16. *Cost of the Work*--See Paragraph 11.01.A for definition.

17. *Drawings*--That part of the Contract Documents prepared or approved by Engineer which graphically shows the scope, extent, and character of the Work to be performed by Contractor. Shop Drawings and other Contractor submittals are not Drawings as so defined.

18. *Effective Date of the Agreement*--The date indicated in the Agreement on which it becomes effective, but if no such date is indicated, it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.

19. *Engineer*--The individual or entity named as such in the Agreement.

20. *Field Order*--A written order issued by Engineer which requires minor changes in the Work but which does not involve a change in the Contract Price or the Contract Times.

21. *General Requirements*--Sections of Division 1 of the Specifications. The General Requirements pertain to all sections of the Specifications.

22. *Hazardous Environmental Condition*--The presence at the Site of Asbestos, PCBs, Petroleum, Hazardous Waste, or Radioactive Material in such quantities or circumstances that may present a substantial danger to persons or property exposed thereto in connection with the Work.

23. *Hazardous Waste*--The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.

24. *Laws and Regulations; Laws or Regulations*--Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.

25. *Liens*--Charges, security interests, or encumbrances upon Project funds, real property, or personal property.

26. *Milestone*--A principal event specified in the Contract Documents relating to an intermediate completion date or time prior to Substantial Completion of all the Work.

27. *Notice of Award*--The written notice by Owner to the Successful Bidder stating that upon timely compliance by the Successful Bidder with the conditions precedent listed therein, Owner will sign and deliver the Agreement.

28. *Notice to Proceed*--A written notice given by Owner to Contractor fixing the date on which the Contract Times will commence to run and on which Contractor shall start to perform the Work under the Contract Documents.

29. *Owner*--The individual or entity with whom Contractor has entered into the Agreement and for whom the Work is to be performed.

30. *PCBs*--Polychlorinated biphenyls.

31. *Petroleum*--Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-Hazardous Waste and crude oils.

32. *Progress Schedule*--A schedule, prepared and maintained by Contractor, describing the sequence and duration of the activities comprising the Contractor's plan to accomplish the Work within the Contract Times.

33. *Project*--The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part.

34. *Project Manual*--The bound documentary information prepared for bidding and constructing the Work. A listing of the contents of the Project Manual, which may be bound in one or more volumes, is contained in the table(s) of contents.

35. *Radioactive Material*--Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.

36. *Related Entity* -- An officer, director, partner, employee, agent, consultant, or subcontractor.

37. *Resident Project Representative*--The authorized representative of Engineer who may be assigned to the Site or any part thereof.

38. *Samples*--Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.

39. *Schedule of Submittals*--A schedule, prepared and maintained by Contractor, of required submittals and the time requirements to support scheduled performance of related construction activities.

40. *Schedule of Values*--A schedule, prepared and maintained by Contractor, allocating portions of the Contract Price to various portions of the Work and used as the basis for reviewing Contractor's Applications for Payment.

41. *Shop Drawings*--All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or

assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work.

42. *Site*--Lands or areas indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by Owner which are designated for the use of Contractor.

43. *Specifications*--That part of the Contract Documents consisting of written requirements for materials, equipment, systems, standards and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable thereto.

44. *Subcontractor*--An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work at the Site.

45. *Substantial Completion*--The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion thereof.

46. *Successful Bidder*--The Bidder submitting a responsive Bid to whom Owner makes an award.

47. *Supplementary Conditions*--That part of the Contract Documents which amends or supplements these General Conditions.

48. *Supplier*--A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or any Subcontractor.

49. *Underground Facilities*--All underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities, including those that convey electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.

50. *Unit Price Work*--Work to be paid for on the basis of unit prices.

51. *Work*--The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction, and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents.

52. *Work Change Directive*--A written statement to Contractor issued on or after the Effective Date of the Agreement and signed by Owner and recommended by Engineer ordering an addition, deletion, or revision in the Work, or responding to differing or unforeseen subsurface or physical conditions under which the Work is to be performed or to emergencies. A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the change ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Times.

1.02 Terminology

A. The following words or terms are not defined but, when used in the Bidding Requirements or Contract Documents, have the following meaning.

B. Intent of Certain Terms or Adjectives

1. The Contract Documents include the terms "as allowed," "as approved," "as ordered", "as directed" or terms of like effect or import to authorize an exercise of professional judgment by Engineer. In addition, the adjectives "reasonable," "suitable," "acceptable," "proper," "satisfactory," or adjectives of like effect or import are used to describe an action or determination of Engineer as to the Work. It is intended that such exercise of professional judgment, action or determination will be solely to evaluate, in general, the Work for compliance with the requirements of and information in the Contract Documents and conformance with the design concept of the completed Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective is not intended to and shall not be effective to assign to Engineer any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility

contrary to the provisions of Paragraph 9.09 or any other provision of the Contract Documents.

C. *Day*

1. The word "day" means a calendar day of 24 hours measured from midnight to the next midnight.

D. *Defective*

1. The word "defective," when modifying the word "Work," refers to Work that is unsatisfactory, faulty, or deficient in that it:

a. does not conform to the Contract Documents, or

b. does not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Contract Documents, or

c. has been damaged prior to Engineer's - recommendation of final payment (unless responsibility for the protection thereof has been assumed by Owner at Substantial Completion in accordance with Paragraph 14.04 or 14.05).

E. *Furnish, Install, Perform, Provide*

1. The word "furnish," when used in connection with services, materials, or equipment, shall mean to supply and deliver said services, materials, or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.

2. The word "install," when used in connection with services, materials, or equipment, shall mean to put into use or place in final position said services, materials, or equipment complete and ready for intended use.

3. The words "perform" or "provide," when used in connection with services, materials, or equipment, shall mean to furnish and install said services, materials, or equipment complete and ready for intended use.

4. When "furnish," "install," "perform," or "provide" is not used in connection with services, materials, or equipment in a context clearly requiring an obligation of Contractor, "provide" is implied.

F. Unless stated otherwise in the Contract Documents, words or phrases which have a well-known technical or construction industry or trade

meaning are used in the Contract Documents in accordance with such recognized meaning.

ARTICLE 2 - PRELIMINARY MATTERS

2.01 *Delivery of Bonds and Evidence of Insurance*

A. When Contractor delivers the executed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner such bonds as Contractor may be required to furnish.

B. *Evidence of Insurance:* Before any Work at the Site is started, Contractor and Owner shall each deliver to the other, with copies to each additional insured identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance which either of them or any additional insured may reasonably request) which Contractor and Owner respectively are required to purchase and maintain in accordance with Article 5.

2.02 *Copies of Documents*

A. Owner shall furnish to Contractor up to ten printed or hard copies of the Drawings and Project Manual. Additional copies will be furnished upon request at the cost of reproduction.

2.03 *Commencement of Contract Times; Notice to Proceed*

A. The Contract Times will commence to run on the thirtieth day after the Effective Date of the Agreement or, if a Notice to Proceed is given, on the day indicated in the Notice to Proceed. A Notice to Proceed may be given at any time within 30 days after the Effective Date of the Agreement. In no event will the Contract Times commence to run later than the sixtieth day after the day of Bid opening or the thirtieth day after the Effective Date of the Agreement, whichever date is earlier.

2.04 *Starting the Work*

A. Contractor shall start to perform the Work on the date when the Contract Times commence to run. No Work shall be done at the Site prior to the date on which the Contract Times commence to run.

2.05 *Before Starting Construction*

A. *Preliminary Schedules:* Within 10 days after the Effective Date of the Agreement (unless otherwise specified in the General Requirements),

Contractor shall submit to Engineer for timely review:

1. a preliminary Progress Schedule; indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract Documents;

2. a preliminary Schedule of Submittals; and

3. a preliminary Schedule of Values for all of the Work which includes quantities and prices of items which when added together equal the Contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.

2.06 *Preconstruction Conference*

A. Before any Work at the Site is started, a conference attended by Owner, Contractor, Engineer, and others as appropriate will be held to establish a working understanding among the parties as to the Work and to discuss the schedules referred to in Paragraph 2.05.A, procedures for handling Shop Drawings and other submittals, processing Applications for Payment, and maintaining required records.

2.07 *Initial Acceptance of Schedules*

A. At least 10 days before submission of the first Application for Payment a conference attended by Contractor, Engineer, and others as appropriate will be held to review for acceptability to Engineer as provided below the schedules submitted in accordance with Paragraph 2.05.A. Contractor shall have an additional 10 days to make corrections and adjustments and to complete and resubmit the schedules. No progress payment shall be made to Contractor until acceptable schedules are submitted to Engineer.

1. The Progress Schedule will be acceptable to Engineer if it provides an orderly progression of the Work to completion within the Contract Times. Such acceptance will not impose on Engineer responsibility for the Progress Schedule, for sequencing, scheduling, or progress of the Work nor interfere with or relieve Contractor from Contractor's full responsibility therefor.

2. Contractor's Schedule of Submittals will be acceptable to Engineer if it provides a workable arrangement for reviewing and processing the required submittals.

3. Contractor's Schedule of Values will be acceptable to Engineer as to form and substance if it provides a reasonable allocation of the Contract Price to component parts of the Work.

ARTICLE 3 - CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

3.01 *Intent*

A. The Contract Documents are complementary; what is required by one is as binding as if required by all.

B. It is the intent of the Contract Documents to describe a functionally complete Project (or part thereof) to be constructed in accordance with the Contract Documents. Any labor, documentation, services, materials, or equipment that may reasonably be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the intended result will be provided whether or not specifically called for at no additional cost to Owner.

C. Clarifications and interpretations of the Contract Documents shall be issued by Engineer as provided in Article 9.

3.02 *Reference Standards*

A. Standards, Specifications, Codes, Laws, and Regulations

1. Reference to standards, specifications, manuals, or codes of any technical society, organization, or association, or to Laws or Regulations, whether such reference be specific or by implication, shall mean the standard, specification, manual, code, or Laws or Regulations in effect at the time of opening of Bids (or on the Effective Date of the Agreement if there were no Bids), except as may be otherwise specifically stated in the Contract Documents.

2. No provision of any such standard, specification, manual or code, or any instruction of a Supplier shall be effective to change the duties or responsibilities of Owner, Contractor, or Engineer, or any of their subcontractors, consultants, agents, or employees from those set forth in the Contract Documents. No such provision or instruction shall be

effective to assign to Owner, or Engineer, or any of their Related Entities, any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the Contract Documents.

3.03 *Reporting and Resolving Discrepancies*

A. Reporting Discrepancies

1. *Contractor's Review of Contract Documents Before Starting Work:* Before undertaking each part of the Work, Contractor shall carefully study and compare the Contract Documents and check and verify pertinent figures therein and all applicable field measurements. Contractor shall promptly report in writing to Engineer any conflict, error, ambiguity, or discrepancy which Contractor may discover and shall obtain a written interpretation or clarification from Engineer before proceeding with any Work affected thereby.

2. *Contractor's Review of Contract Documents During Performance of Work:* If, during the performance of the Work, Contractor discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents or between the Contract Documents and any provision of any Law or Regulation applicable to the performance of the Work or of any standard, specification, manual or code, or of any instruction of any Supplier, Contractor shall promptly report it to Engineer in writing. Contractor shall not proceed with the Work affected thereby (except in an emergency as required by Paragraph 6.16.A) until an amendment or supplement to the Contract Documents has been issued by one of the methods indicated in Paragraph 3.04.

3. Contractor shall not be liable to Owner or Engineer for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless Contractor knew or reasonably should have known thereof.

B. Resolving Discrepancies

1. Except as may be otherwise specifically stated in the Contract Documents, the provisions of the Contract Documents shall take precedence in resolving any conflict, error, ambiguity, or discrepancy between the provisions of the Contract Documents and:

a. the provisions of any standard, specification, manual, code, or instruction

(whether or not specifically incorporated by reference in the Contract Documents); or

b. the provisions of any Laws or Regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation).

3.04 *Amending and Supplementing Contract Documents*

A. The Contract Documents may be amended to provide for additions, deletions, and revisions in the Work or to modify the terms and conditions thereof by either a Change Order or a Work Change Directive.

B. The requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Work may be authorized, by one or more of the following ways:

1. A Field Order;

2. Engineer's approval of a Shop Drawing or Sample; (Subject to the provisions of Paragraph 6.17.D.3); or

3. Engineer's written interpretation or clarification.

3.05 *Reuse of Documents*

A. Contractor and any Subcontractor or Supplier or other individual or entity performing or furnishing all of the Work under a direct or indirect contract with Contractor, shall not:

1. have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of Engineer or Engineer's consultants, including electronic media editions; or

2. reuse any of such Drawings, Specifications, other documents, or copies thereof on extensions of the Project or any other project without written consent of Owner and Engineer and specific written verification or adaptation by Engineer.

B. The prohibition of this Paragraph 3.05 will survive final payment, or termination of the Contract. Nothing herein shall preclude Contractor from retaining copies of the Contract Documents for record purposes.

3.06 *Electronic Data*

A. Copies of data furnished by Owner or Engineer to Contractor or Contractor to Owner or Engineer that may be relied upon are limited to the printed copies (also known as hard copies). Files in electronic media format of text, data, graphics, or other types are furnished only for the convenience of the receiving party. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.

B. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any errors detected within the 60-day acceptance period will be corrected by the transferring party..

C. When transferring documents in electronic media format, the transferring party makes no representations as to long term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the data's creator.

ARTICLE 4 - AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS; REFERENCE POINTS

4.01 *Availability of Lands*

A. Owner shall furnish the Site. Owner shall notify Contractor of any encumbrances or restrictions not of general application but specifically related to use of the Site with which Contractor must comply in performing the Work. Owner will obtain in a timely manner and pay for easements for permanent structures or permanent changes in existing facilities. If Contractor and Owner are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, as a result of any delay in Owner's furnishing the Site or a part thereof, Contractor may make a Claim therefor as provided in Paragraph 10.05.

B. Upon reasonable written request, Owner shall furnish Contractor with a current statement of

record legal title and legal description of the lands upon which the Work is to be performed and Owner's interest therein as necessary for giving notice of or filing a mechanic's or construction lien against such lands in accordance with applicable Laws and Regulations.

C. Contractor shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

4.02 *Subsurface and Physical Conditions*

A. *Reports and Drawings:* The Supplementary Conditions identify:

1. those reports of explorations and tests of subsurface conditions at or contiguous to the Site that Engineer has used in preparing the Contract Documents; and

2. those drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities) that Engineer has used in preparing the Contract Documents.

B. *Limited Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the general accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data" is identified in the Supplementary Conditions. Except for such reliance on such "technical data," Contractor may not rely upon or make any claim against Owner or Engineer, or any of their Related Entities with respect to:

1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto; or

2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or

3. any Contractor interpretation of or conclusion drawn from any "technical data" or any such other data, interpretations, opinions, or information.

4.03 Differing Subsurface or Physical Conditions

A. *Notice:* If Contractor believes that any subsurface or physical condition at or contiguous to the Site that is uncovered or revealed either:

1. is of such a nature as to establish that any "technical data" on which Contractor is entitled to rely as provided in Paragraph 4.02 is materially inaccurate; or

2. is of such a nature as to require a change in the Contract Documents; or

3. differs materially from that shown or indicated in the Contract Documents; or

4. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents;

then Contractor shall, promptly after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency as required by Paragraph 6.16.A), notify Owner and Engineer in writing about such condition. Contractor shall not further disturb such condition or perform any Work in connection therewith (except as aforesaid) until receipt of written order to do so.

B. *Engineer's Review:* After receipt of written notice as required by Paragraph 4.03.A, Engineer will promptly review the pertinent condition, determine the necessity of Owner's obtaining additional exploration or tests with respect thereto, and advise Owner in writing (with a copy to Contractor) of Engineer's findings and conclusions.

C. Possible Price and Times Adjustments

1. The Contract Price or the Contract Times, or both, will be equitably adjusted to the extent that the existence of such differing subsurface or physical condition causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:

a. such condition must meet any one or more of the categories described in Paragraph 4.03.A; and

b. with respect to Work that is paid for on a Unit Price Basis, any adjustment in Contract Price will be subject to the provisions of Paragraphs 9.07 and 11.03.

2. Contractor shall not be entitled to any adjustment in the Contract Price or Contract Times if:

a. Contractor knew of the existence of such conditions at the time Contractor made a final commitment to Owner with respect to Contract Price and Contract Times by the submission of a Bid or becoming bound under a negotiated contract; or

b. the existence of such condition could reasonably have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and contiguous areas required by the Bidding Requirements or Contract Documents to be conducted by or for Contractor prior to Contractor's making such final commitment; or

c. Contractor failed to give the written notice as required by Paragraph 4.03.A.

3. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, a Claim may be made therefor as provided in Paragraph 10.05. However, Owner and Engineer, and any of their Related Entities shall not be liable to Contractor for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Contractor on or in connection with any other project or anticipated project.

4.04 Underground Facilities

A. *Shown or Indicated:* The information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or contiguous to the Site is based on information and data furnished to Owner or Engineer by the owners of such Underground Facilities, including Owner, or by others. Unless it is otherwise expressly provided in the Supplementary Conditions:

1. Owner and Engineer shall not be responsible for the accuracy or completeness of any such information or data; and

2. the cost of all of the following will be included in the Contract Price, and Contractor shall have full responsibility for:

a. reviewing and checking all such information and data,

- b. locating all Underground Facilities shown or indicated in the Contract Documents,
- c. coordination of the Work with the owners of such Underground Facilities, including Owner, during construction, and
- d. the safety and protection of all such Underground Facilities and repairing any damage thereto resulting from the Work.

B. Not Shown or Indicated

1. If an Underground Facility is uncovered or revealed at or contiguous to the Site which was not shown or indicated, or not shown or indicated with reasonable accuracy in the Contract Documents, Contractor shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by Paragraph 6.16.A), identify the owner of such Underground Facility and give written notice to that owner and to Owner and Engineer. Engineer will promptly review the Underground Facility and determine the extent, if any, to which a change is required in the Contract Documents to reflect and document the consequences of the existence or location of the Underground Facility. During such time, Contractor shall be responsible for the safety and protection of such Underground Facility.

2. If Engineer concludes that a change in the Contract Documents is required, a Work Change Directive or a Change Order will be issued to reflect and document such consequences. An equitable adjustment shall be made in the Contract Price or Contract Times, or both, to the extent that they are attributable to the existence or location of any Underground Facility that was not shown or indicated or not shown or indicated with reasonable accuracy in the Contract Documents and that Contractor did not know of and could not reasonably have been expected to be aware of or to have anticipated. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment in Contract Price or Contract Times, Owner or Contractor may make a Claim therefor as provided in Paragraph 10.05.

4.05 Reference Points

A. Owner shall provide engineering surveys to establish reference points for construction which in Engineer's judgment are necessary to enable Contractor to proceed with the Work. Contractor shall be responsible for laying out the Work, shall protect and preserve the established reference

points and property monuments, and shall make no changes or relocations without the prior written approval of Owner. Contractor shall report to Engineer whenever any reference point or property monument is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points or property monuments by professionally qualified personnel.

4.06 Hazardous Environmental Condition at Site

A. *Reports and Drawings:* Reference is made to the Supplementary Conditions for the identification of those reports and drawings relating to a Hazardous Environmental Condition identified at the Site, if any, that have been utilized by the Engineer in the preparation of the Contract Documents.

B. *Limited Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the general accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data" is identified in the Supplementary Conditions. Except for such reliance on such "technical data," Contractor may not rely upon or make any claim against Owner or Engineer, or any of their Related Entities with respect to:

- 1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures of construction to be employed by Contractor and safety precautions and programs incident thereto; or
- 2. other data, interpretations, opinions and information contained in such reports or shown or indicated in such drawings; or
- 3. any Contractor interpretation of or conclusion drawn from any "technical data" or any such other data, interpretations, opinions or information.

C. Contractor shall not be responsible for any Hazardous Environmental Condition uncovered or revealed at the Site which was not shown or indicated in Drawings or Specifications or identified in the Contract Documents to be within the scope of the Work. Contractor shall be responsible for a Hazardous Environmental Condition created with any materials brought to the Site by Contractor, Subcontractors, Suppliers, or anyone else for whom Contractor is responsible.

D. If Contractor encounters a Hazardous Environmental Condition or if Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition, Contractor shall immediately: (i) secure or otherwise isolate such condition; (ii) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by Paragraph 6.16.A); and (iii) notify Owner and Engineer (and promptly thereafter confirm such notice in writing). Owner shall promptly consult with Engineer concerning the necessity for Owner to retain a qualified expert to evaluate such condition or take corrective action, if any.

E. Contractor shall not be required to resume Work in connection with such condition or in any affected area until after Owner has obtained any required permits related thereto and delivered to Contractor written notice: (i) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work; or (ii) specifying any special conditions under which such Work may be resumed safely. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times, or both, as a result of such Work stoppage or such special conditions under which Work is agreed to be resumed by Contractor, either party may make a Claim therefor as provided in Paragraph 10.05.

F. If after receipt of such written notice Contractor does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then Owner may order the portion of the Work that is in the area affected by such condition to be deleted from the Work. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of an adjustment in Contract Price or Contract Times as a result of deleting such portion of the Work, then either party may make a Claim therefor as provided in Paragraph 10.05. Owner may have such deleted portion of the Work performed by Owner's own forces or others in accordance with Article 7.

G. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, Subcontractors, and Engineer, and the officers, directors, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition,

provided that such Hazardous Environmental Condition: (i) was not shown or indicated in the Drawings or Specifications or identified in the Contract Documents to be included within the scope of the Work, and (ii) was not created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 4.06. G shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

H. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 4.06.H shall obligate Contractor to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

I. The provisions of Paragraphs 4.02, 4.03, and 4.04 do not apply to a Hazardous Environmental Condition uncovered or revealed at the Site.

ARTICLE 5 - BONDS AND INSURANCE

5.01 *Performance, Payment, and Other Bonds*

A. Contractor shall furnish performance and payment bonds, each in an amount at least equal to the Contract Price as security for the faithful performance and payment of all of Contractor's obligations under the Contract Documents. These bonds shall remain in effect until one year after the date when final payment becomes due or until completion of the correction period specified in Paragraph 13.07, whichever is later, except as provided otherwise by Laws or Regulations or by the Contract Documents. Contractor shall also furnish such other bonds as are required by the Contract Documents.

B. All bonds shall be in the form prescribed by the Contract Documents except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Financial

Management Service, Surety Bond Branch, U.S. Department of the Treasury. All bonds signed by an agent must be accompanied by a certified copy of the agent's authority to act.

C. If the surety on any bond furnished by Contractor is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is located or it ceases to meet the requirements of Paragraph 5.01.B, Contractor shall promptly notify Owner and Engineer and shall, within 20 days after the event giving rise to such notification, provide another bond and surety, both of which shall comply with the requirements of Paragraphs 5.01.B and 5.02.

5.02 *Licensed Sureties and Insurers*

A. All bonds and insurance required by the Contract Documents to be purchased and maintained by Owner or Contractor shall be obtained from surety or insurance companies that are duly licensed or authorized in the jurisdiction in which the Project is located to issue bonds or insurance policies for the limits and coverages so required. Such surety and insurance companies shall also meet such additional requirements and qualifications as may be provided in the Supplementary Conditions.

5.03 *Certificates of Insurance*

A. Contractor shall deliver to Owner, with copies to each additional insured identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance requested by Owner or any other additional insured) which Contractor is required to purchase and maintain.

B. Owner shall deliver to Contractor, with copies to each additional insured identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance requested by Contractor or any other additional insured) which Owner is required to purchase and maintain.

5.04 *Contractor's Liability Insurance*

A. Contractor shall purchase and maintain such liability and other insurance as is appropriate for the Work being performed and as will provide protection from claims set forth below which may arise out of or result from Contractor's performance of the Work and Contractor's other obligations under the Contract Documents, whether it is to be performed by Contractor, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the

Work, or by anyone for whose acts any of them may be liable:

1. claims under workers' compensation, disability benefits, and other similar employee benefit acts;

2. claims for damages because of bodily injury, occupational sickness or disease, or death of Contractor's employees;

3. claims for damages because of bodily injury, sickness or disease, or death of any person other than Contractor's employees;

4. claims for damages insured by reasonably available personal injury liability coverage which are sustained:

a. by any person as a result of an offense directly or indirectly related to the employment of such person by Contractor, or

b. by any other person for any other reason;

5. claims for damages, other than to the Work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom; and

6. claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle.

B. The policies of insurance required by this Paragraph 5.04 shall:

1. with respect to insurance required by Paragraphs 5.04.A.3 through 5.04.A.6 inclusive, include as additional insured (subject to any customary exclusion regarding professional liability) Owner and Engineer, and any other individuals or entities identified in the Supplementary Conditions, all of whom shall be listed as additional insureds, and include coverage for the respective officers, directors, partners, employees, agents, consultants and subcontractors of each and any of all such additional insureds, and the insurance afforded to these additional insureds shall provide primary coverage for all claims covered thereby;

2. include at least the specific coverages and be written for not less than the limits of liability provided in the Supplementary Conditions or required by Laws or Regulations, whichever is greater;

3. include completed operations insurance;
4. include contractual liability insurance covering Contractor's indemnity obligations under Paragraphs 6.11 and 6.20;
5. contain a provision or endorsement that the coverage afforded will not be canceled, materially changed or renewal refused until at least 30 days prior written notice has been given to Owner and Contractor and to each other additional insured identified in the Supplementary Conditions to whom a certificate of insurance has been issued (and the certificates of insurance furnished by the Contractor pursuant to Paragraph 5.03 will so provide);
6. remain in effect at least until final payment and at all times thereafter when Contractor may be correcting, removing, or replacing defective Work in accordance with Paragraph 13.07; and
7. with respect to completed operations insurance, and any insurance coverage written on a claims-made basis, remain in effect for at least two years after final payment.

a. Contractor shall furnish Owner and each other additional insured identified in the Supplementary Conditions, to whom a certificate of insurance has been issued, evidence satisfactory to Owner and any such additional insured of continuation of such insurance at final payment and one year thereafter.

5.05 *Owner's Liability Insurance*

A. In addition to the insurance required to be provided by Contractor under Paragraph 5.04, Owner, at Owner's option, may purchase and maintain at Owner's expense Owner's own liability insurance as will protect Owner against claims which may arise from operations under the Contract Documents.

5.06 *Property Insurance*

A. Unless otherwise provided in the Supplementary Conditions, Owner shall purchase and maintain property insurance upon the Work at the Site in the amount of the full replacement cost thereof (subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws and Regulations). This insurance shall:

1. include the interests of Owner, Contractor, Subcontractors, and Engineer, and any other individuals or entities identified in the

Supplementary Conditions, and the officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them, each of whom is deemed to have an insurable interest and shall be listed as an insured or additional insured;

2. be written on a Builder's Risk "all-risk" or open peril or special causes of loss policy form that shall at least include insurance for physical loss or damage to the Work, temporary buildings, false work, and materials and equipment in transit, and shall insure against at least the following perils or causes of loss: fire, lightning, extended coverage, theft, vandalism and malicious mischief, earthquake, collapse, debris removal, demolition occasioned by enforcement of Laws and Regulations, water damage, (other than caused by flood) and such other perils or causes of loss as may be specifically required by the Supplementary Conditions;

3. include expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers and architects);

4. cover materials and equipment stored at the Site or at another location that was agreed to in writing by Owner prior to being incorporated in the Work, provided that such materials and equipment have been included in an Application for Payment recommended by Engineer;

5. allow for partial utilization of the Work by Owner;

6. include testing and startup; and

7. be maintained in effect until final payment is made unless otherwise agreed to in writing by Owner, Contractor, and Engineer with 30 days written notice to each other additional insured to whom a certificate of insurance has been issued.

B. Owner shall purchase and maintain such boiler and machinery insurance or additional property insurance as may be required by the Supplementary Conditions or Laws and Regulations which will include the interests of Owner, Contractor, Subcontractors, and Engineer, and any other individuals or entities identified in the Supplementary Conditions, and the officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them, each of whom is deemed to have an insurable interest and shall be listed as an insured or additional insured.

C. All the policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained in accordance with

Paragraph 5.06 will contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or renewal refused until at least 30 days prior written notice has been given to Owner and Contractor and to each other additional insured to whom a certificate of insurance has been issued and will contain waiver provisions in accordance with Paragraph 5.07.

D. Owner shall not be responsible for purchasing and maintaining any property insurance specified in this Paragraph 5.06 to protect the interests of Contractor, Subcontractors, or others in the Work to the extent of any deductible amounts that are identified in the Supplementary Conditions. The risk of loss within such identified deductible amount will be borne by Contractor, Subcontractors, or others suffering any such loss, and if any of them wishes property insurance coverage within the limits of such amounts, each may purchase and maintain it at the purchaser's own expense.

E. If Contractor requests in writing that other special insurance be included in the property insurance policies provided under Paragraph 5.06, Owner shall, if possible, include such insurance, and the cost thereof will be charged to Contractor by appropriate Change Order. Prior to commencement of the Work at the Site, Owner shall in writing advise Contractor whether or not such other insurance has been procured by Owner.

5.07 *Waiver of Rights*

A. Owner and Contractor intend that all policies purchased in accordance with Paragraph 5.06 will protect Owner, Contractor, Subcontractors, and Engineer, and all other individuals or entities identified in the Supplementary Conditions to be listed as insureds or additional insureds (and the officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them) in such policies and will provide primary coverage for all losses and damages caused by the perils or causes of loss covered thereby. All such policies shall contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any of the insureds or additional insureds thereunder. Owner and Contractor waive all rights against each other and their respective officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them for all losses and damages caused by, arising out of or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work; and, in addition, waive all such rights against Subcontractors, and Engineer, and all other individuals or entities

identified in the Supplementary Conditions to be listed as insured or additional insured (and the officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them) under such policies for losses and damages so caused. None of the above waivers shall extend to the rights that any party making such waiver may have to the proceeds of insurance held by Owner as trustee or otherwise payable under any policy so issued.

B. Owner waives all rights against Contractor, Subcontractors, and Engineer, and the officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them for:

1. loss due to business interruption, loss of use, or other consequential loss extending beyond direct physical loss or damage to Owner's property or the Work caused by, arising out of, or resulting from fire or other perils whether or not insured by Owner; and

2. loss or damage to the completed Project or part thereof caused by, arising out of, or resulting from fire or other insured peril or cause of loss covered by any property insurance maintained on the completed Project or part thereof by Owner during partial utilization pursuant to Paragraph 14.05, after Substantial Completion pursuant to Paragraph 14.04, or after final payment pursuant to Paragraph 14.07.

C. Any insurance policy maintained by Owner covering any loss, damage or consequential loss referred to in Paragraph 5.07.B shall contain provisions to the effect that in the event of payment of any such loss, damage, or consequential loss, the insurers will have no rights of recovery against Contractor, Subcontractors, or Engineer, and the officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them.

5.08 *Receipt and Application of Insurance Proceeds*

A. Any insured loss under the policies of insurance required by Paragraph 5.06 will be adjusted with Owner and made payable to Owner as fiduciary for the insureds, as their interests may appear, subject to the requirements of any applicable mortgage clause and of Paragraph 5.08.B. Owner shall deposit in a separate account any money so received and shall distribute it in accordance with such agreement as the parties in interest may reach. If no other special agreement is reached, the damaged Work shall be repaired or re-

placed, the moneys so received applied on account thereof, and the Work and the cost thereof covered by an appropriate Change Order .

B. Owner as fiduciary shall have power to adjust and settle any loss with the insurers unless one of the parties in interest shall object in writing within 15 days after the occurrence of loss to Owner's exercise of this power. If such objection be made, Owner as fiduciary shall make settlement with the insurers in accordance with such agreement as the parties in interest may reach. If no such agreement among the parties in interest is reached, Owner as fiduciary shall adjust and settle the loss with the insurers and, if required in writing by any party in interest, Owner as fiduciary shall give bond for the proper performance of such duties.

5.09 *Acceptance of Bonds and Insurance; Option to Replace*

A. If either Owner or Contractor has any objection to the coverage afforded by or other provisions of the bonds or insurance required to be purchased and maintained by the other party in accordance with Article 5 on the basis of non-conformance with the Contract Documents, the objecting party shall so notify the other party in writing within 10 days after receipt of the certificates (or other evidence requested) required by Paragraph 2.01.B. Owner and Contractor shall each provide to the other such additional information in respect of insurance provided as the other may reasonably request. If either party does not purchase or maintain all of the bonds and insurance required of such party by the Contract Documents, such party shall notify the other party in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage. Without prejudice to any other right or remedy, the other party may elect to obtain equivalent bonds or insurance to protect such other party's interests at the expense of the party who was required to provide such coverage, and a Change Order shall be issued to adjust the Contract Price accordingly.

5.10 *Partial Utilization, Acknowledgment of Property Insurer*

A. If Owner finds it necessary to occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work as provided in Paragraph 14.05, no such use or occupancy shall commence before the insurers providing the property insurance pursuant to Paragraph 5.06 have acknowledged notice thereof and in writing effected any changes in coverage necessitated thereby. The insurers providing the property insurance shall

consent by endorsement on the policy or policies, but the property insurance shall not be canceled or permitted to lapse on account of any such partial use or occupancy.

ARTICLE 6 - CONTRACTOR'S RESPONSIBILITIES

6.01 *Supervision and Superintendence*

A. Contractor shall supervise, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction. Contractor shall not be responsible for the negligence of Owner or Engineer in the design or specification of a specific means, method, technique, sequence, or procedure of construction which is shown or indicated in and expressly required by the Contract Documents.

B. At all times during the progress of the Work, Contractor shall assign a competent resident superintendent who shall not be replaced without written notice to Owner and Engineer except under extraordinary circumstances. The superintendent will be Contractor's representative at the Site and shall have authority to act on behalf of Contractor. All communications given to or received from the superintendent shall be binding on Contractor.

6.02 *Labor; Working Hours*

A. Contractor shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. Contractor shall at all times maintain good discipline and order at the Site.

B. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site shall be performed during regular working hours. Contractor will not permit the performance of Work on a Saturday, Sunday, or any legal holiday without Owner's written consent (which will not be unreasonably withheld) given after prior written notice to Engineer.

6.03 *Services, Materials, and Equipment*

A. Unless otherwise specified in the Contract Documents, Contractor shall provide and assume full responsibility for all services, materials,

equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start-up, and completion of the Work.

B. All materials and equipment incorporated into the Work shall be as specified or, if not specified, shall be of good quality and new, except as otherwise provided in the Contract Documents. All special warranties and guarantees required by the Specifications shall expressly run to the benefit of Owner. If required by Engineer, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment.

C. All materials and equipment shall be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise may be provided in the Contract Documents.

6.04 *Progress Schedule*

A. Contractor shall adhere to the Progress Schedule established in accordance with Paragraph 2.07 as it may be adjusted from time to time as provided below.

1. Contractor shall submit to Engineer for acceptance (to the extent indicated in Paragraph 2.07) proposed adjustments in the Progress Schedule that will not result in changing the Contract Times. Such adjustments will comply with any provisions of the General Requirements applicable thereto.

2. Proposed adjustments in the Progress Schedule that will change the Contract Times shall be submitted in accordance with the requirements of Article 12. Adjustments in Contract Times may only be made by a Change Order.

6.05 *Substitutes and "Or-Equals"*

A. Whenever an item of material or equipment is specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier, the specification or description is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or "or-equal" item or no substitution is permitted, other items of material or equipment or material or equipment of

other Suppliers may be submitted to Engineer for review under the circumstances described below.

1. "*Or-Equal*" Items: If in Engineer's sole discretion an item of material or equipment proposed by Contractor is functionally equal to that named and sufficiently similar so that no change in related Work will be required, it may be considered by Engineer as an "or-equal" item, in which case review and approval of the proposed item may, in Engineer's sole discretion, be accomplished without compliance with some or all of the requirements for approval of proposed substitute items. For the purposes of this Paragraph 6.05.A.1, a proposed item of material or equipment will be considered functionally equal to an item so named if:

a. in the exercise of reasonable judgment Engineer determines that:

1) it is at least equal in materials of construction, quality, durability, appearance, strength, and design characteristics;

2) it will reliably perform at least equally well the function and achieve the results imposed by the design concept of the completed Project as a functioning whole,

3) it has a proven record of performance and availability of responsive service; and

b. Contractor certifies that, if approved and incorporated into the Work:

1) there will be no increase in cost to the Owner or increase in Contract Times, and

2) it will conform substantially to the detailed requirements of the item named in the Contract Documents.

2. Substitute Items

a. If in Engineer's sole discretion an item of material or equipment proposed by Contractor does not qualify as an "or-equal" item under Paragraph 6.05.A.1, it will be considered a proposed substitute item.

b. Contractor shall submit sufficient information as provided below to allow Engineer to determine that the item of material or equipment proposed is essentially equivalent to that named and an acceptable substitute therefor. Requests for review of proposed substitute items of material or

equipment will not be accepted by Engineer from anyone other than Contractor.

c. The requirements for review by Engineer will be as set forth in Paragraph 6.05.A.2.d, as supplemented in the General Requirements and as Engineer may decide is appropriate under the circumstances.

d. Contractor shall make written application to Engineer for review of a proposed substitute item of material or equipment that Contractor seeks to furnish or use. The application:

1) shall certify that the proposed substitute item will:

a) perform adequately the functions and achieve the results called for by the general design,

b) be similar in substance to that specified, and

c) be suited to the same use as that specified;

2) will state:

a) the extent, if any, to which the use of the proposed substitute item will prejudice Contractor's achievement of Substantial Completion on time;

b) whether or not use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with Owner for other work on the Project) to adapt the design to the proposed substitute item; and

c) whether or not incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty;

3) will identify:

a) all variations of the proposed substitute item from that specified, and

b) available engineering, sales, maintenance, repair, and replacement services;

4) and shall contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including costs of redesign and claims of other contractors affected by any resulting change,

B. Substitute Construction Methods or Procedures: If a specific means, method, technique, sequence, or procedure of construction is expressly required by the Contract Documents, Contractor may furnish or utilize a substitute means, method, technique, sequence, or procedure of construction approved by Engineer. Contractor shall submit sufficient information to allow Engineer, in Engineer's sole discretion, to determine that the substitute proposed is equivalent to that expressly called for by the Contract Documents. The requirements for review by Engineer will be similar to those provided in Paragraph 6.05.A.2.

C. Engineer's Evaluation: Engineer will be allowed a reasonable time within which to evaluate each proposal or submittal made pursuant to Paragraphs 6.05.A and 6.05.B. Engineer may require Contractor to furnish additional data about the proposed substitute item. Engineer will be the sole judge of acceptability. No "or equal" or substitute will be ordered, installed or utilized until Engineer's review is complete, which will be evidenced by either a Change Order for a substitute or an approved Shop Drawing for an "or equal." Engineer will advise Contractor in writing of any negative determination.

D. Special Guarantee: Owner may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute.

E. Engineer's Cost Reimbursement: Engineer will record Engineer's costs in evaluating a substitute proposed or submitted by Contractor pursuant to Paragraphs 6.05.A.2 and 6.05.B. Whether or not Engineer approves a substitute item so proposed or submitted by Contractor, Contractor shall reimburse Owner for the charges of Engineer for evaluating each such proposed substitute. Contractor shall also reimburse Owner for the charges of Engineer for making changes in the Contract Documents (or in the provisions of any other direct contract with Owner) resulting from the acceptance of each proposed substitute.

F. *Contractor's Expense*: Contractor shall provide all data in support of any proposed substitute or "or-equal" at Contractor's expense.

6.06 *Concerning Subcontractors, Suppliers, and Others*

A. Contractor shall not employ any Subcontractor, Supplier, or other individual or entity (including those acceptable to Owner as indicated in Paragraph 6.06.B), whether initially or as a replacement, against whom Owner may have reasonable objection. Contractor shall not be required to employ any Subcontractor, Supplier, or other individual or entity to furnish or perform any of the Work against whom Contractor has reasonable objection.

B. If the Supplementary Conditions require the identity of certain Subcontractors, Suppliers, or other individuals or entities to be submitted to Owner in advance for acceptance by Owner by a specified date prior to the Effective Date of the Agreement, and if Contractor has submitted a list thereof in accordance with the Supplementary Conditions, Owner's acceptance (either in writing or by failing to make written objection thereto by the date indicated for acceptance or objection in the Bidding Documents or the Contract Documents) of any such Subcontractor, Supplier, or other individual or entity so identified may be revoked on the basis of reasonable objection after due investigation. Contractor shall submit an acceptable replacement for the rejected Subcontractor, Supplier, or other individual or entity, and the Contract Price will be adjusted by the difference in the cost occasioned by such replacement, and an appropriate Change Order will be issued. No acceptance by Owner of any such Subcontractor, Supplier, or other individual or entity, whether initially or as a replacement, shall constitute a waiver of any right of Owner or Engineer to reject defective Work.

C. Contractor shall be fully responsible to Owner and Engineer for all acts and omissions of the Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work just as Contractor is responsible for Contractor's own acts and omissions. Nothing in the Contract Documents:

1. shall create for the benefit of any such Subcontractor, Supplier, or other individual or entity any contractual relationship between Owner or Engineer and any such Subcontractor, Supplier or other individual or entity, nor

2. shall anything in the Contract Documents create any obligation on the part of Owner or

Engineer to pay or to see to the payment of any moneys due any such Subcontractor, Supplier, or other individual or entity except as may otherwise be required by Laws and Regulations.

D. Contractor shall be solely responsible for scheduling and coordinating the Work of Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work under a direct or indirect contract with Contractor.

E. Contractor shall require all Subcontractors, Suppliers, and such other individuals or entities performing or furnishing any of the Work to communicate with Engineer through Contractor.

F. The divisions and sections of the Specifications and the identifications of any Drawings shall not control Contractor in dividing the Work among Subcontractors or Suppliers or delineating the Work to be performed by any specific trade.

G. All Work performed for Contractor by a Subcontractor or Supplier will be pursuant to an appropriate agreement between Contractor and the Subcontractor or Supplier which specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of Owner and Engineer. Whenever any such agreement is with a Subcontractor or Supplier who is listed as an additional insured on the property insurance provided in Paragraph 5.06, the agreement between the Contractor and the Subcontractor or Supplier will contain provisions whereby the Subcontractor or Supplier waives all rights against Owner, Contractor, and Engineer,, and all other individuals or entities identified in the Supplementary Conditions to be listed as insureds or additional insureds (and the officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them) for all losses and damages caused by, arising out of, relating to, or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work. If the insurers on any such policies require separate waiver forms to be signed by any Subcontractor or Supplier, Contractor will obtain the same.

6.07 *Patent Fees and Royalties*

A. Contractor shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product, or device is specified in

the Contract Documents for use in the performance of the Work and if to the actual knowledge of Owner or Engineer its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by Owner in the Contract Documents.

B. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device not specified in the Contract Documents.

6.08 *Permits*

A. Unless otherwise provided in the Supplementary Conditions, Contractor shall obtain and pay for all construction permits and licenses. Owner shall assist Contractor, when necessary, in obtaining such permits and licenses. Contractor shall pay all governmental charges and inspection fees necessary for the prosecution of the Work which are applicable at the time of opening of Bids, or, if there are no Bids, on the Effective Date of the Agreement. Owner shall pay all charges of utility owners for connections for providing permanent service to the Work.

6.09 *Laws and Regulations*

A. Contractor shall give all notices required by and shall comply with all Laws and Regulations applicable to the performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, neither Owner nor Engineer shall be responsible for monitoring Contractor's compliance with any Laws or Regulations.

B. If Contractor performs any Work knowing or having reason to know that it is contrary to Laws or Regulations, Contractor shall bear all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work. However, it shall not be Contractor's primary responsibility to make certain that the Specifications and Drawings are in accordance with Laws and Regulations, but

this shall not relieve Contractor of Contractor's obligations under Paragraph 3.03.

C. Changes in Laws or Regulations not known at the time of opening of Bids (or, on the Effective Date of the Agreement if there were no Bids) having an effect on the cost or time of performance of the Work shall be the subject of an adjustment in Contract Price or Contract Times. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefor as provided in Paragraph 10.05.

6.10 *Taxes*

A. Contractor shall pay all sales, consumer, use, and other similar taxes required to be paid by Contractor in accordance with the Laws and Regulations of the place of the Project which are applicable during the performance of the Work.

6.11 *Use of Site and Other Areas*

A. Limitation on Use of Site and Other Areas

1. Contractor shall confine construction equipment, the storage of materials and equipment, and the operations of workers to the Site and other areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and other areas with construction equipment or other materials or equipment. Contractor shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof, or of any adjacent land or areas resulting from the performance of the Work.

2. Should any claim be made by any such owner or occupant because of the performance of the Work, Contractor shall promptly settle with such other party by negotiation or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law.

3. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any claim or action, legal or equitable, brought by any such owner or occupant against Owner, Engineer, or any other party indemnified hereunder

to the extent caused by or based upon Contractor's performance of the Work.

B. Removal of Debris During Performance of the Work: During the progress of the Work Contractor shall keep the Site and other areas free from accumulations of waste materials, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris shall conform to applicable Laws and Regulations.

C. Cleaning: Prior to Substantial Completion of the Work Contractor shall clean the Site and the Work and make it ready for utilization by Owner. At the completion of the Work Contractor shall remove from the Site all tools, appliances, construction equipment and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.

D. Loading Structures: Contractor shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Contractor subject any part of the Work or adjacent property to stresses or pressures that will endanger it.

6.12 *Record Documents*

A. Contractor shall maintain in a safe place at the Site one record copy of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field Orders, and written interpretations and clarifications in good order and annotated to show changes made during construction. These record documents together with all approved Samples and a counterpart of all approved Shop Drawings will be available to Engineer for reference. Upon completion of the Work, these record documents, Samples, and Shop Drawings will be delivered to Engineer for Owner.

6.13 *Safety and Protection*

A. Contractor shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:

1. all persons on the Site or who may be affected by the Work;

2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and

3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.

B. Contractor shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection. Contractor shall notify owners of adjacent property and of Underground Facilities and other utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property.

C. All damage, injury, or loss to any property referred to in Paragraph 6.13.A.2 or 6.13.A.3 caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by Contractor (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of Owner or Engineer or , or anyone employed by any of them, or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of Contractor or any Subcontractor, Supplier, or other individual or entity directly or indirectly employed by any of them).

D. Contractor's duties and responsibilities for safety and for protection of the Work shall continue until such time as all the Work is completed and Engineer has issued a notice to Owner and Contractor in accordance with Paragraph 14.07.B that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).

6.14 *Safety Representative*

A. Contractor shall designate a qualified and experienced safety representative at the Site whose duties and responsibilities shall be the prevention of accidents and the maintaining and supervising of safety precautions and programs.

6.15 Hazard Communication Programs

A. Contractor shall be responsible for coordinating any exchange of material safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the Site in accordance with Laws or Regulations.

6.16 Emergencies

A. In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, Contractor is obligated to act to prevent threatened damage, injury, or loss. Contractor shall give Engineer prompt written notice if Contractor believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby or are required as a result thereof. If Engineer determines that a change in the Contract Documents is required because of the action taken by Contractor in response to such an emergency, a Work Change Directive or Change Order will be issued.

6.17 Shop Drawings and Samples

A. Contractor shall submit Shop Drawings and Samples to Engineer for review and approval in accordance with the acceptable Schedule of Submittals (as required by Paragraph 2.07). Each submittal will be identified as Engineer may require.

1. Shop Drawings

a. Submit number of copies specified in the General Requirements.

b. Data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show Engineer the services, materials, and equipment Contractor proposes to provide and to enable Engineer to review the information for the limited purposes required by Paragraph 6.17.D.

2. *Samples*: Contractor shall also submit Samples to Engineer for review and approval in accordance with the acceptable schedule of Shop Drawings and Sample submittals.

a. Submit number of Samples specified in the Specifications.

b. Clearly identify each Sample as to material, Supplier, pertinent data such as catalog numbers, the use for which intended

and other data as Engineer may require to enable Engineer to review the submittal for the limited purposes required by Paragraph 6.17.D.

B. Where a Shop Drawing or Sample is required by the Contract Documents or the Schedule of Submittals, any related Work performed prior to Engineer's review and approval of the pertinent submittal will be at the sole expense and responsibility of Contractor.

C. Submittal Procedures

1. Before submitting each Shop Drawing or Sample, Contractor shall have determined and verified:

a. all field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect thereto;

b. the suitability of all materials with respect to intended use, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work;

c. all information relative to Contractor's responsibilities for means, methods, techniques, sequences, and procedures of construction, and safety precautions and programs incident thereto; and

d. shall also have reviewed and coordinated each Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents.

2. Each submittal shall bear a stamp or specific written certification that Contractor has satisfied Contractor's obligations under the Contract Documents with respect to Contractor's review and approval of that submittal.

3. With each submittal, Contractor shall give Engineer specific written notice of any variations, that the Shop Drawing or Sample may have from the requirements of the Contract Documents. This notice shall be both a written communication separate from the Shop Drawing's or Sample Submittal; and, in addition, by a specific notation made on each Shop Drawing or Sample submitted to Engineer for review and approval of each such variation.

D. Engineer's Review

1. Engineer will provide timely review of Shop Drawings and Samples in accordance with the Schedule of Submittals acceptable to Engineer. Engineer's review and approval will be only to determine if the items covered by the submittals will, after installation or incorporation in the Work, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.

2. Engineer's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction (except where a particular means, method, technique, sequence, or procedure of construction is specifically and expressly called for by the Contract Documents) or to safety precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.

3. Engineer's review and approval shall not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless Contractor has complied with the requirements of Paragraph 6.17.C.3 and Engineer has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample. Engineer's review and approval shall not relieve Contractor from responsibility for complying with the requirements of Paragraph 6.17.C.1.

E. Resubmittal Procedures

1. Contractor shall make corrections required by Engineer and shall return the required number of corrected copies of Shop Drawings and submit, as required, new Samples for review and approval. Contractor shall direct specific attention in writing to revisions other than the corrections called for by Engineer on previous submittals.

6.18 Continuing the Work

A. Contractor shall carry on the Work and adhere to the Progress Schedule during all disputes or disagreements with Owner. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as permitted by Paragraph 15.04 or as Owner and Contractor may otherwise agree in writing.

6.19 Contractor's General Warranty and Guarantee

A. Contractor warrants and guarantees to Owner that all Work will be in accordance with the Contract Documents and will not be defective. Engineer and its Related Entities shall be entitled to rely on representation of Contractor's warranty and guarantee.

B. Contractor's warranty and guarantee hereunder excludes defects or damage caused by:

1. abuse, modification, or improper maintenance or operation by persons other than Contractor, Subcontractors, Suppliers, or any other individual or entity for whom Contractor is responsible; or

2. normal wear and tear under normal usage.

C. Contractor's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents or a release of Contractor's obligation to perform the Work in accordance with the Contract Documents:

1. observations by Engineer;

2. recommendation by Engineer or payment by Owner of any progress or final payment;

3. the issuance of a certificate of Substantial Completion by Engineer or any payment related thereto by Owner;

4. use or occupancy of the Work or any part thereof by Owner;

5. any review and approval of a Shop Drawing or Sample submittal or the issuance of a notice of acceptability by Engineer;

6. any inspection, test, or approval by others; or

7. any correction of defective Work by Owner.

6.20 Indemnification

A. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them from

and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the performance of the Work, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom but only to the extent caused by any negligent act or omission of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work or anyone for whose acts any of them may be liable .

B. In any and all claims against Owner or Engineer or any of their respective consultants, agents, officers, directors, partners, or employees by any employee (or the survivor or personal representative of such employee) of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 6.20.A shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Contractor or any such Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.

C. The indemnification obligations of Contractor under Paragraph 6.20.A shall not extend to the liability of Engineer and Engineer's officers, directors, partners, employees, agents, consultants and subcontractors arising out of:

1. the preparation or approval of, or the failure to prepare or approve, maps, Drawings, opinions, reports, surveys, Change Orders, designs, or Specifications; or

2. giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage.

6.21 *Delegation of Professional Design Services*

A. Contractor will not be required to provide professional design services unless such services are specifically required by the Contract Documents for a portion of the Work or unless such services are required to carry out Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. Contractor shall not be

required to provide professional services in violation of applicable law.

B. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of Contractor by the Contract Documents, Owner and Engineer will specify all performance and design criteria that such services must satisfy. Contractor shall cause such services or certifications to be provided by a properly licensed professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to Engineer.

C. Owner and Engineer shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals, provided Owner and Engineer have specified to Contractor all performance and design criteria that such services must satisfy.

D. Pursuant to this Paragraph 6.21, Engineer's review and approval of design calculations and design drawings will be only for the limited purpose of checking for conformance with performance and design criteria given and the design concept expressed in the Contract Documents. Engineer's review and approval of Shop Drawings and other submittals (except design calculations and design drawings) will be only for the purpose stated in Paragraph 6.17.D.1.

E. Contractor shall not be responsible for the adequacy of the performance or design criteria required by the Contract Documents.

ARTICLE 7 - OTHER WORK AT THE SITE

7.01 *Related Work at Site*

A. Owner may perform other work related to the Project at the Site with Owner's employees, or via other direct contracts therefor, or have other work performed by utility owners. If such other work is not noted in the Contract Documents, then:

1. written notice thereof will be given to Contractor prior to starting any such other work; and

2. if Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times that should be allowed as a result of such other work, a Claim may be made therefor as provided in Paragraph 10.05.

B. Contractor shall afford each other contractor who is a party to such a direct contract, each utility owner and Owner, if Owner is performing other work with Owner's employees, proper and safe access to the Site, a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work, and shall properly coordinate the Work with theirs. Contractor shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating, or otherwise altering their work and will only cut or alter their work with the written consent of Engineer and the others whose work will be affected. The duties and responsibilities of Contractor under this Paragraph are for the benefit of such utility owners and other contractors to the extent that there are comparable provisions for the benefit of Contractor in said direct contracts between Owner and such utility owners and other contractors.

C. If the proper execution or results of any part of Contractor's Work depends upon work performed by others under this Article 7, Contractor shall inspect such other work and promptly report to Engineer in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of Contractor's Work. Contractor's failure to so report will constitute an acceptance of such other work as fit and proper for integration with Contractor's Work except for latent defects and deficiencies in such other work.

7.02 *Coordination*

A. If Owner intends to contract with others for the performance of other work on the Project at the Site, the following will be set forth in Supplementary Conditions:

1. the individual or entity who will have authority and responsibility for coordination of the activities among the various contractors will be identified;

2. the specific matters to be covered by such authority and responsibility will be itemized; and

3. the extent of such authority and responsibilities will be provided.

B. Unless otherwise provided in the Supplementary Conditions, Owner shall have sole authority and responsibility for such coordination.

7.03 *Legal Relationships*

A. Paragraphs 7.01.A and 7.02 are not applicable for utilities not under the control of Owner.

B. Each other direct contract of Owner under Paragraph 7.01.A shall provide that the other contractor is liable to Owner and Contractor for the reasonable direct delay and disruption costs incurred by Contractor as a result of the other contractor's actions or inactions.

C. Contractor shall be liable to Owner and any other contractor for the reasonable direct delay and disruption costs incurred by such other contractor as a result of Contractor's action or inactions.

ARTICLE 8 - OWNER'S RESPONSIBILITIES

8.01 *Communications to Contractor*

A. Except as otherwise provided in these General Conditions, Owner shall issue all communications to Contractor through Engineer.

8.02 *Replacement of Engineer*

A. In case of termination of the employment of Engineer, Owner shall appoint an engineer to whom Contractor makes no reasonable objection, whose status under the Contract Documents shall be that of the former Engineer.

8.03 *Furnish Data*

A. Owner shall promptly furnish the data required of Owner under the Contract Documents.

8.04 *Pay When Due*

A. Owner shall make payments to Contractor when they are due as provided in Paragraphs 14.02.C and 14.07.C.

8.05 *Lands and Easements; Reports and Tests*

A. Owner's duties in respect of providing lands and easements and providing engineering surveys to establish reference points are set forth in

Paragraphs 4.01 and 4.05. Paragraph 4.02 refers to Owner's identifying and making available to Contractor copies of reports of explorations and tests of subsurface conditions and drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site that have been utilized by Engineer in preparing the Contract Documents.

8.06 *Insurance*

A. Owner's responsibilities, if any, in respect to purchasing and maintaining liability and property insurance are set forth in Article 5.

8.07 *Change Orders*

A. Owner is obligated to execute Change Orders as indicated in Paragraph 10.03.

8.08 *Inspections, Tests, and Approvals*

A. Owner's responsibility in respect to certain inspections, tests, and approvals is set forth in Paragraph 13.03.B.

8.09 *Limitations on Owner's Responsibilities*

A. The Owner shall not supervise, direct, or have control or authority over, nor be responsible for, Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Owner will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.

8.10 *Undisclosed Hazardous Environmental Condition*

A. Owner's responsibility in respect to an undisclosed Hazardous Environmental Condition is set forth in Paragraph 4.06.

8.11 *Evidence of Financial Arrangements*

A. If and to the extent Owner has agreed to furnish Contractor reasonable evidence that financial arrangements have been made to satisfy Owner's obligations under the Contract Documents, Owner's responsibility in respect thereof will be as set forth in the Supplementary Conditions.

ARTICLE 9 - ENGINEER'S STATUS DURING CONSTRUCTION

9.01 *Owner's Representative*

A. Engineer will be Owner's representative during the construction period. The duties and responsibilities and the limitations of authority of Engineer as Owner's representative during construction are set forth in the Contract Documents and will not be changed without written consent of Owner and Engineer.

9.02 *Visits to Site*

A. Engineer will make visits to the Site at intervals appropriate to the various stages of construction as Engineer deems necessary in order to observe as an experienced and qualified design professional the progress that has been made and the quality of the various aspects of Contractor's executed Work. Based on information obtained during such visits and observations, Engineer, for the benefit of Owner, will determine, in general, if the Work is proceeding in accordance with the Contract Documents. Engineer will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work. Engineer's efforts will be directed toward providing for Owner a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of such visits and observations, Engineer will keep Owner informed of the progress of the Work and will endeavor to guard Owner against defective Work.

B. Engineer's visits and observations are subject to all the limitations on Engineer's authority and responsibility set forth in Paragraph 9.09. Particularly, but without limitation, during or as a result of Engineer's visits or observations of Contractor's Work Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work.

9.03 *Project Representative*

A. If Owner and Engineer agree, Engineer will furnish a Resident Project Representative to assist Engineer in providing more extensive observation of the Work. The authority and responsibilities of any such Resident Project Representative and assistants will be as provided in

the Supplementary Conditions, and limitations on the responsibilities thereof will be as provided in Paragraph 9.09. If Owner designates another representative or agent to represent Owner at the Site who is not Engineer's consultant, agent or employee, the responsibilities and authority and limitations thereon of such other individual or entity will be as provided in the Supplementary Conditions.

9.04 *Authorized Variations in Work*

A. Engineer may authorize minor variations in the Work from the requirements of the Contract Documents which do not involve an adjustment in the Contract Price or the Contract Times and are compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. These may be accomplished by a Field Order and will be binding on Owner and also on Contractor, who shall perform the Work involved promptly. If Owner or Contractor believes that a Field Order justifies an adjustment in the Contract Price or Contract Times, or both, and the parties are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefor as provided in Paragraph 10.05.

9.05 *Rejecting Defective Work*

A. Engineer will have authority to reject Work which Engineer believes to be defective, or that Engineer believes will not produce a completed Project that conforms to the Contract Documents or that will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Engineer will also have authority to require special inspection or testing of the Work as provided in Paragraph 13.04, whether or not the Work is fabricated, installed, or completed.

9.06 *Shop Drawings, Change Orders and Payments*

A. In connection with Engineer's authority, and limitations thereof, as to Shop Drawings and Samples, see Paragraph 6.17.

B. In connection with Engineer's authority, and limitations thereof, as to design calculations and design drawings submitted in response to a delegation of professional design services, if any, see Paragraph 6.21.

C. In connection with Engineer's authority as to Change Orders, see Articles 10, 11, and 12.

D. In connection with Engineer's authority as to Applications for Payment, see Article 14.

9.07 *Determinations for Unit Price Work*

A. Engineer will determine the actual quantities and classifications of Unit Price Work performed by Contractor. Engineer will review with Contractor the Engineer's preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise). Engineer's written decision thereon will be final and binding (except as modified by Engineer to reflect changed factual conditions or more accurate data) upon Owner and Contractor, subject to the provisions of Paragraph 10.05.

9.08 *Decisions on Requirements of Contract Documents and Acceptability of Work*

A. Engineer will be the initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the Work thereunder. All matters in question and other matters between Owner and Contractor arising prior to the date final payment is due relating to the acceptability of the Work, and the interpretation of the requirements of the Contract Documents pertaining to the performance of the Work, will be referred initially to Engineer in writing within 30 days of the event giving rise to the question

B. Engineer will, with reasonable promptness, render a written decision on the issue referred. If Owner or Contractor believe that any such decision entitles them to an adjustment in the Contract Price or Contract Times or both, a Claim may be made under Paragraph 10.05. The date of Engineer's decision shall be the date of the event giving rise to the issues referenced for the purposes of Paragraph 10.05.B.

C. Engineer's written decision on the issue referred will be final and binding on Owner and Contractor, subject to the provisions of Paragraph 10.05.

D. When functioning as interpreter and judge under this Paragraph 9.08, Engineer will not show partiality to Owner or Contractor and will not be liable in connection with any interpretation or decision rendered in good faith in such capacity.

9.09 *Limitations on Engineer's Authority and Responsibilities*

A. Neither Engineer's authority or responsibility under this Article 9 or under any other provision of the Contract Documents nor any decision

made by Engineer in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise, or performance of any authority or responsibility by Engineer shall create, impose, or give rise to any duty in contract, tort, or otherwise owed by Engineer to Contractor, any Subcontractor, any Supplier, any other individual or entity, or to any surety for or employee or agent of any of them.

B. Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Engineer will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.

C. Engineer will not be responsible for the acts or omissions of Contractor or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.

D. Engineer's review of the final Application for Payment and accompanying documentation and all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, tests and approvals, and other documentation required to be delivered by Paragraph 14.07.A will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals that the results certified indicate compliance with the Contract Documents.

E. The limitations upon authority and responsibility set forth in this Paragraph 9.09 shall also apply to, the Resident Project Representative, if any, and assistants, if any.

ARTICLE 10 - CHANGES IN THE WORK; CLAIMS

10.01 *Authorized Changes in the Work*

A. Without invalidating the Contract and without notice to any surety, Owner may, at any time or from time to time, order additions, deletions, or revisions in the Work by a Change Order, or a Work Change Directive. Upon receipt of any such document, Contractor shall promptly proceed with the Work involved which will be performed under the applicable conditions of the Contract Documents (except as otherwise specifically provided).

B. If Owner and Contractor are unable to agree on entitlement to, or on the amount or extent, if any, of an adjustment in the Contract Price or Contract Times, or both, that should be allowed as a result of a Work Change Directive, a Claim may be made therefor as provided in Paragraph 10.05.

10.02 *Unauthorized Changes in the Work*

A. Contractor shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any work performed that is not required by the Contract Documents as amended, modified, or supplemented as provided in Paragraph 3.04, except in the case of an emergency as provided in Paragraph 6.16 or in the case of uncovering Work as provided in Paragraph 13.04.B.

10.03 *Execution of Change Orders*

A. Owner and Contractor shall execute appropriate Change Orders recommended by Engineer covering:

1. changes in the Work which are: (i) ordered by Owner pursuant to Paragraph 10.01.A, (ii) required because of acceptance of defective Work under Paragraph 13.08.A or Owner's correction of defective Work under Paragraph 13.09, or (iii) agreed to by the parties;

2. changes in the Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive; and

3. changes in the Contract Price or Contract Times which embody the substance of any written decision rendered by Engineer pursuant to Paragraph 10.05; provided that, in lieu of executing any such Change Order, an appeal may be taken from any such decision in accordance with the provisions of the Contract Documents and applicable Laws and Regulations, but during any such appeal, Contractor shall carry on the Work and adhere to the Progress Schedule as provided in Paragraph 6.18.A.

10.04 *Notification to Surety*

A. If notice of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Times) is required by the provisions of any bond to be given to a surety, the giving of any such notice will be Contractor's responsibility. The amount of each applicable bond

will be adjusted to reflect the effect of any such change.

10.05 Claims

A. *Engineer's Decision Required:* All Claims, except those waived pursuant to Paragraph 14.09, shall be referred to the Engineer for decision. A decision by Engineer shall be required as a condition precedent to any exercise by Owner or Contractor of any rights or remedies either may otherwise have under the Contract Documents or by Laws and Regulations in respect of such Claims.

B. *Notice:* Written notice stating the general nature of each Claim, shall be delivered by the claimant to Engineer and the other party to the Contract promptly (but in no event later than 30 days) after the start of the event giving rise thereto. The responsibility to substantiate a Claim shall rest with the party making the Claim. Notice of the amount or extent of the Claim, with supporting data shall be delivered to the Engineer and the other party to the Contract within 60 days after the start of such event (unless Engineer allows additional time for claimant to submit additional or more accurate data in support of such Claim). A Claim for an adjustment in Contract Price shall be prepared in accordance with the provisions of Paragraph 12.01.B. A Claim for an adjustment in Contract Time shall be prepared in accordance with the provisions of Paragraph 12.02.B. Each Claim shall be accompanied by claimant's written statement that the adjustment claimed is the entire adjustment to which the claimant believes it is entitled as a result of said event. The opposing party shall submit any response to Engineer and the claimant within 30 days after receipt of the claimant's last submittal (unless Engineer allows additional time).

C. *Engineer's Action:* Engineer will review each Claim and, within 30 days after receipt of the last submittal of the claimant or the last submittal of the opposing party, if any, take one of the following actions in writing:

1. deny the Claim in whole or in part,
2. approve the Claim, or

3. notify the parties that the Engineer is unable to resolve the Claim if, in the Engineer's sole discretion, it would be inappropriate for the Engineer to do so. For purposes of further resolution of the Claim, such notice shall be deemed a denial.

D. In the event that Engineer does not take action on a Claim within said 30 days, the Claim shall be deemed denied.

E. Engineer's written action under Paragraph 10.05.C or denial pursuant to Paragraphs 10.05.C.3 or 10.05.D will be final and binding upon Owner and Contractor, unless Owner or Contractor invoke the dispute resolution procedure set forth in Article 16 within 30 days of such action or denial.

F. No Claim for an adjustment in Contract Price or Contract Times will be valid if not submitted in accordance with this Paragraph 10.05.

ARTICLE 11 - COST OF THE WORK; ALLOWANCES; UNIT PRICE WORK

11.01 Cost of the Work

A. *Costs Included:* The term Cost of the Work means the sum of all costs, except those excluded in Paragraph 11.01.B, necessarily incurred and paid by Contractor in the proper performance of the Work. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, the costs to be reimbursed to Contractor will be only those additional or incremental costs required because of the change in the Work or because of the event giving rise to the Claim. Except as otherwise may be agreed to in writing by Owner, such costs shall be in amounts no higher than those prevailing in the locality of the Project, shall include only the following items, and shall not include any of the costs itemized in Paragraph 11.01.B.

1. Payroll costs for employees in the direct employ of Contractor in the performance of the Work under schedules of job classifications agreed upon by Owner and Contractor. Such employees shall include, without limitation, superintendents, foremen, and other personnel employed full time at the Site. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits, which shall include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay applicable thereto. The expenses of performing Work outside of regular working hours, on Saturday, Sunday, or legal holidays, shall be included in the above to the extent authorized by Owner.

2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers'

field services required in connection therewith. All cash discounts shall accrue to Contractor unless Owner deposits funds with Contractor with which to make payments, in which case the cash discounts shall accrue to Owner. All trade discounts, rebates and refunds and returns from sale of surplus materials and equipment shall accrue to Owner, and Contractor shall make provisions so that they may be obtained.

3. Payments made by Contractor to Subcontractors for Work performed by Subcontractors. If required by Owner, Contractor shall obtain competitive bids from subcontractors acceptable to Owner and Contractor and shall deliver such bids to Owner, who will then determine, with the advice of Engineer, which bids, if any, will be acceptable. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee shall be determined in the same manner as Contractor's Cost of the Work and fee as provided in this Paragraph 11.01.

4. Costs of special consultants (including but not limited to Engineers, architects, testing laboratories, surveyors, attorneys, and accountants) employed for services specifically related to the Work.

5. Supplemental costs including the following:

a. The proportion of necessary transportation, travel, and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the Work.

b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office, and temporary facilities at the Site, and hand tools not owned by the workers, which are consumed in the performance of the Work, and cost, less market value, of such items used but not consumed which remain the property of Contractor.

c. Rentals of all construction equipment and machinery, and the parts thereof whether rented from Contractor or others in accordance with rental agreements approved by Owner with the advice of Engineer, and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs shall be in accordance with the terms of said rental agreements. The rental of any such equipment, machinery, or parts shall cease when the use thereof is no longer necessary for the Work.

d. Sales, consumer, use, and other similar taxes related to the Work, and for which Contractor is liable, imposed by Laws and Regulations.

e. Deposits lost for causes other than negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.

f. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by Contractor in connection with the performance of the Work (except losses and damages within the deductible amounts of property insurance established in accordance with Paragraph 5.06.D), provided such losses and damages have resulted from causes other than the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of Owner. No such losses, damages, and expenses shall be included in the Cost of the Work for the purpose of determining Contractor's fee.

g. The cost of utilities, fuel, and sanitary facilities at the Site.

h. Minor expenses such as telegrams, long distance telephone calls, telephone service at the Site, expresses, and similar petty cash items in connection with the Work.

i. The costs of premiums for all bonds and insurance Contractor is required by the Contract Documents to purchase and maintain.

B. *Costs Excluded:* The term Cost of the Work shall not include any of the following items:

1. Payroll costs and other compensation of Contractor's officers, executives, principals (of partnerships and sole proprietorships), general managers, safety managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by Contractor, whether at the Site or in Contractor's principal or branch office for general administration of the Work and not specifically included in the

agreed upon schedule of job classifications referred to in Paragraph 11.01.A.1 or specifically covered by Paragraph 11.01.A.4, all of which are to be considered administrative costs covered by the Contractor's fee.

2. Expenses of Contractor's principal and branch offices other than Contractor's office at the Site.

3. Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments.

4. Costs due to the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.

5. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraphs 11.01.A and 11.01.B.

C. *Contractor's Fee:* When all the Work is performed on the basis of cost-plus, Contractor's fee shall be determined as set forth in the Agreement. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, Contractor's fee shall be determined as set forth in Paragraph 12.01.C.

D. *Documentation:* Whenever the Cost of the Work for any purpose is to be determined pursuant to Paragraphs 11.01.A and 11.01.B, Contractor will establish and maintain records thereof in accordance with generally accepted accounting practices and submit in a form acceptable to Engineer an itemized cost breakdown together with supporting data.

11.02 Allowances

A. It is understood that Contractor has included in the Contract Price all allowances so named in the Contract Documents and shall cause the Work so covered to be performed for such sums and by such persons or entities as may be acceptable to Owner and Engineer.

B. *Cash Allowances*

1. Contractor agrees that:

a. the cash allowances include the cost to Contractor (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the Site, and all applicable taxes; and

b. Contractor's costs for unloading and handling on the Site, labor, installation, overhead, profit, and other expenses contemplated for the cash allowances have been included in the Contract Price and not in the allowances, and no demand for additional payment on account of any of the foregoing will be valid.

C. *Contingency Allowance*

1. Contractor agrees that a contingency allowance, if any, is for the sole use of Owner to cover unanticipated costs.

D. Prior to final payment, an appropriate Change Order will be issued as recommended by Engineer to reflect actual amounts due Contractor on account of Work covered by allowances, and the Contract Price shall be correspondingly adjusted.

11.03 *Unit Price Work*

A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement.

B. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Determinations of the actual quantities and classifications of Unit Price Work performed by Contractor will be made by Engineer subject to the provisions of Paragraph 9.07.

C. Each unit price will be deemed to include an amount considered by Contractor to be adequate to cover Contractor's overhead and profit for each separately identified item.

D. Owner or Contractor may make a Claim for an adjustment in the Contract Price in accordance with Paragraph 10.05 if:

1. the quantity of any item of Unit Price Work performed by Contractor differs materially and significantly from the estimated quantity of such item indicated in the Agreement; and

2. there is no corresponding adjustment with respect any other item of Work; and

3. Contractor believes that Contractor is entitled to an increase in Contract Price as a result of having incurred additional expense or Owner believes that Owner is entitled to a decrease in Contract Price and the parties are unable to agree as to the amount of any such increase or decrease.

ARTICLE 12 - CHANGE OF CONTRACT PRICE; CHANGE OF CONTRACT TIMES

12.01 *Change of Contract Price*

A. The Contract Price may only be changed by a Change Order. Any Claim for an adjustment in the Contract Price shall be based on written notice submitted by the party making the Claim to the Engineer and the other party to the Contract in accordance with the provisions of Paragraph 10.05.

B. The value of any Work covered by a Change Order or of any Claim for an adjustment in the Contract Price will be determined as follows:

1. where the Work involved is covered by unit prices contained in the Contract Documents, by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 11.03); or

2. where the Work involved is not covered by unit prices contained in the Contract Documents, by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 12.01.C.2); or

3. where the Work involved is not covered by unit prices contained in the Contract Documents and agreement to a lump sum is not reached under Paragraph 12.01.B.2, on the basis of the Cost of the Work (determined as provided in Paragraph 11.01) plus a Contractor's fee for overhead and profit (determined as provided in Paragraph 12.01.C).

C. *Contractor's Fee:* The Contractor's fee for overhead and profit shall be determined as follows:

1. a mutually acceptable fixed fee; or

2. if a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:

a. for costs incurred under Paragraphs 11.01.A.1 and 11.01.A.2, the Contractor's fee shall be 15 percent;

b. for costs incurred under Paragraph 11.01.A.3, the Contractor's fee shall be five percent;

c. where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of Paragraph 12.01.C.2.a is that the Subcontractor who actually performs the Work, at whatever tier, will be paid a fee of 15 percent of the costs incurred by such Subcontractor under Paragraphs 11.01.A.1 and 11.01.A.2 and that any higher tier Subcontractor and Contractor will each be paid a fee of five percent of the amount paid to the next lower tier Subcontractor;

d. no fee shall be payable on the basis of costs itemized under Paragraphs 11.01.A.4, 11.01.A.5, and 11.01.B;

e. the amount of credit to be allowed by Contractor to Owner for any change which results in a net decrease in cost will be the amount of the actual net decrease in cost plus a deduction in Contractor's fee by an amount equal to five percent of such net decrease; and

f. when both additions and credits are involved in any one change, the adjustment in Contractor's fee shall be computed on the basis of the net change in accordance with Paragraphs 12.01.C.2.a through 12.01.C.2.e, inclusive.

12.02 *Change of Contract Times*

A. The Contract Times may only be changed by a Change Order. Any Claim for an adjustment in the Contract Times shall be based on written notice submitted by the party making the Claim to the Engineer and the other party to the Contract in accordance with the provisions of Paragraph 10.05.

B. Any adjustment of the Contract Times covered by a Change Order or any Claim for an adjustment in the Contract Times will be determined in accordance with the provisions of this Article 12.

12.03 *Delays*

A. Where Contractor is prevented from completing any part of the Work within the Contract Times due to delay beyond the control of Contractor,

the Contract Times will be extended in an amount equal to the time lost due to such delay if a Claim is made therefor as provided in Paragraph 12.02.A. Delays beyond the control of Contractor shall include, but not be limited to, acts or neglect by Owner, acts or neglect of utility owners or other contractors performing other work as contemplated by Article 7, fires, floods, epidemics, abnormal weather conditions, or acts of God.

B. If Owner, Engineer, or other contractors or utility owners performing other work for Owner as contemplated by Article 7, or anyone for whom Owner is responsible, delays, disrupts, or interferes with the performance or progress of the Work, then Contractor shall be entitled to an equitable adjustment in the Contract Price or the Contract Times, or both. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times.

C. If Contractor is delayed in the performance or progress of the Work by fire, flood, epidemic, abnormal weather conditions, acts of God, acts or failures to act of utility owners not under the control of Owner, or other causes not the fault of and beyond control of Owner and Contractor, then Contractor shall be entitled to an equitable adjustment in Contract Times, if such adjustment is essential to Contractor's ability to complete the Work within the Contract Times. Such an adjustment shall be Contractor's sole and exclusive remedy for the delays described in this Paragraph 12.03.C.

D. Owner, Engineer and the Related Entities of each of them shall not be liable to Contractor for any claims, costs, losses, or damages (including but not limited to all fees and charges of Engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Contractor on or in connection with any other project or anticipated project.

E. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for delays within the control of Contractor. Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of Contractor.

ARTICLE 13 - TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK

13.01 *Notice of Defects*

A. Prompt notice of all defective Work of which Owner or Engineer has actual knowledge will be given to Contractor. All defective Work may be rejected, corrected, or accepted as provided in this Article 13.

13.02 *Access to Work*

A. Owner, Engineer, their consultants and other representatives and personnel of Owner, independent testing laboratories, and governmental agencies with jurisdictional interests will have access to the Site and the Work at reasonable times for their observation, inspecting, and testing. Contractor shall provide them proper and safe conditions for such access and advise them of Contractor's Site safety procedures and programs so that they may comply therewith as applicable.

13.03 *Tests and Inspections*

A. Contractor shall give Engineer timely notice of readiness of the Work for all required inspections, tests, or approvals and shall cooperate with inspection and testing personnel to facilitate required inspections or tests.

B. Owner shall employ and pay for the services of an independent testing laboratory to perform all inspections, tests, or approvals required by the Contract Documents except:

1. for inspections, tests, or approvals covered by Paragraphs 13.03.C and 13.03.D below;

2. that costs incurred in connection with tests or inspections conducted pursuant to Paragraph 13.04.B shall be paid as provided in said Paragraph 13.04.C; and

3. as otherwise specifically provided in the Contract Documents.

C. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such public body, Contractor shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish Engineer the required certificates of inspection or approval.

D. Contractor shall be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests, or approvals required for Owner's and Engineer's acceptance of materials or equipment to be incorporated in the Work; or acceptance of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work. Such inspections, tests, or approvals shall be performed by organizations acceptable to Owner and Engineer.

E. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by Contractor without written concurrence of Engineer, it must, if requested by Engineer, be uncovered for observation.

F. Uncovering Work as provided in Paragraph 13.03.E shall be at Contractor's expense unless Contractor has given Engineer timely notice of Contractor's intention to cover the same and Engineer has not acted with reasonable promptness in response to such notice.

13.04 *Uncovering Work*

A. If any Work is covered contrary to the written request of Engineer, it must, if requested by Engineer, be uncovered for Engineer's observation and replaced at Contractor's expense.

B. If Engineer considers it necessary or advisable that covered Work be observed by Engineer or inspected or tested by others, Contractor, at Engineer's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as Engineer may require, that portion of the Work in question, furnishing all necessary labor, material, and equipment.

C. If it is found that the uncovered Work is defective, Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and Owner shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount thereof, Owner may make a Claim therefor as provided in Paragraph 10.05.

D. If, the uncovered Work is not found to be defective, Contractor shall be allowed an increase in the Contract Price or an extension of the Contract Times, or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction. If the parties are unable to agree as to the amount or extent thereof, Contractor may make a Claim therefor as provided in Paragraph 10.05.

13.05 *Owner May Stop the Work*

A. If the Work is defective, or Contractor fails to supply sufficient skilled workers or suitable materials or equipment, or fails to perform the Work in such a way that the completed Work will conform to the Contract Documents, Owner may order Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of Owner to stop the Work shall not give rise to any duty on the part of Owner to exercise this right for the benefit of Contractor, any Subcontractor, any Supplier, any other individual or entity, or any surety for, or employee or agent of any of them.

13.06 *Correction or Removal of Defective Work*

A. Promptly after receipt of notice, Contractor shall correct all defective Work, whether or not fabricated, installed, or completed, or, if the Work has been rejected by Engineer, remove it from the Project and replace it with Work that is not defective. Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or removal (including but not limited to all costs of repair or replacement of work of others).

B. When correcting defective Work under the terms of this Paragraph 13.06 or Paragraph 13.07, Contractor shall take no action that would void or otherwise impair Owner's special warranty and guarantee, if any, on said Work.

13.07 *Correction Period*

A. If within one year after the date of Substantial Completion (or such longer period of time as may be prescribed by the terms of any applicable special guarantee required by the Contract Documents) or by any specific provision of the Contract Documents, any Work is found to be defective, or if the repair of any damages to the land or areas made available for Contractor's use by Owner or permitted by Laws and Regulations as

contemplated in Paragraph 6.11.A is found to be defective, Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions:

1. repair such defective land or areas; or
2. correct such defective Work; or
3. if the defective Work has been rejected by Owner, remove it from the Project and replace it with Work that is not defective, and
4. satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others or other land or areas resulting therefrom.

B. If Contractor does not promptly comply with the terms of Owner's written instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Work corrected or repaired or may have the rejected Work removed and replaced. All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others) will be paid by Contractor.

C. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications .

D. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this Paragraph 13.07, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.

E. Contractor's obligations under this Paragraph 13.07 are in addition to any other obligation or warranty. The provisions of this Paragraph 13.07 shall not be construed as a substitute for or a waiver of the provisions of any applicable statute of limitation or repose.

13.08 *Acceptance of Defective Work*

A. If, instead of requiring correction or removal and replacement of defective Work, Owner (and, prior to Engineer's recommendation of final payment, Engineer) prefers to accept it, Owner may

do so. Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) attributable to Owner's evaluation of and determination to accept such defective Work (such costs to be approved by Engineer as to reasonableness) and the diminished value of the Work to the extent not otherwise paid by Contractor pursuant to this sentence. If any such acceptance occurs prior to Engineer's recommendation of final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work, and Owner shall be entitled to an appropriate decrease in the Contract Price, reflecting the diminished value of Work so accepted. If the parties are unable to agree as to the amount thereof, Owner may make a Claim therefor as provided in Paragraph 10.05. If the acceptance occurs after such recommendation, an appropriate amount will be paid by Contractor to Owner.

13.09 *Owner May Correct Defective Work*

A. If Contractor fails within a reasonable time after written notice from Engineer to correct defective Work or to remove and replace rejected Work as required by Engineer in accordance with Paragraph 13.06.A, or if Contractor fails to perform the Work in accordance with the Contract Documents, or if Contractor fails to comply with any other provision of the Contract Documents, Owner may, after seven days written notice to Contractor, correct or remedy any such deficiency.

B. In exercising the rights and remedies under this Paragraph 13.09, Owner shall proceed expeditiously. In connection with such corrective or remedial action, Owner may exclude Contractor from all or part of the Site, take possession of all or part of the Work and suspend Contractor's services related thereto, take possession of Contractor's tools, appliances, construction equipment and machinery at the Site, and incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere. Contractor shall allow Owner, Owner's representatives, agents and employees, Owner's other contractors, and Engineer and Engineer's consultants access to the Site to enable Owner to exercise the rights and remedies under this Paragraph.

C. All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred or sustained by

Owner in exercising the rights and remedies under this Paragraph 13.09 will be charged against Contractor, and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and Owner shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount of the adjustment, Owner may make a Claim therefor as provided in Paragraph 10.05. Such claims, costs, losses and damages will include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of Contractor's defective Work.

D. Contractor shall not be allowed an extension of the Contract Times because of any delay in the performance of the Work attributable to the exercise by Owner of Owner's rights and remedies under this Paragraph 13.09.

ARTICLE 14 - PAYMENTS TO CONTRACTOR AND COMPLETION

14.01 *Schedule of Values*

A. The Schedule of Values established as provided in Paragraph 2.07.A will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to Engineer. Progress payments on account of Unit Price Work will be based on the number of units completed.

14.02 *Progress Payments*

A. Applications for Payments

1. At least 20 days before the date established in the Agreement for each progress payment (but not more often than once a month), Contractor shall submit to Engineer for review an Application for Payment filled out and signed by Contractor covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice, or other documentation warranting that Owner has received the materials and equipment free and clear of all Liens and evidence that the materials and equipment are covered by appropriate property insurance or other arrange-

ments to protect Owner's interest therein, all of which must be satisfactory to Owner.

2. Beginning with the second Application for Payment, each Application shall include an affidavit of Contractor stating that all previous progress payments received on account of the Work have been applied on account to discharge Contractor's legitimate obligations associated with prior Applications for Payment.

3. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.

B. *Review of Applications*

1. Engineer will, within 10 days after receipt of each Application for Payment, either indicate in writing a recommendation of payment and present the Application to Owner or return the Application to Contractor indicating in writing Engineer's reasons for refusing to recommend payment. In the latter case, Contractor may make the necessary corrections and resubmit the Application.

2. Engineer's recommendation of any payment requested in an Application for Payment will constitute a representation by Engineer to Owner, based on Engineer's observations on the Site of the executed Work as an experienced and qualified design professional and on Engineer's review of the Application for Payment and the accompanying data and schedules, that to the best of Engineer's knowledge, information and belief:

a. the Work has progressed to the point indicated;

b. the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents, to a final determination of quantities and classifications for Unit Price Work under Paragraph 9.07, and to any other qualifications stated in the recommendation); and

c. the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work.

3. By recommending any such payment Engineer will not thereby be deemed to have represented that:

a. inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in the Contract Documents; or

b. that there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by Owner or entitle Owner to withhold payment to Contractor.

4. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment, including final payment, will impose responsibility on Engineer:

a. to supervise, direct, or control the Work, or

b. for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or

c. for Contractor's failure to comply with Laws and Regulations applicable to Contractor's performance of the Work, or

d. to make any examination to ascertain how or for what purposes Contractor has used the moneys paid on account of the Contract Price, or

e. to determine that title to any of the Work, materials, or equipment has passed to Owner free and clear of any Liens.

5. Engineer may refuse to recommend the whole or any part of any payment if, in Engineer's opinion, it would be incorrect to make the representations to Owner stated in Paragraph 14.02.B.2. Engineer may also refuse to recommend any such payment or, because of subsequently discovered evidence or the results of subsequent inspections or tests, revise or revoke any such payment recommendation previously made, to such extent as may be necessary in Engineer's opinion to protect Owner from loss because:

a. the Work is defective, or completed Work has been damaged, requiring correction or replacement;

b. the Contract Price has been reduced by Change Orders;

c. Owner has been required to correct defective Work or complete Work in accordance with Paragraph 13.09; or

d. Engineer has actual knowledge of the occurrence of any of the events enumerated in Paragraph 15.02.A.

C. Payment Becomes Due

1. Ten days after presentation of the Application for Payment to Owner with Engineer's recommendation, the amount recommended will (subject to the provisions of Paragraph 14.02.D) become due, and when due will be paid by Owner to Contractor.

D. Reduction in Payment

1. Owner may refuse to make payment of the full amount recommended by Engineer because:

a. claims have been made against Owner on account of Contractor's performance or furnishing of the Work;

b. Liens have been filed in connection with the Work, except where Contractor has delivered a specific bond satisfactory to Owner to secure the satisfaction and discharge of such Liens;

c. there are other items entitling Owner to a set-off against the amount recommended; or

d. Owner has actual knowledge of the occurrence of any of the events enumerated in Paragraphs 14.02.B.5.a through 14.02.B.5.c or Paragraph 15.02.A.

2. If Owner refuses to make payment of the full amount recommended by Engineer, Owner will give Contractor immediate written notice (with a copy to Engineer) stating the reasons for such action and promptly pay Contractor any amount remaining after deduction of the amount so withheld. Owner shall promptly pay Contractor the amount so withheld, or any adjustment thereto agreed to by Owner and Contractor, when Contractor corrects to Owner's satisfaction the reasons for such action.

3. If it is subsequently determined that Owner's refusal of payment was not justified, the amount wrongfully withheld shall be treated as an amount due as determined by Paragraph 14.02.C.1.

14.03 *Contractor's Warranty of Title*

A. Contractor warrants and guarantees that title to all Work, materials, and equipment covered by any Application for Payment, whether incorporated in the Project or not, will pass to Owner no later than the time of payment free and clear of all Liens.

14.04 *Substantial Completion*

A. When Contractor considers the entire Work ready for its intended use Contractor shall notify Owner and Engineer in writing that the entire Work is substantially complete (except for items specifically listed by Contractor as incomplete) and request that Engineer issue a certificate of Substantial Completion.

B. Promptly after Contractor's notification, , Owner, Contractor, and Engineer shall make an inspection of the Work to determine the status of completion. If Engineer does not consider the Work substantially complete, Engineer will notify Contractor in writing giving the reasons therefor.

C. If Engineer considers the Work substantially complete, Engineer will deliver to Owner a tentative certificate of Substantial Completion which shall fix the date of Substantial Completion. There shall be attached to the certificate a tentative list of items to be completed or corrected before final payment. Owner shall have seven days after receipt of the tentative certificate during which to make written objection to Engineer as to any provisions of the certificate or attached list. If, after considering such objections, Engineer concludes that the Work is not substantially complete, Engineer will within 14 days after submission of the tentative certificate to Owner notify Contractor in writing, stating the reasons therefor. If, after consideration of Owner's objections, Engineer considers the Work substantially complete, Engineer will within said 14 days execute and deliver to Owner and Contractor a definitive certificate of Substantial Completion (with a revised tentative list of items to be completed or corrected) reflecting such changes from the tentative certificate as Engineer believes justified after consideration of any objections from Owner.

D. At the time of delivery of the tentative certificate of Substantial Completion, Engineer will deliver to Owner and Contractor a written

recommendation as to division of responsibilities pending final payment between Owner and Contractor with respect to security, operation, safety, and protection of the Work, maintenance, heat, utilities, insurance, and warranties and guarantees. Unless Owner and Contractor agree otherwise in writing and so inform Engineer in writing prior to Engineer's issuing the definitive certificate of Substantial Completion, Engineer's aforesaid recommendation will be binding on Owner and Contractor until final payment.

E. Owner shall have the right to exclude Contractor from the Site after the date of Substantial Completion subject to allowing Contractor reasonable access to complete or correct items on the tentative list.

14.05 *Partial Utilization*

A. Prior to Substantial Completion of all the Work, Owner may use or occupy any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which Owner, Engineer, and Contractor agree constitutes a separately functioning and usable part of the Work that can be used by Owner for its intended purpose without significant interference with Contractor's performance of the remainder of the Work, subject to the following conditions.

1. Owner at any time may request Contractor in writing to permit Owner to use or occupy any such part of the Work which Owner believes to be ready for its intended use and substantially complete. If and when Contractor agrees that such part of the Work is substantially complete, Contractor will certify to Owner and Engineer that such part of the Work is substantially complete and request Engineer to issue a certificate of Substantial Completion for that part of the Work.

2. Contractor at any time may notify Owner and Engineer in writing that Contractor considers any such part of the Work ready for its intended use and substantially complete and request Engineer to issue a certificate of Substantial Completion for that part of the Work.

3. Within a reasonable time after either such request, Owner, Contractor, and Engineer shall make an inspection of that part of the Work to determine its status of completion. If Engineer does not consider that part of the Work to be substantially complete, Engineer will notify Owner and Contractor in writing giving the reasons therefor. If Engineer considers that part of the Work to be substantially complete, the provisions of Paragraph 14.04 will apply with respect to certification of Substantial

Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.

4. No use or occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of Paragraph 5.10 regarding property insurance.

14.06 *Final Inspection*

A. Upon written notice from Contractor that the entire Work or an agreed portion thereof is complete, Engineer will promptly make a final inspection with Owner and Contractor and will notify Contractor in writing of all particulars in which this inspection reveals that the Work is incomplete or defective. Contractor shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

14.07 *Final Payment*

A. Application for Payment

1. After Contractor has, in the opinion of Engineer, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance certificates of inspection, marked-up record documents (as provided in Paragraph 6.12), and other documents, Contractor may make application for final payment following the procedure for progress payments.

2. The final Application for Payment shall be accompanied (except as previously delivered) by:

a. all documentation called for in the Contract Documents, including but not limited to the evidence of insurance required by Paragraph 5.04.B.7;

b. consent of the surety, if any, to final payment;

c. a list of all Claims against Owner that Contractor believes are unsettled; and

d. complete and legally effective releases or waivers (satisfactory to Owner) of all Lien rights arising out of or Liens filed in connection with the Work.

3. In lieu of the releases or waivers of Liens specified in Paragraph 14.07.A.2 and as approved by Owner, Contractor may furnish receipts or

releases in full and an affidavit of Contractor that: (i) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed; and (ii) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which Owner or Owner's property might in any way be responsible have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, Contractor may furnish a bond or other collateral satisfactory to Owner to indemnify Owner against any Lien.

B. *Engineer's Review of Application and Acceptance*

1. If, on the basis of Engineer's observation of the Work during construction and final inspection, and Engineer's review of the final Application for Payment and accompanying documentation as required by the Contract Documents, Engineer is satisfied that the Work has been completed and Contractor's other obligations under the Contract Documents have been fulfilled, Engineer will, within ten days after receipt of the final Application for Payment, indicate in writing Engineer's recommendation of payment and present the Application for Payment to Owner for payment. At the same time Engineer will also give written notice to Owner and Contractor that the Work is acceptable subject to the provisions of Paragraph 14.09. Otherwise, Engineer will return the Application for Payment to Contractor, indicating in writing the reasons for refusing to recommend final payment, in which case Contractor shall make the necessary corrections and resubmit the Application for Payment.

C. Payment Becomes Due

1. Thirty days after the presentation to Owner of the Application for Payment and accompanying documentation, the amount recommended by Engineer, less any sum Owner is entitled to set off against Engineer's recommendation, including but not limited to liquidated damages, will become due and , will be paid by Owner to Contractor.

14.08 *Final Completion Delayed*

A. If, through no fault of Contractor, final completion of the Work is significantly delayed, and if Engineer so confirms, Owner shall, upon receipt of Contractor's final Application for Payment (for Work fully completed and accepted) and recommendation of Engineer, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance to be held by Owner for Work not fully completed or corrected is less than the

retainage stipulated in the Agreement, and if bonds have been furnished as required in Paragraph 5.01, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by Contractor to Engineer with the Application for such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

14.09 Waiver of Claims

A. The making and acceptance of final payment will constitute:

1. a waiver of all Claims by Owner against Contractor, except Claims arising from unsettled Liens, from defective Work appearing after final inspection pursuant to Paragraph 14.06, from failure to comply with the Contract Documents or the terms of any special guarantees specified therein, or from Contractor's continuing obligations under the Contract Documents; and

2. a waiver of all Claims by Contractor against Owner other than those previously made in accordance with the requirements herein and expressly acknowledged by Owner in writing as still unsettled.

ARTICLE 15 - SUSPENSION OF WORK AND TERMINATION

15.01 Owner May Suspend Work

A. At any time and without cause, Owner may suspend the Work or any portion thereof for a period of not more than 90 consecutive days by notice in writing to Contractor and Engineer which will fix the date on which Work will be resumed. Contractor shall resume the Work on the date so fixed. Contractor shall be granted an adjustment in the Contract Price or an extension of the Contract Times, or both, directly attributable to any such suspension if Contractor makes a Claim therefor as provided in Paragraph 10.05.

15.02 Owner May Terminate for Cause

A. The occurrence of any one or more of the following events will justify termination for cause:

1. Contractor's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the Progress

Schedule established under Paragraph 2.07 as adjusted from time to time pursuant to Paragraph 6.04);

2. Contractor's disregard of Laws or Regulations of any public body having jurisdiction;

3. Contractor's disregard of the authority of Engineer; or

4. Contractor's violation in any substantial way of any provisions of the Contract Documents.

B. If one or more of the events identified in Paragraph 15.02.A occur, Owner may, after giving Contractor (and surety) seven days written notice of its intent to terminate the services of Contractor:

1. exclude Contractor from the Site, and take possession of the Work and of all Contractor's tools, appliances, construction equipment, and machinery at the Site, and use the same to the full extent they could be used by Contractor (without liability to Contractor for trespass or conversion),

2. incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere, and

3. complete the Work as Owner may deem expedient.

C. If Owner proceeds as provided in Paragraph 15.02.B, Contractor shall not be entitled to receive any further payment until the Work is completed. If the unpaid balance of the Contract Price exceeds all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Owner arising out of or relating to completing the Work, such excess will be paid to Contractor. If such claims, costs, losses, and damages exceed such unpaid balance, Contractor shall pay the difference to Owner. Such claims, costs, losses, and damages incurred by Owner will be reviewed by Engineer as to their reasonableness and, when so approved by Engineer, incorporated in a Change Order. When exercising any rights or remedies under this Paragraph Owner shall not be required to obtain the lowest price for the Work performed.

D. Notwithstanding Paragraphs 15.02.B and 15.02.C, Contractor's services will not be terminated if Contractor begins within seven days of receipt of notice of intent to terminate to correct its failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt of said notice.

E. Where Contractor's services have been so terminated by Owner, the termination will not affect any rights or remedies of Owner against Contractor then existing or which may thereafter accrue. Any retention or payment of moneys due Contractor by Owner will not release Contractor from liability.

F. If and to the extent that Contractor has provided a performance bond under the provisions of Paragraph 5.01.A, the termination procedures of that bond shall supersede the provisions of Paragraphs 15.02.B, and 15.02.C.

15.03 *Owner May Terminate For Convenience*

A. Upon seven days written notice to Contractor and Engineer, Owner may, without cause and without prejudice to any other right or remedy of Owner, terminate the Contract. In such case, Contractor shall be paid for (without duplication of any items):

1. completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;

2. expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses;

3. all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred in settlement of terminated contracts with Subcontractors, Suppliers, and others; and

4. reasonable expenses directly attributable to termination.

B. Contractor shall not be paid on account of loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination.

15.04 *Contractor May Stop Work or Terminate*

A. If, through no act or fault of Contractor, (i) the Work is suspended for more than 90 consecutive days by Owner or under an order of court or other public authority, or (ii) Engineer fails to act on any

Application for Payment within 30 days after it is submitted, or (iii) Owner fails for 30 days to pay Contractor any sum finally determined to be due, then Contractor may, upon seven days written notice to Owner and Engineer, and provided Owner or Engineer do not remedy such suspension or failure within that time, terminate the Contract and recover from Owner payment on the same terms as provided in Paragraph 15.03.

B. In lieu of terminating the Contract and without prejudice to any other right or remedy, if Engineer has failed to act on an Application for Payment within 30 days after it is submitted, or Owner has failed for 30 days to pay Contractor any sum finally determined to be due, Contractor may, seven days after written notice to Owner and Engineer, stop the Work until payment is made of all such amounts due Contractor, including interest thereon. The provisions of this Paragraph 15.04 are not intended to preclude Contractor from making a Claim under Paragraph 10.05 for an adjustment in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to Contractor's stopping the Work as permitted by this Paragraph.

ARTICLE 16 - DISPUTE RESOLUTION

16.01 *Methods and Procedures*

A. Either Owner or Contractor may request mediation of any Claim submitted to Engineer for a decision under Paragraph 10.05 before such decision becomes final and binding. The mediation will be governed by the Construction Industry Mediation Rules of the American Arbitration Association in effect as of the Effective Date of the Agreement. The request for mediation shall be submitted in writing to the American Arbitration Association and the other party to the Contract. Timely submission of the request shall stay the effect of Paragraph 10.05.E.

B. Owner and Contractor shall participate in the mediation process in good faith. The process shall be concluded within 60 days of filing of the request. The date of termination of the mediation shall be determined by application of the mediation rules referenced above.

C. If the Claim is not resolved by mediation, Engineer's action under Paragraph 10.05.C or a denial pursuant to Paragraphs 10.05.C.3 or 10.05.D shall become final and binding 30 days after termination of the mediation unless, within that time period, Owner or Contractor:

1. elects in writing to invoke any dispute resolution process provided for in the Supplementary Conditions, or

2. agrees with the other party to submit the Claim to another dispute resolution process, or

3. gives written notice to the other party of their intent to submit the Claim to a court of competent jurisdiction.

ARTICLE 17 - MISCELLANEOUS

17.01 *Giving Notice*

A. Whenever any provision of the Contract Documents requires the giving of written notice, it will be deemed to have been validly given if:

1. delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, or

2. delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the giver of the notice.

17.02 *Computation of Times*

A. When any period of time is referred to in the Contract Documents by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day will be omitted from the computation.

17.03 *Cumulative Remedies*

A. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Laws or Regulations, by special warranty or guarantee, or by other provisions of the Contract Documents. The provisions of this Paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right, and remedy to which they apply.

17.04 *Survival of Obligations*

A. All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Contract Documents, as well as all continuing obligations indicated in the Contract Documents, will survive final payment, completion, and acceptance of the Work or termination or completion of the Contract or termination of the services of Contractor.

17.05 *Controlling Law*

A. This Contract is to be governed by the law of the state in which the Project is located.

17.06 *Headings*

A. Article and paragraph headings are inserted for convenience only and do not constitute parts of these General Conditions.

**FIRST AMENDED
SUPPLEMENTARY CONDITIONS**

SECTION 00800

FIRST AMENDED SUPPLEMENTARY CONDITIONS

The following supplements modify, change from or add to the Standard General Conditions of the Construction Contract, EJCDC Latest Edition. Where any Article of the General Conditions is modified or any Paragraph, Subparagraph or Clause thereof is modified or deleted by these supplements, the unaltered provisions shall remain in effect.

ARTICLE 1 - DEFINITIONS AND TERMINOLOGY

Add the following sentence to Paragraph 1.01.28 entitled "Notice of Award":

"When requested by OWNER, the Notice of Award may be issued by the ENGINEER."

Add the following sentence to Paragraph 1.01.29 entitled "Notice to Proceed":

"When requested by OWNER, the Notice to Proceed may be issued by ENGINEER."

Add the following terms after Paragraph 1.01 50:

1.51 ARCHITECT/ENGINEER - The person, firm or corporation named as the ENGINEER in the Agreement.

1.52 Provide - As used in the Project Manual, means to furnish and install, complete and ready for intended use.

1.53 Product - As used in the Project Manual, includes materials, fabrications, systems and equipment.

1.54 Project Manual - The volume of written construction documents, including the Bidding Documents, sample forms, and the Contract Documents, such as the Conditions of the Contract and the Specifications.

1.55 Retainage – The percentage of the Contract Price, retained by Owner from the progress payments to the Contractor for Work performed until the Work is completed. It shall be payable to Contractor in accordance with the Contract Documents.

ARTICLE 2 - PRELIMINARY MATTERS

Add the following to Paragraph 2.01:

"If the Work is to be commenced prior to execution of the Agreement in response to a letter of intent, CONTRACTOR shall, prior to commencement of the Work, submit evidence satisfactory to OWNER that such bonds will be furnished."

In the first line of Paragraph 2.02. change the term "...ten..." to read:

"...six(6)..."

Delete Paragraph 2.03. and replace with the following:

"The date of commencement of the Work is the date established in a Notice to Proceed."

Add the following to Paragraph 2.05.:

"D. CONTRACTOR shall perform no portion of the Work at any time without Contract Documents or, where specified, approved Shop Drawings for such portion of the Work.

E. By executing the Contract, CONTRACTOR represents that he has visited the site, familiarized himself with the local conditions under which the Work is to be performed, and correlated his observations with the requirements of the Contract Documents."

ARTICLE 3 - CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

Add the following to Paragraph 3.02.A.:

"3. Sections of Division One - General Requirements govern the execution of all sections of the Specifications."

ARTICLE 4 - AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS; REFERENCE POINTS

In Paragraph 4.02.A., change the term "...Supplementary Conditions..." to read:

"...bidding requirements..."

In Paragraph 4.02.B., change the term "Supplementary Conditions..." to read:

"...bidding requirements..."

ARTICLE 5 - BONDS AND INSURANCE

In the first line of Paragraph 5.04., following the word "...maintain...", insert the words:

"...in a company or companies licensed to do business in the State of Florida,..."

In the last line of Paragraph 5.04.A.6., following the word "...vehicle.", insert the words:

"..., or arising out of operation of laws and regulations for damages because of bodily injury or death of any person or for damage to property."

Add the following after Paragraph 5.04.B.7.:

8. Include all major divisions of coverage and be on a comprehensive basis including:

- i. Premises Operations (including X, C and U coverages as applicable.
- ii. Independent contractor's Protective.
- iii. Products and Completed Operations.
- iv. Personal Injury Liability with Employment Exclusion deleted.
- v. Contractual Liability.
- vi. Owned, non-owned and hired motor vehicles.
- vii. Broad Form property Damage including Completed Operations.

9. Provide coverage for not less than the following amounts.

Workers' Compensation, etc.
under paragraphs 5.4.1 and 5.4.2:

- a.
 - 1. State Including employers liability limits \$1,000,000 each accident, \$1,000,000 disease policy limit, \$1,000,000 disease each employee
 - 2. Applicable Federal (e.g. Longshoreman's and/or Maritime) Statutory
 - 3. Employer's Liability \$ 1,000,000.00
- b. Contractor's Liability Insurance under Article 5.4, which shall also include completed operations and product liability coverages and eliminate the exclusion with respect to property under the care, custody and control of custody and control of Contractor:
 - 1. General Aggregate (Except Products - Completed Operations) \$ 1,000,000.00
 - 2. Products - Completed Operations Aggregate \$ 1,000,000.00
 - 3. Personal and Advertising Injury (Per Person/Organization) \$ 1,000,000.00
 - 4. Each Occurrence (Bodily Injury and Property Damage) \$ 1,000,000.00
 - 5. Property Damage liability insurance will provide Explosion, Collapse and Underground coverages where \$ 1,000,000.00

applicable.

- | | | |
|-----|--|---|
| 6. | Professional Liability, Errors & Omissions insurance for architects, engineers and other consulting professionals | \$ <u>1,000,000.00</u> |
| 7.. | Excess Liability | |
| | General Aggregate | \$ <u>10,000,000.00</u> |
| | Each Occurrence | \$ <u>10,000,000.00</u> |
| 8. | Professional Liability Insurance, as it applies | \$ <u>1,000,000.00</u> |
| c. | Automobile Liability under paragraph 5.4.6: | |
| 1. | Bodily Injury: | |
| | Each Person | \$ <u>1,000,000.00</u> |
| | Each Accident | \$ <u>1,000,000.00</u> |
| | Property Damage: | |
| | Each Occurrence | \$ <u>1,000,000.00</u> |
| OR | 2. Bodily Injury and Property Damage Combined Single Limit: | |
| | Each Occurrence | \$ <u>1,000,000.00</u> |
| | Aggregate | \$ <u>1,000,000.00</u> |
| d. | Additional liability coverage for OWNER and ENGINEER shall be provided by endorsement as additional insured's on Contractor's General Liability Policy. Add the following names: | |
| | OWNER - | Town of Surfside
9293 Harding Avenue
Surfside, Florida 33154 |
| | ENGINEER - | Calvin, Giordano & Associates, Inc.
Engineers, Planners & Surveyors
1800 Eller Drive, Suite 600
Fort Lauderdale, Florida 33316 |
| 10. | The additional liability coverage for ENGINEER is not to be construed as to requiring, in any way, that either OWNER or CONTRACTOR be obligated to supply insurance protecting ENGINEER for its liability emanating from professional errors or omissions. | |
| 11 | In conformance with the requirements of Section 725.06, Florida Statutes, the specific considerations for CONTRACTOR's promises are: | |

- a. One dollar (\$1.00) in hand paid by OWNER, ENGINEER, and ENGINEER's employees to CONTRACTOR, receipt whereof is hereby acknowledged and the adequacy of which CONTRACTOR accepts as completely fulfilling the obligations of OWNER, ENGINEER, and ENGINEER's employees under the requirements of Section 725.06, Florida Statutes, and;
- b. The entry of OWNER and CONTRACTOR into the construction contract because, but for CONTRACTOR's promises as contained in the General Conditions, OWNER would not have entered into the construction contract with CONTRACTOR."

Additionally, Section 6.20 of the Standard General Conditions of the Construction Contract is deleted in its entirety and replaced by the following:

"6.20 Indemnification.

A. In consideration of the entry of this Agreement, and to the extent permitted by Chapter 725, Florida Statutes, as may be amended, the Contractor agrees to indemnify, protect, defend, and hold harmless the Owner its elected officials, officers, employees, consultants, and agents from liabilities, damages, losses, and costs including, but not limited to reasonable attorney's fees at both the trial and appellate levels to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of the Contractor and other persons employed or utilized by the Contractor in the performance of the Work. The foregoing indemnity is limited to the maximum amount of the insurance coverage limits set forth in this Agreement, which monetary limitation on the extent of the indemnification both parties acknowledge and agree bears a reasonable commercial relationship to the Agreement.

B. The indemnification obligation under this clause shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Contractor and/or any Subcontractor or subconsultants under worker's compensation acts, disability benefit acts, or other employee benefit acts.

C. In the event that any claims are brought or actions are filed against the Owner with respect to the indemnity contained herein, the Contractor agrees to defend against any such claims or actions regardless of whether such claims or actions are rightfully or wrongfully brought or filed. The Contractor agrees that the Owner may select the attorneys to appear and defend such claims or actions on behalf of the Owner. The Contractor further agrees to pay at the Contractor's expense the attorneys' fees and costs incurred by those attorneys selected by the Owner to appear and defend such claims or actions on behalf of the Owner. The Owner, at its sole option, shall have the sole authority for the direction of the defense, and shall be the sole judge of the acceptability of any compromise or settlement of any claims or actions against the Owner.

D. To the extent this indemnification clause or any other indemnification clause in this Agreement does not comply with Chapter 725, Florida Statutes, as may be amended, this provision and all aspects of the Contract Documents shall hereby be

interpreted as the parties' intention for the indemnification clauses and Contract Documents to comply with Chapter 725, Florida Statutes, as may be amended."

Add the following after Paragraph 5.06.E:

"F. The form of policy for this coverage shall be Completed Value.

G. If, under the provisions of this insurance, there are mandatory deductibles, or if OWNER elects to increase the mandatory deductibles or purchase this insurance with voluntary deductible amounts, then OWNER shall be responsible for payment of the full amount of the deductible in the event of a paid claim."

ARTICLE 6 - CONTRACTOR'S RESPONSIBILITIES

Add the following after Paragraph 6.05.F:

"G. The use of asbestos or asbestos-based fiber materials is prohibited in this Project."

Add the following after Paragraph 6.08:

"6.08.A. The OWNER will secure and pay for only the following governmental charges and inspection fees:

- a. special assessments,
- b. capital connection fees,
- c. threshold and special inspection fees,
- d. permanent utility meter installation fees,
- e. permanent utility hook-up fees, and
- f. impact fees.

6.08.B. CONTRACTOR shall pay for all building permits and charges of utility owners for connections to the Work, and OWNER will pay charges of such utility owners for capital costs related thereto such as plant investment fees."

Add the following after the last sentence in Paragraph 6.10:

In accordance with Exhibit A hereto, entitled Tax Exemption Agreement to Contract, the Owner may directly purchase all materials and equipment identified in the Contract Documents for incorporation into the Project ("Owner-Provide Materials").

Delete the last sentence of Paragraph 6.12. and substitute the following:

"These shall be available to ENGINEER for examination during construction and shall be delivered to ENGINEER for OWNER upon Substantial Completion of the Work."

At the end of Paragraph 6.13.B, add the following sentences:

"The Occupational Safety and Health Administration excavation safety standards, 29 CFR 1926.650 Subpart P trench safety standards are in effect during the period of construction of the Project. In compliance with current State of Florida statutes, the Contractor or subcontractor performing trench excavation work on the Project shall comply with the applicable trench safety standards."

In the sixth line of Paragraph 6.20.A., change the parenthetical insert to read as follows:

"...(including but not limited to fees and charges of ENGINEER, other engineers, architects, attorneys and other professionals, particularly including, but not limited to reasonable ENGINEER's attorney's fees, and court costs)..."

ARTICLE 9 - ENGINEER'S STATUS DURING CONSTRUCTION

Change the first sentence of Paragraph 9.01.A. to read as follows:

"If OWNER and ENGINEER agree, ENGINEER will be OWNER's representative during the construction period."

ARTICLE 10 - CHANGES IN THE WORK; CLAIMS

Add the following:

"10.06. Without invalidating the agreement, Owner may, at any time execute appropriate Change Orders for additions and/or deletions in the work of up to 25% of the total contract amount, without a change in the contract unit prices bid."

ARTICLE 13 - TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK

Replace 13.03.B. with:

"All testing shall be paid for by the Contractor."

Add the following sentence to Paragraph 13.07.A.:

"Specific and special warranties specified in the Contract Documents are in addition to, and not in lieu of, the contractors general warranty. CONTRACTOR shall not be relieved of general warranty obligations by the specification of specific products or procedures."

13.09. In the first sentence of the paragraph OWNER, change the first line from "If Contractor fails within a reasonable time after written notice of Engineer..." to read:

"If Contractor fails within ten (10) calendar days after written notice of Engineer..."

ARTICLE 14 - PAYMENTS TO CONTRACTOR AND COMPLETION

In the first sentence of Paragraph 14.02.A.1., change the phrase "At least twenty days before each progress payment is scheduled (but not more often than once a month), ..." to read:

"By no later than the first day of the month, ...".

Following Paragraph 14.02.A.3 add:

4. An original Partial Release of Lien is required from the General Contractor along with the application for Payment No. 1 and for each subsequent application thereafter. For each application for payment (excluding Application No. 1) the Contractor shall submit with the application Partial Releases of Liens for all Notice to Owners that have been received for the project by the Owner and Engineer".
5. With each Application for Payment, the Contractor shall submit supporting records and other evidence, in a form and amount acceptable to the Town and the Engineer, to demonstrate the expenses incurred and the Work performed. This shall include, but not be limited to documentation related to the purchase of Owner-Provided Material and the reduction in the Contract Sum as a result of such expenditures.
6. Each application for Payment shall be based on the most recent schedule of values submitted by Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire guaranteed maximum Contract Price among the various portions of the Work, except that the Contractor's Fee shall be shown as a separate item. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Engineer may require. This schedule, unless objected to by the Engineer, shall be used as a basis for reviewing the Contractor's Applications for Payment.
7. Applications for payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of: (1) the percentage of that portion of the Work which has actually been completed; or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Contractor on account of that portion of the Work for which the Contractor has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Contract Price allocated to that portion of the Work in the schedule of values.
8. Subject to the provisions of the Contract Documents, the amount of progress payments shall be computed as follows:
 - a) take that portion of the Contract Price properly allocable to the computed Work as determined by multiplying the percentage of completion of each portion of the Work in the schedule of values. Pending final determination of the costs to the Owner of changes in the Work, amounts not in dispute shall be included in the Application for Payment along with Change Order, Work Change Directive or Written Amendment indicating the parties' agreement with all or part of such costs for additional Work.
 - b) add the portion of the Contract Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or, if approved in advance by Owner, suitably stored off-site at a location agreed upon in writing.

- c) add the Contractor's Fee, less the ten percent (10%) Retainage. The Contractor's Fee shall be computed upon the Cost of the Work described in the preceding clauses at the rate in accordance with Paragraph 11.01.C or, if the Contractor's Fee is stated as a fixed sum, then it shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work in the two preceding clauses bears to a reasonable estimate of the probable Cost of Work upon completion.
- d) subtract the aggregate of the previous payments made by the Owner;
- e) subtract the shortfall, if any, indicated by the Contractor in the supporting records and other evidence as mutually agreed between the Owner or Engineer and Contractor to demonstrate expenditures incurred to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by Owner, or designee;
- f) subtract the amounts, if any, for which the Architect has withheld or nullified Certificate for Payment in accordance with the provisions of the Contract Documents."

In Paragraph 14.02.B., change the beginning of the sentence: from "Ten days..." to read:

"Forty-five days..."

In Paragraph 14.02.C.1, insert the following:

2. The Contractor shall promptly pay each subcontractor, upon receipt of payment from the Owner, out of the amount paid to the Contractor on account of such Subcontractor's portion of the Work, the amount to which said Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of such Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Subsubcontractors, if such Subsubcontractors are permitted by the Contract Documents, to make payments to Subsubcontractors in the same manner.
3. Neither the Owner nor the Engineer shall have an obligation to pay or see to the payment of money to a Subcontractor, except as provided by law.
4. Payment by Contractor to material suppliers shall be treated in the manner as provided in Paragraph 14.02.C.2.
5. Except with the Owner's prior approval, payments to Subcontractors shall be subject to Retainage of not less than ten percent (10%). The Owner and the Contractor shall agree upon a mutually acceptable procedure for review and approval of payments and retention for Subcontractors.
6. Upon mutual agreement by Owner and Contractor, payment in full may be made to those Subcontractors whose Work is fully completed during the early stages of the Project. Notwithstanding Paragraphs 14.02.A.8 and 14.02.C.5 above, at such times as the Work as set forth in the schedule of values has been 50% completed, and upon mutual agreement of the Owner and Contractor, no further Retainage shall be withheld from progress payments with respect to such portion of the Work. Agreement as to any such reduction in retained amounts will not constitute a waiver of or otherwise

prejudice the Owner's right to subsequently reinstate full retainage, as to that subcontractor, should circumstances justify such action in the Owner's sole judgment.

7. Upon Substantial Completion of the entire Work of the Contractor, a sum, sufficient to increase payments to the Contractor to one hundred percent (100%) of the Contract Sum, less amounts, if any for incomplete Work and unsettled claims, shall be paid to Contractor with the next sequential payment application after Substantial Completion is obtained.

Delete Paragraph 14.05 and replace with the following:

- A. The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented by the insurer, in accordance with Paragraph 5.06.A.5 and as authorized by public authorities having jurisdiction over the Work. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, Retainage, if any, security, maintenance, heat, utilities, damage to Work and insurance, and have agreed in writing concerning the period for correction of Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a comprehensive list to the Engineer of the items to be completed or corrected prior to final payment. The Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and the Contractor, or if no agreement is reached, by decision of the Engineer.
- B. Immediately or prior to such partial occupancy or use, the Owner, Contractor, and Engineer shall jointly inspect the area to be occupied or the portion of the Work to be used in order to determine and record the condition of the Work.
- C. Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of the Work not complying with the Contract Documents."

After the last sentence in Paragraph 14.04.B, insert the following:

- "C. Once 1) the definitive certificate of completion has been issued to the Owner and the Contractor and 2) once consent of the surety, if any, has been obtained, the Owner shall make payment of Retainage applying to such Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents."

After the last sentence in the Paragraph 14.04.B, insert the following:

"Final payment, constituting the entire unpaid balance of the Contract Price, shall be made by the Owner to the Contractor when the Contractor has fully performed the Contract except for Contractor's responsibility to correct Work as provided in Paragraphs 13.06 and 13.07, and to satisfy other requirements, if any, which extend beyond final payment and after the Engineer sends written notice to Owner that the Work is acceptable and in accordance with Paragraphs 14.07.B and 14.07.C."

Delete Paragraph 14.07.A.2 and 14.07.A.3 insert the following:

"The final Application for Payment shall be accompanied (except as previously delivered) by: (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise been satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to be expired until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of the surety, if any, to final payment, and (5) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases, and waivers of liens, claims, security interests of encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner, (6) all documentation as required by the Contract Documents, and (7) acceptance by the Owner and governing agencies. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Owner may require that the Contractor furnish a bond or other collateral satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging the lien, including all reasonable attorneys' fees and costs. The final payment will become due when the Contractor submits the information above to the Engineer."

ARTICLE 15 - SUSPENSION OF WORK AND TERMINATION

In the twentieth line of Paragraph 15.02.B., insert the following after the words...such excess...;":

(including but not limited to fees and charges of ENGINEER, other engineers, architects, attorneys and other professionals, particularly including, but not limited to reasonable Engineer's attorney's fees, and court costs)..."

ARTICLE 16 - DISPUTE RESOLUTION

Delete this Article in its entirety.

ARTICLE 17 – MISCELLANEOUS

Add 17.05.B:

"The venue for any cause of action shall be Miami-Dade County."

After Article 17 add the following article:

ARTICLE 18 – OWNER-PROVIDED MATERIALS

The Contractor and Owner desire to enter into an arrangement whereby certain purchases under the Contract may be made by the Owner as a result of Owner's status of being exempt from sales and use tax.

1. Notwithstanding anything in the Contract to the contrary, the Owner shall directly purchase all materials and equipment identified in the Contract Documents as required for incorporation into the Project ("Owner-Provided Materials"). The Owner does hereby grant to the Contractor the full authority as an agent of the Owner to prepare, place and execute Purchase Orders for and in the name of the Owner for all Owner-Provided Materials. The Contractor as agent of the Owner shall sign such Purchase Orders.
2. The Owner will be liable for the timely payment for all Owner-Provided Materials. The Contractor will submit requisitions for orders of Owner-Provided Materials to the Owner for approval when required. Vendors will render statements ("OPM Invoices") to the Owner for any Owner-Provided Materials purchased. The Owner will provide copies of all OPM Invoices to the Contractor upon approval by the Owner. After reviewing the OPM Invoices, the Contractor will return these OPM Invoices with proper back up to the Owner for payment. The Owner shall make payment directly to the respective vendors as provided in the OPM Invoices. The Owner will send such vendor payments along with Contractor payment to the Contractor who will, as Owner's agent, distribute such vendor payments to the respective vendors in return for Releases of Lien. The Owner will provide Contractor with any tax exemption certificates or other documents required or useful to provide to the vendors of Owner-Provided Materials to evidence the tax-exempt status of the Owner.

3. The Contract Price and shall be reduced by the sum of all Costs of the Work paid by the Owner for Owner-Provided Materials plus any applicable sales and use tax amounts initially included in the Contract Sum and GMP for such Owner-Provided Materials.
4. The Contractor shall maintain separate accounting records for all transactions carried out under the authority of this Agreement. Such records shall be open to the Owner during normal business hours of the Contractor.
5. The Contractor shall select, obtain approvals, submit samples, price shop drawings, pursue, receive, inspect, and accept or reject all Owner-Provided Materials purchased in the manner described herein per the Contract. The Contractor shall remain responsible for the proper installation of all Owner-Provided Materials and will continue to warrant its installation of these Owner-Provided Materials as provided in the Contract. This Agreement will not be an acceptable excuse for delay to the construction schedule.
6. The authority granted the Contractor hereunder may be revoked by the Owner at any time upon written notice delivered to the Contractor at its offices at: _____, during normal business hours.
7. The Owner agrees that the Contractor's Fee as set forth in the Contract shall not be reduced as a result of any Owner-Provided Materials deduct change orders; i.e., the Contractor's Fee shall continue to apply to the total sum of all remaining Costs of the Work plus the costs of all Owner-Provided Materials and plus the applicable tax amounts. Likewise, all agreed charging rates based on the Contract Price, including without limitation for bonds and insurance, shall continue to be charged based on the total sum of the Contract Price amount plus the costs of all Owner-Provided Materials and plus the applicable tax amounts."

END OF DOCUMENT

IN WITNESS WHEREOF, the parties hereto have made and executed this First Amended Supplemental Conditions on the respective dates under each signature: Town of Surfside through its Town Commission, signing by and through its Mayor, authorized to execute same by Commission action on the ____ day of _____, ____; and CONTRACTOR authorized to execute same.

TOWN OF SURFSIDE, through its
Town Commission

ATTEST:

By: _____
Daniel Dietch, Mayor

_____ day of _____, 2011

Town Clerk

Approved as to form and legality by
Office of the City Attorney

By: _____
Town Manager

_____ day of _____, 2011

By: _____
Town Attorney

ATTEST:

By _____

[CORPORATE SEAL]

[CORPORATE SEAL]

Address for giving notices

License No. _____

Agent for service of process

(If CONTRACTOR is a corporation, attached
evidence of authority to sign).

_____ day of _____, 2011

(TOWN SEAL)

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RESOLUTION NO. 11-_____

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA APPROVING A CONTRACT WITH THE FIRM OF RIC MAN INTERNATIONAL, INC. FOR THE INFRASTRUCTURE REHABILITATION PROJECT; AUTHORIZING OTHER APPROVALS AND POSSIBLE ADDITIVE ALTERNATES; AUTHORIZING TOWN OFFICIALS TO TAKE ALL STEPS NECESSARY TO CARRY OUT THE TERMS OF THIS RESOLUTION; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, a Citizen Oversight Committee was established to assist in the review and oversight of the design to date, permitting, pre-qualification, bidding, award and construction of the Infrastructure Rehabilitation Project and the Committee has met on five (5) occasions to date; and

WHEREAS, on April 28, 2011 the Town received six (6) apparent responsive and responsible bids for the Infrastructure Rehabilitation Project from Ric-Man International, Inc. ("Ric Man"), SouthEastern Engineering, Lanzo Construction, Globetec, Man-Con and Reynolds, Inc., and those bids were publicly opened and read; and

WHEREAS, after reviewing all proposals submitted to the Town, and after further detailed review of the lowest two bidders, the Town Manager, Citizen Oversight Committee and consulting engineers recommend the selection of Ric Man International, Inc. and in the alternative, SouthEastern Engineering; and

WHEREAS, the Town Commission finds Ric Man International, Inc. to be the lowest, and SouthEastern Engineering to be the next lowest bidder with both being responsible and responsive bidders. The Town Commission finds, however, that while the selection of Ric Man International, Inc. (being the lowest bidder) would be in the best interest of the Town, if for any reason RicMan becomes disqualified, the selection of SouthEastern Engineering as the next lowest responsible responsive bidder would be in the best interest of the Town; and

WHEREAS, the Bid Package included a list and description of Additive Alternate Items which could be incorporated as part of the Infrastructure Rehabilitation Project as follows:

- **End of Road Signage**
- **Street End Improvements**
- **Street Tree Program**
- **Decorative Street Signage**

WHEREAS, an additional project to construct a force main along Collins Avenue for the joint use of the Village of Bal Harbor and Town of Surfside is necessary to provide an alternate to the sixty (60) year old force main along Byron Avenue; and

WHEREAS, there are limited funds available to complete the projects. the Town Manager recommends that the Town Commission authorize the base project as defined in the Commission Communication of even date, the FP&L conduit study and placement of and interconnection to the existing sewer force main with the Bal Harbor Shared Force Main (“SFM”) to be constructed along Collins Avenue. The Town Manager also recommends that should additional funds become available, the Town Commission should identify and authorize the additive alternatives it wishes to see come to fruition.

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 incorporated into this Resolution by this reference.

Section 2. Approval of Award to Ric Man International, Inc. The Town Commission approves the award of this competitive bid to Ric Man International, Inc. as the lowest, most responsible, responsive bidder (RFQ Project Number 065355-15) for the Infrastructure Rehabilitation Project. If, for any reason the bid cannot be awarded to Ric Man International, Inc., the bid shall be and is awarded to SouthEastern Engineering as the next

lowest, most responsible, responsive bidder. The contract to be entered into between the Town and the Contractor shall be in substantially the same form as the contract contained in the RFP.

Section 3. Other Approvals. The Town Commission also approves the following:

- A. **Bal Harbor Sewer Force Main Project.** From the additive alternatives set forth in the recitals above, the Town Commission selects and approves the Bal Harbor Force Main Project. The Town Manager is hereby authorized to enter into negotiations with the Town with Bal Harbor for the Town's participation in the construction and ownership of a Sewer Force Main to be completed along Collins Avenue to 72nd Street in Miami Beach and to be interconnected in Surfside along 96th Street and Collins Avenue. The Interlocal Agreement between the two municipalities addressing all the terms of such participation and ownership shall be approved for legal sufficiency by the Town Attorney.
- B. **FP&L Study and Conduit Installation.** The Town Manager is hereby authorized and directed to secure a study from FP&L that will allow underground conduit to be installed at intersections for future undergrounding of transmission lines during the course of the construction of the infrastructure rehabilitation project.
- C. **North Dade Treatment Plant.** The Town Manager is hereby authorized to commence the process of obtaining the Town's share (\$2,000,000) of the Building Better Communities Bond Funds which will allow Surfside and Bal Harbor to interconnect to the North Dade Treatment Plant as either back-up or alternative to the Miami Beach connection.
- D. **Construction Staging Area.** The Town Commission hereby approves the northernmost two lanes of 91st Street between Collins and Harding Avenue to be

closed to traffic and utilized as a construction staging area for the infrastructure rehabilitation project. In the alternative, the Town Manager is authorized to pursue negotiations with either the Surf Club or the City of Miami Beach to locate alternative construction staging areas.

Section 4. Additive Alternates. Should additional funds become available, the Town Commission authorizes the additive alternates as follows:

	Yes	No
○ End of Road Signage	___	___
○ Street End Improvements	___	___
○ Street Tree Program	___	___
○ Decorative Street Signage	___	___

Section 5. Authorization of Town Officials. The Town Manager and Town Attorney are hereby authorized to take all steps necessary to complete the execution of the terms of this Resolution.

Section 6. Effective Date. This Resolution shall take effect immediately upon adoption.

Motion by Commissioner _____, Second by Commissioner _____.

PASSED AND ADOPTED this 14th day of June, 2011

FINAL VOTE ON ADOPTION

Commissioner Michael Karukin _____
Commissioner Edward Kopelman _____
Commissioner Marta Olchyk _____
Vice Mayor Joseph Graubart _____
Mayor Daniel Dietch _____

Daniel Dietch, Mayor

ATTEST:

Debra E. Eastman, MMC
Town Clerk

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



Lynn M. Dannheisser, Town Attorney



**Town of Surfside
Commission Communication**

Agenda Item # 5B

Agenda Date: June 14, 2011

Subject: FY 2010-2011 Proposed Mid-Year Budget Amendment Resolution

Background: The State of Florida, the Charter of the Town of Surfside, and sound financial management practices, require monitoring of the Town's budgetary condition. Budget requirements include maintaining a balanced budget and a prohibition against entering into encumbrances for which there is not sufficient appropriation. Insufficient appropriation results from:

1. Projected or unforeseen expenditures exceed approved (budgeted) expenditures or
2. Projected or unforeseen revenues exceed approved (budgeted) revenues or
3. Projected expenditures exceed projected revenues.

The attached documents represent in summary form and in detail form, the amendments which are proposed to ensure compliance with State law, Town Charter and sound financial management practices.

Analysis: Staff has revisited and scrutinized all the current fiscal year's anticipated revenues and expenditures. A summary discussion, on a fund by fund basis, follows:

GENERAL FUND (Attachment A)

With this mid-year adjustment request, the General Fund is projected to end the fiscal year with an additional positive net increase to fund balance-unassigned reserves in the amount of not less than \$44,043. This net increase is primarily due to higher than expected Red Light Violation and Building permit revenues. General Fund expenditures also require adjustment for Town Manager discretionary items as well as expenditures in excess of those originally budgeted as detailed within the justification column of Attachment A. It is also anticipated that additional savings will occur from on-going Staff efforts that will positively impact reserves but cannot be individually identified and are not reflected in this mid-year adjustment.

Adding \$44,043 to the original budgeted \$73,587 net increase and then including the \$867,867 fiscal year 2009/2010 carryover from the audited Comprehensive Annual Financial Report (CAFR) will therefore total \$985,497 in fund balance-unassigned reserves at

September 30, 2011. Additionally, it should be noted, the Town has also set aside \$2,000,000 in fund balance-assigned reserves for hurricane recovery.

CAPITAL PROJECTS FUND (Attachment B)

The Capital Projects Fund has projected expenditures in excess of revenues primarily due to two prior year (FY 2009/2010) encumbrance carryovers. The first encumbrance carryover pertains to our new Community Center construction project. The FY 2009/2010 budget anticipated spending up to \$1 million dollars but only \$675,000 in expenses were actually incurred. Therefore, \$325,000 needs to be added from reserves to the originally encumbered budget balance of \$4 million dollars for FY 2010/2011 to total \$4,325,000 (\$5,000,000 - \$675,000 spent in FY 2009/2010 = \$4,325,000 total required for FY 2010/2011). Staff continues to work diligently to bring this project in on-time. The second encumbrance carryover pertains to an AARA grant that did not commence construction prior to the end of the FY 2009/2010. This amounted to approximately \$139,000 dollars which now requires grant revenue and an encumbrance to be budgeted.

RESORT FUND (Attachment B)

The Resort Fund is projected to end the year with a positive net increase to fund balance in the amount of \$17,900. The 4% resort accommodation tax revenues are exceeding projections by \$20,000 while a \$2,900 adjustment to personnel expenditures in excess of originally budgeted is required. The Resort Fund has already appropriated \$19,800 for its pro-rata design of the Community Center addition which was previously approved by the Town Commission as well as the Tourism Board.

POLICE FORFEITURE FUND (Attachment B)

The Police Forfeiture Fund has both a projected increase in budgeted revenues and expenses that require adjustment. Specifically, Fines and Forfeiture revenues are currently exceeding budget in the amount of \$9,694 while personnel expenditures pertaining to the Citizens On Patrol (COP) training program also require adjustment for the same amount (\$9,694). The higher than budgeted expenditures in the Forfeiture Fund results from the decision to reduce personnel costs related to special investigations and crime prevention programs during the adoption of the FY 2010/2011 budget. With the resulting increase in revenues, these qualified expenditures have been charged to the Forfeiture Fund relieving the General Fund of the expense.

WATER AND SEWER FUND (Attachment C)

The Water and Sewer Fund is projected to end the fiscal year with a net positive increase to net asset reserves of not less than \$330,058. Although revenues are expected to decline slightly due to decreased consumption in conformity with our new rate structure this is partially offset by lower wholesale water costs. Additionally, as a result of securing a lower

interest rate than expected, overall expenditures have declined resulting in an excess of revenues over expenditures for FY 2010/2011.

STORMWATER FUND (Attachment C)

The Stormwater Fund is projected to end the fiscal year with a net positive increase to net asset reserves of not less than \$118,354 primarily from securing a lower interest rate than expected. Therefore, overall expenditures have declined resulting in an excess of revenues over expenditures for FY 2010/2011.

TRANSPORTATION FUND/MUNICIPAL PARKING FUND/SOLID WASTE FUND

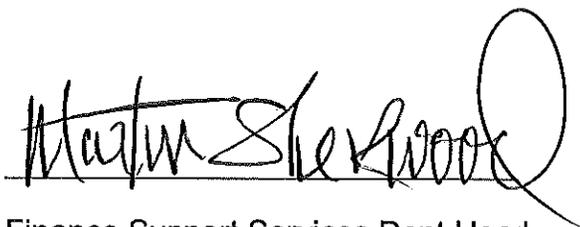
Staff is not recommending any mid-year adjustment to either the Transportation, Municipal Parking or Solid Waste funds

Budget Impact: Adoption of this resolution will positively increase unassigned or restricted fund balance or unrestricted net assets in the General Fund, Resort Tax Fund, Water & Sewer Fund and Stormwater Fund, respectively. Fund Balance will only decrease within the Capital Projects Fund. Impact to the Police Forfeiture Fund restricted fund balance is neutral.

Please note that the entirety of budget changes in the General Fund is 4.1% of total originally budget revenues and expenditures, respectively.

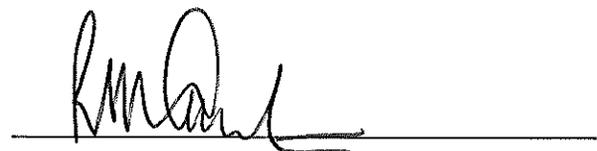
Staff Impact: No layoffs, furloughs, or position reductions are required to re-balance the budget and meet the Town's fiduciary responsibilities.

Recommendation: It is recommended that the Surfside Town Commission adopt the proposed FY 2010-2011 mid-year General Fund, Capital Projects Fund, Resort Tax Fund, Police Forfeiture Fund, Water & Sewer Fund and Stormwater Fund budget amendment resolution per attachment D.



Martin Sheerwood

Finance Support Services Dept Head



Town Manager

Town Manager

RESOLUTION NO. 11-_____

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, AMENDING THE ANNUAL APPROPRIATIONS RESOLUTIONS ADOPTED FOR THE FISCAL YEAR OCTOBER 1, 2010 TO SEPTEMBER 30, 2011; FOR THE PURPOSE OF AMENDING THE CURRENT YEAR'S GENERAL FUND BUDGET, CAPITAL PROJECTS FUND BUDGET, RESORT TAX FUND BUDGET, AND POLICE FORFEITURE FUND BUDGET, UPWARD; AND THE WATER & SEWER FUND BUDGET, AND THE STORMWATER FUND BUDGET DOWNWARD, AND OTHER BUDGETARY ADJUSTMENTS REQUIRED TO THE FISCAL YEAR ENDED SEPTEMBER 30, 2011 BUDGET; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town of Surfside adopted Resolution Nos. 10-1956, 10-1957 on September 22, 2010 establishing revenues and appropriations for the Town of Surfside, Florida for the fiscal year ended September 30, 2011; and

WHEREAS, the Town's General Fund operation revenues (income) have increased and the most notable increase resulted from red light traffic violations and unanticipated building permit activity; and

WHEREAS, the Town's Capital Projects Fund has received an unbudgeted increase through a carryover Community Center construction project and grant revenues; and

WHEREAS, the Town's Resort Tax Fund has primarily received an unbudgeted increase in 4% resort accommodation collections; and

WHEREAS, the Police Forfeiture Fund has received almost \$10,000 in unbudgeted forfeiture funds and may relieve the General Fund of approximately \$10,000 in qualified forfeiture fund expenditures; and

WHEREAS, the Town's Water & Sewer and Stormwater Funds has encountered an overall decline in expenditures primarily attributable to securing better than expected tax exempt financing terms; and

WHEREAS, to address the corresponding necessary modifications in expenditures and incomes, the Finance Support Services Director has met with the Town Manager and Department Heads to identify modifications with no impact on service delivery.

WHEREAS, a increase to the funds budgeted revenue estimates is required for the General Fund, the Capital Projects Fund, the Resort Tax Fund, The Police Forfeiture Fund, and a decrease in expenditures to the Water & Sewer Fund and the Stormwater Fund, as a result of State statutes as well as the Town's commitment to sound budgeting practices, budgeted expenses may not exceed anticipated revenues. Accordingly, the budget resolution proposes to amend the current year's budget as set forth as Attachments A, B and C.

WHEREAS, it is in the best interest of the Town of Surfside to adopt the proposed FY 2010-2011 amendatory General Fund and Capital Projects Fund, Resort Tax Fund, Police Forfeiture Fund, Water & Sewer Fund and Stormwater Fund budget resolution as submitted.

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

Section 1. Recitals. That the above and foregoing recitals are true and correct and are incorporated herein by reference.

Section 2. Authorization. The Town Commission hereby approves and authorizes the proposed budget 2010/11 amendments.

Section 3. Implementation. The Town Manager is hereby authorized to take any and all action necessary to implement this Resolution.

Section 4. Effective Date. This Resolution shall become effective immediately upon its adoption.

Motion by Commissioner _____, Second by Commissioner _____.

PASSED AND ADOPTED this _____ day of _____, 2011

FINAL VOTE ON ADOPTION

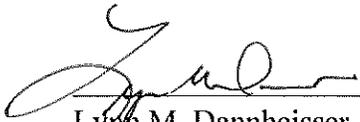
Commissioner Michael Karukin _____
Commissioner Edward Kopelman _____
Commissioner Marta Olchyk _____
Vice Mayor Joseph Graubart _____
Mayor Daniel Dietch _____

Daniel Dietch, Mayor

ATTEST:

Debra E. Eastman, MMC
Town Clerk

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



Lynn M. Dannheisser, Town Attorney

ATTACHMENT A

**TOWN OF SURFSIDE, FLORIDA
BUDGET TRANSFER/AMENDMENT REQUEST**

Fiscal Year:

2010/2011

Attachment A

BA #

Fund No.: 001

Fund Name:

General Fund

Department:

Multiple

Account Number	Account Description	Justification	Increase Expenditure Account	Decrease Expenditure Account	Increase or (Decrease) Revenue Account
GENERAL Fund					
001-0000-311-1000	Real Property Taxes				(100,000)
001-0000-312-1400	Four Percent Resort Tax				38,990
001-0000-312-1500	Resort Tax / Penalties				4,000
001-0000-312-4100	First Local Option Gas Tax				6,000
001-0000-312-4200	Second Local Option Gas Tax				2,483
001-0000-323-1000	Electric Franchise				23,000
001-0000-315-0100	Telecommunication Simplification Tax				14,886
001-0000-314-4000	Gas Utility				10,000
001-0000-322-1000	Building Permits				155,000
001-0000-322-8500	Contractor Registration				35,000
001-0000-331-2100	Miami-Dade Public Safety Grant				2,500
001-0000-331-2120	US Dept of Justice Grant				3,000
001-0000-335-1200	State Revenue Sharing				6,531
001-0000-335-1800	1/2 Cent Sales Tax				26,000
001-0000-347-2004	Recreation - Room Rentals				(11,650)
001-0000-347-2003	Recreation - Aquatics				(27,320)
001-0000-347-2006	Recreation - Winter Camp				2,280
001-0000-347-2007	Recreation - Summer Camp				16,000
001-0000-347-2011	Recreation - Beach Equipment Rentals				(1,080)
001-0000-347-2015	Recreation - Sports Programs				(7,534)
001-0000-359-1001	Parking Violations				18,996
001-0000-351-5030	Red Light Violations				133,000
001-0000-359-4000	Code Enforcement Fees and Penalties				9,500
001-1500-514-3111	Lawsuits & Prosecutions	Unanticipated Litigation	12,088		
001-1500-514-3120	Lawsuits & Prosecutions-Young Israel	Unanticipated Litigation-Young Israel	11,000		
001-2000-512-1210	Executive Regular Salaries	Position Reclassification	24,683		
001-2000-512-2210	Pension	Unbudgeted Actuarial Payment	18,650		
001-2000-512-3410	Other Contractual Services	Increased Commission Broadcasts	10,000		
001-2100-513-3110	Professional Services	5 Year Financial Forecast	5,000		
001-2400-519-1210	Regular Salaries	Position Reclassification	19,377		
001-2400-519-1310	FT/PT-no benefits-salaries	Recording Clerk-PT	10,334		
001-2400-519-3410	Other Contractual Services	IT Study	15,000		
001-2400-516-3410	Other Contractual Services	Iron Mountain Backup Increase	25,000		
001-2400-519-4910	Legal Advertising	Young Israel Legal Advertisement	12,000		
001-2400-519-4911	Other Current Charges	Staff Trans.,MCC Books, Digital Recorder	2,600		
001-2500-524-1310	Other Salaries - Building	Director Salary Adjustment	6,900		
001-2500-524-3410	Other Contractual Services - Building	Special Project-Temp Clerk	7,200		
001-3000-521-4112	Cell Phone Allowance	unbudgeted allowances for Sgts.	1,440		
001-3000-521-6410	Machinery & Equipment	Grant subsidized equipment	5,500		
001-5000-539-1210	Regular Salaries - Public Works	New PW Dir. rate unbudgeted&Severance	20,000		
001-5000-539-4602	Bldg Maintenance	TH complete painting	3,000		
001-5000-539-4604	Grounds Maintenance	Private Property Code Cures	8,000		
001-6000-572-1310	FT/PT-no benefits-salaries	community center lifeguard coverage	45,000		
001-6600-552-1210	Regular Salaries	Position Reclassification	5,951		
001-7900-590-3110	Non-Dept Professional Services	Pension Benefit Calculations / Exp Study	13,331		
001-7900-590-4111	Postage	Higher than Anticipated	2,500		
001-7900-590-4510	Property & Liability Ins.	Increased insurance costs	8,000		
001-7900-590-4601	Maint. Service / Repair Contracts	Archive System Program Costs	5,985		
001-7900-590-5110	Non-Dept Office Supplies	Higher Copier Paper Costs	4,500		
001-7900-529-5290	Non-Dept Equipment Leasing	Debtx ID security + Fidelity Bonds	6,000		
001-7900-590-6220	Building Improvements	Town Hall first floor Construction	6,500		
001-7900-590-9910	Contingency/Reserves	Additional Return to Fund Balance	44,043		
NET INCREASE GENERAL Fund			359,582	-	359,582

Requested by: _____
Department Director

Approved: _____
Finance Support Services Director

Approved: _____
Town Manager

Entered to Naviline _____
By _____ Date _____

TOWN OF SURFSIDE, FLORIDA
BUDGET TRANSFER/AMENDMENT REQUEST

Fiscal Year:

2010/2011

Attachment B

BA #

Fund No.: Multiple

Fund Name: Multiple

Department: Multiple

Account Number	Account Description	Justification	Increase Expenditure Account	Decrease Expenditure Account	Increase or (Decrease) Revenue Account
CAPITAL PROJECTS Fund					
301-0000-331-4210	AARA Grant	Unbudgeted Prior Year Grant Revenue			139,027
301-0000-361-1000	Interest Earnings	Unbudgeted Revenue			600
301-0000-392-0000	Reappropriated Fund Balance	Increase to cover prior year carryovers			326,800
301-4400-539-6210	Community Center Construction	Unbudgeted Prior Year Encumbrance	325,000		
301-4400-541-6310	Improvements other than buildings	Unbudgeted Prior Year Encumbrance	141,427		
	NET INCREASE CAPITAL PROJECTS Fund		466,427		466,427
RESORT TAX Fund					
102-0000-312-2000	4% Resort Tax	Proj. Collections in Excess of Budget			20,000
102-8000-552-1210	Regular Salaries	Tourism Director Position Reclasse	2,100		
102-8000-552-9910	Contingency/Reserves	Additional Return to Fund Balance	17,900		
	NET INCREASE RESORT TAX Fund		20,000		20,000
POLICE FORFEITURE Fund					
105-0000-395-2000	Fines & Forfeitures	Collections in Excess of Budget			9,694
105-3300-521-1410	Overtime	Unbudgeted C.O.P. training expense	8,001		
105-3300-521-2110	Payroll Taxes	Unbudgeted C.O.P. training expense	643		
105-3300-521-2310	Life/Health Insurance	Unbudgeted C.O.P. training expense	630		
105-3300-521-2410	Worker's Compensation	Unbudgeted C.O.P. training expense	420		
	NET INCREASE POLICE FORFEITURE Fund		9,694		9,694

Requested by: _____
Department Director

Approved : _____
Finance Support Services Director

Approved : _____
Town Manager

Entered to Naviline _____
By Date

TOWN OF SURFSIDE, FLORIDA
BUDGET TRANSFER/AMENDMENT REQUEST

Fiscal Year:

2010/2011

Attachment C

BA #

Fund No.: Multiple

Fund Name: Multiple

Department: Multiple

Account Number	Account Description	Justification	Increase Expenditure Account	Decrease Expenditure Account	Increase or (Decrease) Revenue Account
WATER AND SEWER FUND					
BALANCE SHEET:					
401-0000-104-0000	Cash	Regions Bank (75%)			11,962,500
401-0000-154-0000	Deferred Charge (closing costs)	Regions Bank (75%)			37,500
401-0000-232-0000	Loan Payable-current	Regions Bank (75%)	652,616		
401-0000-232-9000	Loan Payable-Long Term	Regions Bank (75%)	11,347,384		
	TOTAL		12,000,000		12,000,000
REVENUES/EXPENSES					
401-0000-384-0000	Capital Project needs	Reduced to Project Costs			(6,015,215)
401-0000-343-3000	Water Revenues	Consumption change			(205,209)
401-0000-343-5000	Sewer Revenues	Billable Usage change			(305,341)
401-9900-536-3401	Water Purchases	Reduced Consumption		411,728	
401-9900-536-4901	Discounts Taken	Discounts Eliminated		60,000	
401-9900-536-6310	Sewer Project	Lower Sewer Rehab Project Costs		2,688,368	
401-9900-536-6320	Water Project	Lower Water Rehab Project Costs		3,326,847	
401-9900-536-7110	Principal	Later starting and lower payments		132,978	
401-9900-536-7210	Interest	Later starting and lower payments		235,902	
401-9900-536-9310	Contingency/Reserves	Excess of Revenues Over Expenditures	330,058		
	NET DECREASE WATER & SEWER Fund		330,058	6,855,823	(6,525,765)
STORMWATER FUND					
BALANCE SHEET:					
404-0000-104-0000	Cash	Regions Bank (25%)			3,987,500
404-0000-154-0000	Deferred Charge (closing costs)	Regions Bank (25%)			12,500
404-0000-232-0000	Loan Payable-current	Regions Bank (25%)	217,539		
404-0000-232-9000	Loan Payable-Long Term	Regions Bank (25%)	3,782,461		
	TOTAL		4,000,000		4,000,000
REVENUES/EXPENSES					
404-0000-313-9410	Capital Project needs	Reduce to Projected Project Cost			(941,079)
404-5500-539-6310	Improvements Other Than Bldg.	Lower Drainage Project Cost		941,079	
404-5500-539-7110	Principal	Later starting and lower payments		48,833	
404-5500-539-7210	Interest	Later starting and lower payments		69,521	
404-5500-539-9310	Contingency/Reserves	Excess of Revenues Over Expenditures	118,354		
	NET DECREASE STORMWATER Fund		118,354	1,059,433	(941,079)

Requested by: _____
Department Director

Approved: _____
Finance Support Services Director

Approved: _____
Town Manager

Entered to Navline _____
By _____ Date _____



Town of Surfside
Commission Communication

Agenda Item # 5C

Agenda Date: June 14, 2011

Subject: Parking Lot Improvements

Background: The Town's municipal parking lots are all in dire need of improvements including resurfacing, restriping, landscaping, drainage, irrigation and signage. In addition, both alleyways in the business district also need improvement and there is a need to provide more directional signage. The latter two items are included in the package of recommendations from the Downtown Vision Advisory Committee which appears on this agenda. With approval from the Town Commission, staff sought an engineering study to determine what these improvements would cost and sent out a Request for Proposal to the seven architectural and engineering firms that have been prequalified to perform these services for the Town.

A selection committee reviewed the qualified proposals that were submitted and ranked them in the following order:

Florida Transportation Engineering, Inc. (FTE)

WA Architecture Engineering

C3TS – Corzo, Castella, Carballo, Thompson, Salman

ADA Engineering

Sixto Architect, Inc.

The selection committee recommends that Florida Transportation Engineering, Inc. be awarded the contract to serve as the Town's engineer/architect for the parking lot improvement project.

The ranking sheet is attached which reflects that FTE received the highest ranking predominantly because the firm had the best price and will provide biddable documents. (Attachment A)

Budget Impact: The cost for the conceptual design and plans for the parking lots, signage and alleyways is \$94,339 to be paid from the Municipal Parking Fund. If the Town Commission awards to this firm staff will negotiate a lower price. Funds are available in the FY 10/11 Budget for this project.

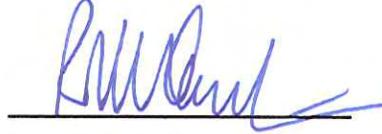
Analysis: Improvements to the municipal parking lots are much needed and long overdue. The work recently completed to expand the Post Office lot demonstrates the very positive impact of lot renovation. These improvements have been well received by residents and visitors and should serve as a model for the five remaining Town parking lots.

Staff Impact: N/A

Recommendation: It is recommended that the Surfside Town Commission award the contract for parking lot improvements to Florida Transportation Engineering at a price not to exceed \$94,339. (Attachment B)



John Di Censo
Assistant Chief



Roger M. Carlton
Town Manager

	Evaluation Factors	Point Range	ADA			BA			C3TS			FTE			SILVA			SIXTO			WA		
Mandatory Requirements	1. The extent that the proposal is complete in format	Yes / No	Yes	Yes	Yes	No	No	No	Yes	Yes	Yes	Yes	Yes	Yes	No	No	No	Yes	Yes	Yes	Yes	Yes	Yes
	2. Contractor is licensed	Yes / No	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
	3. Conflict of Interest	Yes / No	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Technical Requirements	4. Experience	0 to 25	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
	5. Approach	0 - 25	25	25	25	0	0	0	25	25	25	25	25	25	0	0	0	25	25	25	20	20	25
	6. Fees	0 - 50	40	30	35	0	0	0	40	35	44	50	50	50	0	0	0	35	25	38	45	40	45
	TOTAL		65	55	60	0	0	0	65	60	69	75	75	75	0	0	0	60	50	63	65	60	70
	CUMULATIVE		180			0			194			225			0			173			195		

ATTACHMENT A

May 4th, 2011

Town of Surfside
 Town Clerk's Office
 9293 Harding Avenue
 Surfside, FL 33154

Subject: **REQUEST FOR PROPOSALS # FY2011-04**
 TO PROVIDE PARKING LOT STANDARDS

Dear Ms. Debra Eastman, MMC:

Florida Transportation Engineering, Inc. (FTE) along with **TSM International, Inc.** are pleased to submit this Request for Proposals Statement to provide Parking Lot Standards for the Town of Surfside.

FTE as the **lead firm** for this contract has exclusive expertise in transportation planning and traffic engineering services including traffic impact studies, traffic operations and safety study, transportation modeling, corridor studies, and data collection.

FTE carefully has prepared an approach to the project and a requested fee estimated for the parking design A&E services of six parking lots under the jurisdiction of the town as well as the conceptual Town signage program and the design concept of the alleyway on the east and west of Harding Avenue from 94th Street to 96th Street. Please find below a FTE's breakdown of cost estimated for the requested services:

FTE Proposed Estimated Cost:

- The cost estimated for **A&E Services parking lot design Improvements** is \$68,988.29
- The cost estimated for **Conceptual Town signage program** is \$13,467.67
- The cost estimated for **Alleyways Design Concept** is \$11,882.77
- **Total estimated cost** for overall project is **\$94,338.73**

FTE has been providing general engineering and traffic engineering services during the 21 years of existence in Florida. FTE is a **certified DBE** firm with the Florida Department of Transportation (FDOT) and a **certified MBE** firm with the Florida Department of Management Services.

After reviewing our proposal, should you have any questions or need additional information, please do not hesitate to contact us at (305) 463-8411.

We are excited about the opportunity to serve the Town of Surfside.

Sincerely,



Juan S. Calderon, P.E., PTOE
 Vice-President.



Responsible Office

7955 NW 12 Street
 Suite 418
 Miami, FL 33126

Contact Person

Juan Calderon,
 P.E., PTOE
 Vice-President
 (305) 463-8411
 (305) 463-8477 (Fax)
 jcalderon@fteinc.net

Sub-consultant

TSM International, Inc.
 Hesham Elbadrawi,
 Ph.D., P.E.
 President
 (305) 970-1642
 helbadrawi@tsmincus.com

**FTE is a State Certified
 DBE & MBE Firm**



1. UNDERSTANDING OF THE SCOPE OF SERVICES

FTE understands that the purpose of this project is to analyze each of the Town's parking lots and the Alleys on the west and east side of Harding Avenue from 94th Street to 96th Street, recommend improvements, prioritize the recommendations and provide an engineering cost estimate of recommended improvements.

Items to be inventoried and analyzed will include, but not limited to: driveways, driveway ramps, parking stalls, aisles, pavement, drainage, landscaping, screen fencing, and lighting.

Furthermore, FTE understands that recommended improvement must comply with Miami-Dade County code and any applicable Town codes. After providing the Town with the recommended improvements, the Town will provide a list of improvements to be bid and FTE will prepare the bid documents.



2. APPROACH TO PROJECT

FTE carefully has prepared an approach to the project and a requested fee estimated for the parking design A&E services of six parking lots under the jurisdiction of the Town as well as the conceptual Town signage program and the design concept of the alleyway on the east and west of Harding Avenue from 94th Street to 96th Street.

2.1 A&E Services for Parking Lots

FTE will perform A&E services to design 6 parking lots for the Town of surfside considering section 90-77 of the Town Code as well as the new considerations for multi-space meters that are recently being implemented by the Town. The tasks included within those services are as follows:



2.1.1 Field Review and Parking Inventory

FTE will perform field review for each of the six parking lots listed in the RFP to identify any deficiency and to evaluate the accessibility, functionally and traffic circulation pattern during peak demand periods. Items to be inventoried and analyzed will include, but not limited to: driveways, driveway ramps, parking stalls, aisles, pavement, drainage, landscaping, screen fencing, signage, way-find signs, and lighting.

2.1.2 Plan Preparation

A. Survey

FTE will perform survey for each of the parking lot and for the Alleys on the west and east side of Harding Avenue from 94th Street to 96th Street. The survey will include elevation, curbing, signs, drainage structures, parking pay machines, pavement markings, lighting, etc.



B. Percolation Testing

FTE will perform percolation test at each parking lot to determine the absorption rate of the soil to avoid any drainage problems and flooding of the parking lots and alleys during storm events.

C. Plans

Plans for the parking lots shall conform to Miami-Dade County standards and the code of ordinances of the Town of Surfside and shall show the following on a priority basis with each item estimated for cost:

- Paving
- Striping
- Signage including business directory, beach access information, and commercial signs.
- Curbing
- Lighting including high intensity energy efficient bulbs.
- Landscaping upgrade and/or replacement
- Drainage
- Trash receptacles
- Ingress/Egress of each parking lot
- Wheel stops
- Stall size – all parking stalls will comply with parking bay dimension standards for an average size vehicle (that is no less than 9'x18' as per Town code)
- Accessible Parking



2.2 Commercial Town-wide Signage Program

FTE will prepare a conceptual design for the commercial Town-wide Signage Program. The design will emphasize on way-finding signs to direct drivers to municipal parking lots, major retail areas, major attractions, culture centers, municipal buildings, etc. Surfside Way finding signs will be design considering the article VI of the Town of Surfside Zoning Code and the new section 2D.50 of the 2009 MUTCD. Among considerations for the Commercial sign program includes elements such as colors, legend width, lettering sizes, symbology, sign placement, retro-reflectivity levels, and maintenance programs.



2.3 Alleyway conceptual Design

FTE will prepare a conceptual design for the Alleyway on the east and west side of Harding Avenue from 94th Street to 96th Street. The design will include a master plan concept, preliminary parking, drainage, signage, pavement markings, pavement, cost estimates.

FTE's conceptual design will be established based on a series of guidelines such as alleyways act as a catalyst of existing and future developments, alleyways are an expression of the Town to residents and visitors and alleyways promotes sustainability and walkability.

FTE is envisioning this conceptual design of both alleyways as part of an alleyway revitalization project with a goal to create an attractive, well-lit that is a pedestrian- and bicycle-friendly corridor, giving diners and shoppers easy access to the commercial centers. As a result, FTE will develop a concept that really fits with the whole sustainability concept of making use of existing spaces and the existing infrastructure.



Town of Surfside



FM No.: RFP #FY2011-04
 Task: Parking Lots A&E Services
Town of Surfside
 Counties: Miami-Dade County
 Contract: _____

CONSULTANT: _____
 Project Manager: Juan s. Calderon, P.E., PTOE
 DATE: _____
 SHEET NO.: 1 of 1
 FTE# 207007

SUMMARY FEE SHEET																	
ACTIVITY	PROJECT MANAGER		SENIOR ENGINEER		PROJECT ENGINEER		ENGINEER INTERN		SENIOR TECHNICIAN		FIELD TECHNICIAN		CLERICAL		BASIC ACTIVITY	STAFF HOURS BY ACTIVITY	AVG HOURLY RATE
	STAFF HOURS	HOURLY RATE	STAFF HOURS	HOURLY RATE	STAFF HOURS	HOURLY RATE	STAFF HOURS	HOURLY RATE	STAFF HOURS	HOURLY RATE	STAFF HOURS	HOURLY RATE	STAFF HOURS	HOURLY RATE			
Roadway Plans	16	\$48.08	8	\$43.27	101	\$26.44	5	\$26.45	48	\$26.45	16	\$20.75	3	\$13.00	5534.52	196.6	28.15
Signing and Pavement Markings	5	\$48.08	2	\$43.27	48	\$26.44	5	\$26.45	24	\$26.45	8	\$20.75	0	\$13.00	2531.51	92	27.52
Lighting	5	\$48.08	2	\$43.27	24	\$26.44	5	\$26.45	19	\$26.45	0	\$20.75	0	\$13.00	1603.99	55.2	29.06
Drainage	5	\$48.08	2	\$43.27	31	\$26.44	1	\$26.45	12	\$26.45	0	\$20.75	1	\$13.00	1527.53	52.8	28.93
Landscaping	5	\$48.08	2	\$43.27	31	\$26.44	1	\$26.45	12	\$26.45	0	\$20.75	1	\$13.00	1527.53	52.8	28.93
Geotechnical	36	\$48.08	0	\$43.27	0	\$26.44	0	\$26.45	3	\$26.45	18	\$20.75	3	\$13.00	2222.73	60	37.05
Survey	5	\$48.08	2	\$43.27	2	\$26.44	1	\$26.45	5	\$26.45	31	\$20.75	1	\$13.00	1223.02	48	25.48
Cost-Estimated	5	\$48.08	2	\$43.27	16	\$26.44	0	\$26.45	0	\$26.45	0	\$20.75	0	\$13.00	757.67	23.2	32.66
Permitting	5	\$48.08	2	\$43.27	0	\$26.44	0	\$26.45	0	\$26.45	0	\$20.75	0	\$13.00	345.21	7.6	45.42
Reporting	2	\$48.08	4	\$43.27	16	\$26.44	4	\$26.45	4	\$26.45	4	\$20.75	2	\$13.00	1012.88	36	28.14
Meetings	8	\$48.08	0	\$43.27	0	\$26.44	0	\$26.45	0	\$26.45	0	\$20.75	0	\$13.00	384.64	8	48.08
Q/A and Q/C	6	\$48.08	2	\$43.27	0	\$26.44	0	\$26.45	0	\$26.45	0	\$20.75	0	\$13.00	376.94	8	47.12
TOTALS	MH	SALARY	MH	SALARY	MH	SALARY	MH	SALARY	MH	SALARY	MH	SALARY	MH	SALARY	19048.17	640.2	29.75
	102	\$48.08	30	\$43.27	270	\$26.44	23	\$26.45	127	\$26.45	77	\$20.75	11	\$13.00			

Basic Activities Fees (Salary Co	=	\$19,048.17
(a) ___% 235.51%	=	\$44,860.35
SUBTOTAL	=	<u>\$63,908.52</u>
(b) ___% 15.00%	=	\$2,857.23
(c) FCCM 0.968%	=	\$184.39
SUBTOTAL	=	<u>\$3,041.62</u>
(d) Direct E 10.70%	=	\$2,038.15
SUBTOTAL	=	<u>\$2,038.15</u>
Total Task Work Order	=	\$68,988.29

Town of Surfside



FM No.: RFP #FY2011-04
 Task: Commercial Signage Program
Town of Surfside
 Counties: Miami-Dade County
 Contract: _____

CONSULTANT: _____
 Project Manager: Juan s. Calderon, P.E., PTOE
 DATE: _____
 SHEET NO.: 1 of 1
 FTE# 207007

SUMMARY FEE SHEET																	
ACTIVITY	PROJECT MANAGER		SENIOR ENGINEER		PROJECT ENGINEER		ENGINEER INTERN		SENIOR TECHNICIAN		TECHNICIAN		CLERICAL		BASIC ACTIVITY	STAFF HOURS BY ACTIVITY	AVG HOURLY RATE
	STAFF HOURS	HOURLY RATE	STAFF HOURS	HOURLY RATE	STAFF HOURS	HOURLY RATE	STAFF HOURS	HOURLY RATE	STAFF HOURS	HOURLY RATE	STAFF HOURS	HOURLY RATE	STAFF HOURS	HOURLY RATE			
Meetings	6	\$48.08	6	\$43.27		\$26.44		\$26.45		\$26.45		\$20.75		\$13.00	548.10	12	45.68
Program Consideration Analysis	3	\$48.08	8	\$43.27	6	\$26.44		\$26.45		\$26.45		\$20.75	0.5	\$13.00	655.54	17.5	37.46
Conceptual Graphic Design	4	\$48.08	8	\$43.27	16	\$26.44	2	\$26.45	8	\$26.45	0	\$20.75	0.5	\$13.00	1232.52	38.5	32.01
Details	1	\$48.08	2	\$43.27	1	\$26.44	0.5	\$26.45	16	\$26.45		\$20.75	0.5	\$13.00	603.99	21	28.76
Reporting	2	\$48.08	4	\$43.27	8	\$26.44	0.5	\$26.45		\$26.45		\$20.75	0.5	\$13.00	500.49	15	33.37
Q/A and Q/C	1	\$48.08	3	\$43.27	0	\$26.44	0	\$26.45	0	\$26.45	0	\$20.75	0	\$13.00	177.89	4	44.47
TOTALS	MH	SALARY	MH	SALARY	MH	SALARY	MH	SALARY	MH	SALARY	MH	SALARY	MH	SALARY	3718.52	108	34.43
	17	\$48.08	31	\$43.27	31	\$26.44	3	\$26.45	24	\$26.45	0	\$20.75	2	\$13.00			

Basic Activities Fees (Salary)	=	\$3,718.52
(a) _____% 235.51%	=	\$8,757.49
SUBTOTAL	=	\$12,476.01
(b) _____% 15.00%	=	\$557.78
(c) FCCM 0.968%	=	\$36.00
SUBTOTAL	=	\$593.78
(d) Direct E 10.70%	=	\$397.88
SUBTOTAL	=	\$397.88
 Lump Sum Amount Per C	=	 \$13,467.67

Town of Surfside



FM No.: RFP #FY2011-04
 Task: Alleyway Conceptual Design
 Town of Surfside
 Counties: Miami-Dade County
 Contract: _____

CONSULTANT: _____
 Project Manager: Juan s. Calderon, P.E., PTOE
 DATE: _____
 SHEET NO.: 1 of 1
 FTE# 207007

ACTIVITY	conceptual														BASIC ACTIVITY	STAFF HOURS BY ACTIVITY	AVG HOURLY RATE
	PROJECT MANAGER		SENIOR ENGINEER		PROJECT ENGINEER		ENGINEER INTERN		SENIOR TECHNICIAN		FIELD TECHNICIAN		CLERICAL				
	STAFF HOURS	HOURLY RATE	STAFF HOURS	HOURLY RATE	STAFF HOURS	HOURLY RATE	STAFF HOURS	HOURLY RATE	STAFF HOURS	HOURLY RATE	STAFF HOURS	HOURLY RATE	STAFF HOURS	HOURLY RATE			
Development of Alleyway Master Plan	4	\$48.08	6	\$43.27	8	\$26.44	0	\$26.45	0	\$26.45	0	\$20.75	0	\$13.00	663.46	18	36.86
Conceptual Plans	2	\$48.08	3	\$43.27	24	\$26.44	6	\$26.45	24	\$26.45	0	\$20.75	0.5	\$13.00	1660.53	59.5	27.91
Preliminary Survey	0.5	\$48.08	1	\$43.27	0	\$26.44	2	\$26.45	8	\$26.45	8	\$20.75		\$13.00	497.81	19.5	25.53
Cost-Estimate	1	\$48.08	3	\$43.27	8	\$26.44	0	\$26.45	0	\$26.45	0	\$20.75	0	\$13.00	389.41	12	32.45
Q/A and Q/C	0	\$48.08	1	\$43.27	1	\$26.44	0	\$26.45	0	\$26.45	0	\$20.75	0	\$13.00	69.71	2	34.86
TOTALS			MH	SALARY	MH	SALARY	MH	SALARY	MH	SALARY	MH	SALARY	MH	SALARY	3280.92	111	29.56
	7.5	\$48.08	14	\$43.27	41	\$26.44	8	\$26.45	32	\$26.45	8	\$20.75	0.5	\$13.00			

Basic Activities Fees (Salary)	=	\$3,280.92
(a) ___% 235.51%	=	\$7,726.89
SUBTOTAL	=	\$11,007.81
(b) ___% 15.00%	=	\$492.14
(c) FCCM 0.968%	=	\$31.76
SUBTOTAL	=	\$523.90
(d) Direct E 10.70%	=	\$351.06
SUBTOTAL	=	\$351.06
Lump Sum Amount Per C	=	\$11,882.77

RESOLUTION NO. _____

A RESOLUTION OF THE TOWN OF SURFSIDE FLORIDA, FLORIDA APPROVING THE AWARD OF THE CONTRACT TO FLORIDA TRANSPORTATION ENGINEERING, INC. (FTE) AS THE TOWN'S ENGINEER/ARCHITECT FOR THE PARKING LOT IMPROVEMENT PROJECT; AUTHORIZING THE MANAGER TO DO ALL THINGS NECESSARY TO EFFECTUATE THE TERMS OF THIS RESOLUTION; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the Town's municipal parking lots are all in dire need of improvements including resurfacing, restriping, landscaping, drainage, irrigation and signage; and

WHEREAS, the Downtown Vision Advisory Committee also recommended both alleyways in the business district need improvement with a need to provide more directional signage; and

WHEREAS, the Town of Surfside sought an engineering study to determine what improvements would cost and sent out a Request for Proposal to the seven architectural and engineering firms that have been prequalified to perform these services for the Town; and

WHEREAS, a Selection Committee reviewed the qualified proposals that were submitted and ranked them in the following order:

Florida Transportation Engineering, Inc. (FTE)
WA Architecture Engineering
C3TS – Corzo, Castella, Carballo, Thompson, Salman
ADA Engineering
Sixto Architect, Inc.; and

WHEREAS, the Selection Committee recommends that Florida Transportation Engineering, Inc. be awarded the contract to serve as the Town's engineer/architect for the parking lot improvement project; and

WHEREAS, the cost for the conceptual design and plans for the parking lots, signage and alleyways is \$94,339 to be paid from the Municipal Parking Fund; and

WHEREAS, the Town has considered the proposals submitted in response to the RFP and has determined that Florida Transportation Engineering, Inc. (FTE) is the lowest most responsible and responsive bidder in accordance with the applicable codes and ordinances of the Town; and

WHEREAS, has Florida Transportation Engineering, Inc. (FTE) agreed to enter into an agreement based on the terms of the RFP and its proposal; and

WHEREAS, the Town Commission has determined that it is in the best interests of the Town to award the contract to Florida Transportation Engineering, Inc. (FTE) as the Town's engineer/architect for the Parking Lot Improvement Project.

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

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

Section 2. Acceptance of Proposal. The Town Manager is hereby authorized to enter into an agreement with Florida Transportation Engineering, Inc. (FTE) as the Town's engineer/architect for the Parking Lot Improvement Project.

Resolution No. _____

Section 3. Implementation. The Town Manager is hereby authorized to take all action necessary to implement this Resolution in accordance with the terms, conditions and purposes of this Resolution and the Agreement.

Section 4. Effective Date. This Resolution shall be effective immediately upon adoption.

PASSED and ADOPTED on this ____ day of June, 2011.

Motion by Commissioner _____, second by Commissioner _____.

FINAL VOTE ON ADOPTION

Commissioner Michael Karukin	_____
Commissioner Edward Kopelman	_____
Commissioner Marta Olchyk	_____
Vice Mayor Joseph Graubart	_____
Mayor Daniel Dietch	_____

Daniel Dietch, Mayor

ATTEST:

Debra E. Eastman, MMC
Town Clerk

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



Lynn M. Dannheisser, Town Attorney

Resolution No. _____



Town of Surfside Commission Communication

Agenda Item # 9A

Agenda Date: 6/12/2011

Subject: Community Center Initial Rules and Summer Events

Objective: To convey the rules and regulations that will govern the new Community Center, as well as to give a view into what will be taking place at the Center's Grand Opening, and to spell out the town's Aquatics event schedule for the upcoming summer.

Recommendation: That the Town Commission review and approve the recommended rules and regulations, as well as the schedule of events for the Grand Opening ceremony and the summer Aquatics programs respectively. Also attached is the menu for the Surf Café.

Background: The rules and regulations listed herein are a small selection from the complete list of facility rules (which will be posted on signage throughout the building). In addition, there is a short list of the major events that will be occurring at the Community Center's Grand Opening ceremony, as well as a description of the Aquatics programs, with tentative times and dates, for each stage of the summer season.

Analysis: By approving these rules and regulations, which have been thoroughly examined and carefully selected and put in place as a result of extensive research, coupled with comparisons to similar facilities, the Commission will allow the project to move forward with its final stages, and keep the timeline of the opening of the facility on schedule.

Budget Impact: The Department has budgeted funds for the Grand Opening event as well as for the operation of the Community Center in the current fiscal year.

Growth Impact: With the completion of the facility the Town of Surfside will once again have a Community Center to serve as a town social hub, as well as a place to put on the large number of events and programs that the town typically hosts throughout the year.

Staff Impact: Events and programs will be staffed and run by Town of Surfside employees or independent contractors of the Town, while food concessions will be provided by an outside vendor through a written agreement on an annual basis.

Department Head

Town Manager



Town of Surfside
Community Center Information Sheet

June 3, 2011

Things to Remember

- Town of Surfside Resident ID required.
- Community Center Access is for Surfside Residents only.
 - Exception: Households are allowed a maximum of two guests under the age of fifteen each day, when accompanied by an adult resident.
- Resident ID cards are now available. Residents must come to the Parks and Recreation office and present current proof of residency. Residents will receive a Surfside Resident ID card, which allows access into the new Community Center. Proof of Residency Includes:
 - Current Utility Bill
 - Current Bank Statement
 - Credit Card Statement
 - Current Lease
 - Current Florida Driver License
- All patrons must check in at the Parks and Recreation office located in the main building of the Community Center.
- Re-entry into the facility requires a wristband. Staff will be positioned on the east side of the facility to direct patrons.
- Food and non-alcoholic beverages must be consumed outside the pool area or in designated areas. No alcohol, glass containers, or outside food permitted at any time.
- Children 12 and under must be accompanied and supervised by an adult 18 years of age or older. Children are not to be left unattended. All infants must be wearing swim diapers before entering the water.
- No animals permitted with the exception of service animals.
- The Town of Surfside is not responsible for any lost or stolen items.
- The Town of Surfside reserves the right to modify or add rules when deemed advisable for the protection of the health and safety of its patrons.

- Community Center capacities (Estimated):

▪ SPA	Bathing Load	6
▪ Activity Pool	Bathing load	48
▪ Recreation Pool	Bathing load	108
▪ Multipurpose Room #1	Capacity	166
▪ Multipurpose Room #2	Capacity	67

Grand Opening Information

- Grand Opening will take place June 19th beginning at 1:00 PM with the Opening Ceremonies, which will include a ribbon cutting and time-capsule ceremony, and conclude at 8:30 PM with a fireworks display.
- Free food will be available from 2-6 pm for the first 700 residents. Kosher meals will be available.
- Grand Opening attendees will receive a commemorative pin to mark the occasion.
- The main pool will be open from 2-8 pm. Dressing room and locker facilities will be available on a limited basis.
- Various events will be held throughout the course of day at the Community Center. Events will include an interactive DJ, a mock beach rescue, a surf demonstration, a game booth, an ice-cream bar, and other fun-filled activities for all ages.

Upcoming Program Information

- Learn to Swim Program
 - Lessons will begin in July; Residents: \$68, Non-Residents: \$100
 - Classes will be held Tuesday, Wednesday and Thursday mornings and evenings, as well as Saturday and Sunday morning.
 - Classes will be offered for Pre-Schoolers and beginners ranging from ages 3-14.
- Sand Dollar Key
 - Sand Dollar Key is designed for children under 48 inches ONLY.
 - Open daily.
- Main Pool Slide
 - Minimum height required to ride the slide is 48 inches.
 - Slide is limited to one RIDER at a time, NO EXCEPTIONS.
 - Open daily.

- Lap Swimming
 - The Town will have early morning lap swimming in addition to different times during the day throughout the week starting in July 2011. Please see pool hours for exact days and times.
- Kindle Library
 - The Community Center will have a Kindle library with eight reading chairs available to residents in Multipurpose Room #2.
 - Times and availability to be determined.



Town of Surfside Aquatics Preliminary Hours of Operation

June 10, 2011 – July 3, 2011

Main Pool:

Monday – Sunday 10:00am – 7:00 pm

Sand Dollar Key:

Monday – Sunday 10:00am – 7:00 pm

Main Pool Slide:

Monday - Sunday 11:30am – 6:00 pm

Lap Swimming:

Monday - Friday 10:00am – 12:00pm (Limited Lanes)
5:00pm – 7:00pm (Limited lanes)

Saturday & Sunday 10:00am – 12:00pm (Limited Lanes)

Beach Lifeguard Tower (Located at 93rd Street):

Monday - Sunday 9:00am – 5:00pm

Concession Stand (Full Menu Attached):

Continental Breakfast 8:00am – 7:00pm
Lunch and Early Dinner 12:00pm – 7:00pm



July Fourth Holiday Hours

Main Pool:

Monday – Sunday 10:00am – 7:00pm

Sand Dollar Key:

Monday – Sunday 10:00am – 7:00pm

Water Slide:

Monday - Sunday 10:30am – 7:00pm

Lap Swimming:

No Lap swimming

Beach Lifeguard Tower (Located at 93rd Street):

Monday - Sunday 9:00am – 7:00 pm

*Hours subject to change



Town of Surfside Aquatics Summer Hours of Operation July 5, 2011 – August 21, 2011

Main Pool: Open swim

Monday – Sunday 11:00am – 7:00pm

Sand Dollar Key:

Monday – Sunday 11:00am – 7:00pm

Water Slide:

Monday, Friday, Saturday, Sunday 12:00pm – 6:00pm

Tuesday, Wednesday, Thursday 12:00pm – 5:00pm

Lap Swimming:

Monday, Wednesday, Friday 6:45am – 8:30am (5 Lap Lanes)

Monday -Friday 5:00pm – 7:00pm (limited Lanes)

Beach lifeguard tower: Located behind the Community Center

Monday - Sunday 9:00am – 5:00 pm

Swim Lessons: See attached for dates and time of lessons

Tuesday, Wednesday, Thursday 9:45am – 11:15am

5:15pm – 6:30pm

Saturday & Sunday 9:45am – 11:15am

*Hours subject to change

SURF CAFÉ

STARTERS

- Buffalo Wings
- Naked or Spicy\$5.95
- Edamame Beans.....\$3.95

BURGER BAR

All Burgers with lettuce, tomato, red onion & french fries
 Choose your sauce – kick 'n bayou / bbq honey chipotle / tzatziki
 Add Mozzarella, American, Jalapenos..... Extra 75c each

- Classic Beef Burger.....\$5.95
- Chicken Breast Filet Burger.....\$6.95
- Turkey Burger.....\$6.95
- Salmon Burger.....\$7.95
- Vegetarian Burger.....\$6.95

COMBO - Add a soda fountain and cookie for ONLY \$1.75 extra

SANDWICHES

All sandwiches served with lettuce, tomato and onion & a packet of chips, on a bagel

- Chicken Salad.....\$6.95
- Albacore Tuna Salad.....\$6.75
- Grilled Cheese on Country White.....\$3.50

COMBO - Add a soda fountain and cookie for ONLY \$1.75 extra

BAKKIE.....\$6.95

Grilled Chicken with Fiesta Vegetable Rice, Coleslaw, Pita Bread & Tangy, Hot Sauce

Served in a convenient "to go" cup

COMBO - Add a soda fountain and cookie for ONLY \$1.75 extra

Side of Fries

\$2.50

EMPANADAS

Chicken or Beef

\$2.95

COMBO - Add a soda fountain and cookie for ONLY \$1.75 extra

CHEESE PIZZA®

Traditional Crust

- Individual Pie.....\$3.95
- X-Large Pie.....\$12.00

HOT DOG

All Beef or

Turkey

\$2.50

KIDS MENU \$4.95

Includes a juice (apple or punch)

Chicken Tenders w/ french fries

All Beef Hotdog w/ french fries

Individual Cheese Pizza

COMBO - Add a soda fountain and cookie for ONLY \$1.75 extra

FRESH EXPRESS GOURMET SALADS.....\$6.95

Caribbean Chicken - island spiced chicken breast, chili-lime corn chips, trio of dried tropical fruit and a spicy, mango salsa vinaigrette

Waldorf Chicken - mesquite grilled chicken, crisp granny smith apples and a zest poppy seed dressing

Chicken Caesar - grilled chicken breast, tres fromage croustini, aged Italian cheese blend and a rich, creamy caesar dressing

CATERING AVAILABLE Call 305 868-3223

Senior Citizens (65yrs & older)
 Receive 10% Off Total Bill

SURF CAFÉ

BREAKFAST - served everyday from 8am

- Assorted Bagels \$1.25 w/ cream cheese.....\$1.85
w/ smoked salmon spread.....\$3.95
- Fresh Fruit Salad (K).....\$3.95
- Oatmeal - crunch or orchard.....\$3.50
- Low Fat Vanilla Parfait w/ granola.....\$3.50

COFFEE

- Espresso.....\$1.40 Latte.....\$1.85
- Cappuccino.....\$1.85 Iced Latte.....\$1.85
- Regular Coffee.....\$1.50

DESSERTS \$3.95

New York Style Cheese Cake
w/ raspberry sauce
Crème Caramel

PASTRIES (K) \$2.50

Vanilla Pound Cake
Assorted Danishes
Chocolate Brownie

SNACKS

- Go-Gurt Kids.....\$1.50
- Hummus and Pretzels (K).....\$2.95
- Dirty Potato Chips (K).....\$1.70
- Popcorn.....\$2.50
- Ice Pops.....\$1.00

ICE CREAM BARS

Assorted Varieties

BEVERAGES

- Soda Fountain.....\$1.75
Coke, Diet Coke, Coke Zero, Sprite, Pink Lemonade,
Iced Tea
- Slushies.....\$2.25
Green Tea or Orange Juice
- V-Fusion (K).....\$2.25
Blueberry & Pomegranate, Strawberry & Banana
- San Pellegrino Orange.....\$1.70
- Organic Wheat Grass.....\$3.99
- Bottled Water (Eco-Friendly).....\$1.50
- Gatorade.....\$1.95
Lemon/Lime, Orange

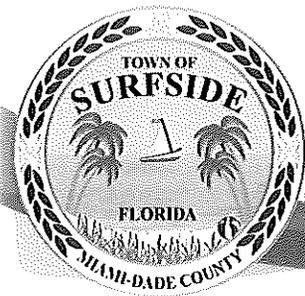
- FRUIT SMOOTHIES.....\$3.95
Wild Berry or Mixed Tropical Blend
Add protein\$1.00

COFFEE

- Espresso.....\$1.40 Latte.....\$1.85
- Cappuccino.....\$1.85 Iced Latte.....\$1.85
- Regular Coffee.....\$1.50

CATERING AVAILABLE Call 786 436-0697

Senior Citizens (65yrs & older)
Receive 10% Off Total Bill



TOWN OF SURFSIDE

9293 HARDING AVENUE
SURFSIDE, FLORIDA 33154
(305) 861-4863 • FAX: (305) 861-1302
WWW.TOWNOFSURFSIDEFL.GOV

TO: Mayor and Members of the Town Commission

FROM: Commissioner Ted Kopelman

DATE: June 14, 2011

SUBJ: Discussion of Town Manager's Employment Agreement

Our Town Manager began work on October 1, 2010. During the past eight months he has done an extraordinary job resolving past issues, modernizing our administrative procedures, expanding transparency in our financial management, improving land use regulation and motivating Town professional staff.

On a personal level, he is at work early in the morning to late at night, and often seven days per week. That commitment both personally and professionally is much more than we bargained for when his employment agreement was approved by the Town Commission.

It is my suggestion that the Mayor meet with the Town Manager to discuss reasonable improvements to his Employment Agreement and that he be compensated comparatively to the managers in our neighboring communities of Bal Harbour and Bay Harbor.

The Mayor will bring us his recommendations in the July 19, 2011 Town Commission meeting for review.



Town of Surfside Commission Communication

Agenda Item # 9C

Agenda Date: June 14, 2011

Subject: Police Vehicle Lease Program

Background: The Police Department fleet is comprised of thirty-one (31) vehicles. Seventeen (17) of these vehicles have over 75,000 miles on the odometer and seven (7) have in excess of 100,000 miles. The oldest vehicle in the fleet is thirteen years old and the remaining range in age between six and twelve years old. Due to their age and high mileage these vehicles are in constant need of repair and are not cost effective. In addition, these vehicles could be a safety and liability issue if high maintenance costs are not maintained.

In order to rectify this problem it is necessary to have a vehicle replacement schedule in place. The Police Department is requesting to implement a vehicle lease program that will replace and keep current its aging fleet over a four year period as illustrated in the attached chart.

The largest impact is in year one since ten vehicles are required due to the number of older vehicles in the fleet and not having a vehicle replacement schedule in place. The number of vehicles needed in each subsequent year is reduced to five.

The vehicles will be leased under a municipal leasing program in conjunction with the Florida Sheriffs Association Bid Contract. At the end of the 48 month lease the Town would own the vehicles. The ten replaced police vehicles will be sold at auction.

Town staff has received preliminary quotes from Sun Trust Bank and Mears Motor Leasing but is unable to make a recommendation regarding the lowest cost lease program at this time because the manufacturer has not determined pricing for the 2012 vehicles. However, we are recommending that staff be authorized to place an order to have a high priority in the manufacturing queue as soon as the 2012 vehicles are released.

Budget Impact: Pricing for the 2012 Dodge Charger police vehicle has not been released so Staff added five per cent to the 2011 Florida Sheriffs Bid price to determine an approximate cost for purposes of this communication. The cost to lease ten (10) vehicles is projected to be \$72,000 per year for four years. This includes outfitting and installing the necessary equipment in the vehicles.

Analysis: Replacement of these vehicles will ensure the safety and efficiency of the fleet and our personnel. This long term vehicle replacement policy will keep our fleet modern, safe and efficient.

In FY 09/10 the Police Department expended \$39,633 on vehicle maintenance and repairs and year to date in FY 10/11 have expended \$23,000. The majority of vehicles in the fleet are out of warranty and repairs are not covered. The most expensive and common repair is failure of the air-conditioning system. It is projected that replacing the ten older vehicles will save \$20,000 in maintenance and repair costs. Additionally, replacing the eight-cylinder engines with more fuel efficient six-cylinder engines will result in fuel savings of \$10,000. Essentially, this means that nearly half the cost of the lease program is funded through maintenance and fuel savings.

By way of comparison the FY 10/11 budget included two new police vehicles for a total cost of \$55,000. Due to high demand to replace vehicles and problems at the factory six months were required from the date of order to the date of receipt. Our fleet will not be sustainable if we wait until October to order the vehicles and then possibly six months for delivery.

Pricing for the 2012 Dodge Charger police vehicle is expected to be released the second week of June. At that time orders will be accepted and the vehicles will be delivered within 90 days. The early approval of this leasing program will allow us to move forward now and keep our place in the queue while funding the lease payments in FY 11/12. The FY 11/12 budget has been prepared with this cost included.

The Town Commission should be aware that Staff is recommending a long term commitment to modernize the fleet; however, the determination to implement the program will still be made each year based on available resources.

Staff Impact: N/A

Recommendation: It is recommended that the Surfside Town Commission approve the lease of ten (10) police vehicles in FY10/11 at a projected annual cost of \$72,000 for four years.



John Di Censo
Assistant Chief



Roger M. Carlton
Town Manager

VEHICLE NUMBER	YEAR	MAKE	MODEL	MILEAGE AS OF May-2011	YEAR ONE REPLACE- MENT	YEAR TWO REPLACE- MENT	YEAR THREE REPLACE- MENT	YEAR FOUR REPLACE- MENT	PROJECTED MILEAGE 2012 (+15K)	PROJECTED MILEAGE 2013 (+30K)	PROJECTED MILEAGE 2014 (+45K)
82	1998	FORD	CROWN VICTORIA	75,217	2011						
392	1999	FORD	CROWN VICTORIA	114,320	2011						
201	2000	FORD	CROWN VICTORIA	113,909	2011						
312	2001	FORD	CROWN VICTORIA	117,017	2011						
211	2001	FORD	CROWN VICTORIA	83,063	2011						
322	2002	FORD	CROWN VICTORIA	87,395	2011						
321	2002	FORD	CROWN VICTORIA	89,996	2011						
331	2003	FORD	CROWN VICTORIA	106,577	2011						
341	2004	FORD	CROWN VICTORIA	111,921	2011						
342	2004	FORD	CROWN VICTORIA	110,263	2011						
355	2005	FORD	CROWN VICTORIA	96,059		2012			110,059		
356	2005	FORD	EXPEDITION	76,304		2012			91,304		
251	2005	CHRYSLER	SEBRING	109,000		2012			124,000		
252	2005	FORD	TAURUS	90,008		2012			105,008		
254	2005	CHRYSLER	SEBRING	75,744		2012			90,744		
255	2005	DODGE	CHARGER	81,601			2013		96,601	111,601	
360	2006	FORD	CROWN VICTORIA	54,033			2013		69,033	84,033	
361	2006	FORD	CROWN VICTORIA	56,517			2013		71,517	86,517	
271	2007	FORD	500	74,881			2013		89,881	104,881	
376	2007	FORD	CROWN VICTORIA	45,050			2013		60,050	75,050	
377	2007	FORD	CROWN VICTORIA	41,470				2014	56,740	71,740	86,740
379	2007	FORD	CROWN VICTORIA	62,323				2014	77,323	92,323	107,323
282	2008	CHEVROLET	IMPALA	89,307				2014	104,307	119,307	134,307
381	2008	FORD	CROWN VICTORIA	56,334				2014	71,334	86,334	101,334
382	2008	FORD	CROWN VICTORIA	36,530				2014	51,530	66,530	81,530

MIAMI-DADE COUNTY LEAGUE OF CITIES226 East Flagler Street • Suite 200 • Miami, FL 33131
Phone 305.416.4155 Fax 305.416.4157 www.mdclc.orgRichard Kuper, Esq.
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May 27, 2011

The Honorable Daniel Dietch
Mayor, Town of Surfside
9293 Harding Ave
Surfside, Fl 33154

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Councilman, Town of Bay Harbor Islands
Hon. Julio Robaina
Mayor, City of Hialeah
Hon. R.S. Shiver
Commissioner, City of Florida City
Hon. Wifredo "Willy" Gort
Commissioner, City of Miami
Hon. Paul Vogel
Commissioner, City of North Bay Village
General Counsel
Howard B. Lenard, Esq.

Dear Mayor Dietch:

Allow me this opportunity to first thank you for your continued participation in and support of the Miami-Dade County League of Cities (MDCLC). President Juan Carlos Bermudez, and myself are well aware that MDCLC's success is a direct result of the hard work and dedication of its members. For this reason, we need your cooperation in making appointments to the Board.

Each member municipality designates one of its elected officials to serve as a Director and one as an alternate of the League for a period of one year. The term commences at the date of the Annual Meeting which has been changed to the month of February, and runs until the following February.

Allow this letter to serve as a kind reminder that you are required to designate a Director and an alternate to represent your municipality on the MDCLC's Board. Please send us via e-mail or U.S. Mail a letter with your appointments.

Thank you for your continued cooperation and support.

Sincerely,

Richard Kuper, Esq.
Executive Director

RK/mr



Town of Surfside Commission Communication

Agenda Item # 9F

Agenda Date: June 14, 2011

Subject: Resident Parking Program

Background: In November 2006 the Town Commission instituted the resident parking program which provided free metered parking to residents in the business district and municipal lots. The program was offered in conjunction with business merchants and was designed to encourage residents to patronize local businesses. Originally intended as a pilot program it has continued each year since.

The parking permits are free of charge to residents and are valid October 1st through September 30th of each year. Each household is eligible to receive two permits. Proof of residency and license plate number(s) are required when registering for the permit. Each permit is individually numbered and recorded on the Town's registration form.

In 2009 it became necessary to add the following restrictions:

- Not valid in the 9400 – 9500 blocks of Harding Avenue
- Parking limited to four (4) hours in any location
- Cannot be used for all day or overnight parking

This year the Town has issued the most permits since the program began (2100).

Recently a random check was conducted on sixty (60) parking permits throughout the Town. It was discovered that twelve (12) permits were on vehicles with license plates that did not match the one on the Town registration form. Of the twelve vehicles, six were not even registered to Surfside residents. In addition, Parking Enforcement Officers have found construction workers using resident permits to park in the Abbott lot. When the resident was contacted they admitted letting the construction worker use their permit. It is apparent that the program is being abused by some residents and resulting in lost revenue from the parking space.

Staff is recommending the following changes to the resident parking program:

- Use of a permanently affixed decal
- Decal to be affixed by a Town employee
- Authorization for the Police Chief to revoke resident parking privilege when abuse is confirmed
- Establishment of an appeal process for any revocation to the Town Manager
- Vehicles displaying a revoked parking permit and parked illegally at a meter will be cited
- Vehicle must be registered to a Surfside resident
- Vehicle registration must be shown at time of registration

Budget Impact: The cost to print the parking permits last year was \$1200 as additional permits were necessary due to increased demand. The software program needed to track the vehicle registrations cost \$1550. The cost for clerical staff to process the registrations and do data entry is estimated at \$3250. Total cost of the resident parking program is approximately \$6000.

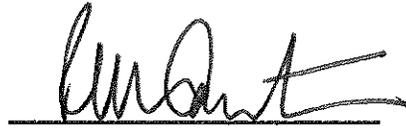
Analysis: The resident parking program is being abused by a small minority of residents and needs tighter restrictions and sanctions in place.

Staff Impact: Clerical staff spends considerable time on the registration process and data entry.

Recommendation: It is recommended that the Surfside Town Commission approve the changes to the resident parking program. We would also request your reaction to implementing a \$10 annual fee for FY 11/12. This will offset the cost of the program including the additional Staff time to affix the decals.



John Di Censo
Assistant Chief



Roger M. Carlton
Town Manager



Town of Surfside Commission Communication

Agenda Item #: 9G
Agenda Date: June 14, 2011
Subject: New Crime Prevention Initiatives

Background: At the April 12th 2011 Town Commission Meeting, the Mayor requested for the Town Manager to identify new crime prevention initiatives to address the perception of crime in Surfside.

At the May 10, 2011 Town Commission Meeting four of the initiatives were approved:

- Citizens Patrol – trained residents who will work directly with the Police Department to be the eyes and ears of the community and report suspicious activity
- Crime Watch – Eye on Surfside neighborhood watch signs installed in the residential area
- Bike with the Chief – residents join the Chief and other police officers on a recurring bicycle ride through the residential area to get to know their police department and identify crime problems and quality of life issues
- Crime Prevention Expo – a fair at the 96 Street Park to demonstrate to our residents the latest crime prevention techniques

The cost of these initiatives will be paid from the forfeiture fund. Implementation of these four initiatives is forthcoming. Three more crime prevention initiatives are presented for the fiscal year 2011-2012:

- Mobile license plate readers – cameras installed on the parking enforcement vehicle to instantaneously check license plates from national and countywide databases and to alert the Police Department of stolen cars, wanted vehicles, and parking violation scofflaws
- Fixed automated license plate recognition system – cameras mounted with our red light cameras to immediately identify stolen cars and wanted vehicles entering or leaving the Town limits
- Crime prevention through environmental design – landscaping, lighting, and physical barriers at the entrances to residential areas enhance safety and deter criminal activity

Analysis: The mobile license readers installed on the parking enforcement vehicle will allow seven day week coverage for the day and evening shifts to immediately alert the Police Department of stolen cars or wanted cars in the residential area and business district. Criminals in many cases steal cars and then use the stolen car to commit burglaries and robberies. The mobile license reader also has the capability to identify and alert the Police Department of parking violation scofflaws.

The fixed automated license plate recognition system is in the planning stages with American Traffic Solutions (vendor for the Red Light Camera Safety Program). The license plate reader system will be installed on the red light camera pole at 88 Street and Collins Avenue. The system, like the mobile reader will immediately notify the Police Department of a stolen or wanted vehicle entering the Town at 88 Street and Collins Avenue seven days a week, twenty fours a day. The Bal Harbour Police Department is planning to install a fixed system on their red light camera pole at 96 Street and Harding Avenue. The software will provide us immediate notification of stolen or wanted vehicles entering the Town from 96 Street.

Suggestions for the installation of Town of Surfside physical entrance ways are 88 Street and Byron Avenue, 96 Street and Bay Drive, and 91 Street and Harding Avenue. The structures may provide the perception of greater security and at the same time beautify the locations. See Attachment A of examples of entrance ways for Surfside and other local communities.

Budget Impact: The cost for the mobile two camera license reader is \$25,000 to be paid from the Parking Fund. The cost for the fixed automated plate recognition system installed on the red light camera poles is \$42,735 (\$14,245 apiece for three cameras to cover three lanes of traffic). It is recommended that revenue from the red light camera safety program cover the cost of this project. The cost for the Town entrance ways can range from \$7,000 to \$9,000 apiece for a basic structure to \$13,000 to \$15,000 apiece for an advanced entrance way. It is recommended that the Town install pillar like structures at 88 Street and Byron Avenue and 91 Street and Harding Avenue, and one entrance way structure at 96 and Bay Drive. The entrance way structure at 96 Street and Harding Avenue also needs to be upgraded. The cost is estimated from \$35,000-\$45,000. The installation of the structures could be phased in over the several fiscal years.

Staff Impact: None

Recommendation: Staff recommends the Town Commission approve the implementation of this expanded crime prevention initiative to address the perception of crime in Surfside. The Administration views this program as an enhancement to a job already well done by our Police Department. Should additional efforts be required in the future, recommendations will be made to the Town Commission.



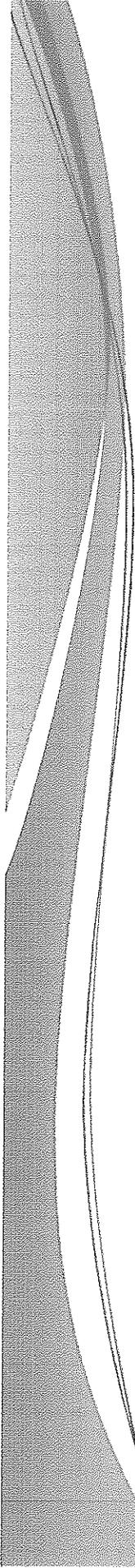
John Di Censo, Assistant Chief of Police



Roger M. Carlton, Town Manager

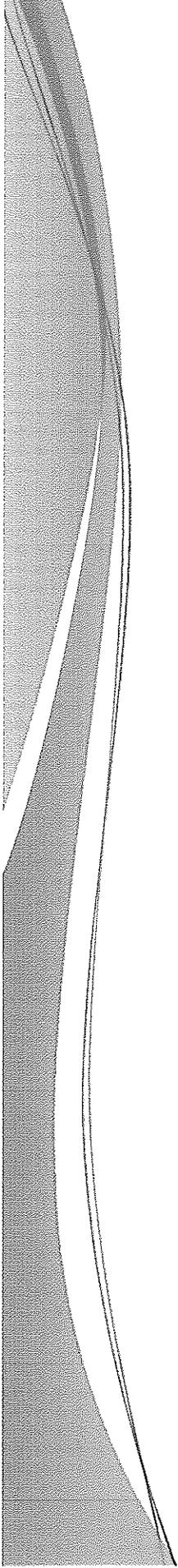
SURFSIDE POLICE DEPARTMENT
CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

TOWN BEAUTIFICATION AND CRIME
PREVENTION PROJECT.



PURPOSE:

TO HELP MAKE THE TOWN OF SURFSIDE EVEN MORE OF A DESIRABLE PLACE TO LIVE AND VISIT AND AT THE SAME TIME DETER CRIMINAL ACTIVITY USING CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN PRINCIPLES. THE FOLLOWING SLIDES WILL ILLUSTRATE ENTRANCE WAYS TO OTHER LOCAL COMMUNITIES THAT SURFSIDE MAY CONSIDER OR MODIFY.



ESTIMATED COST:

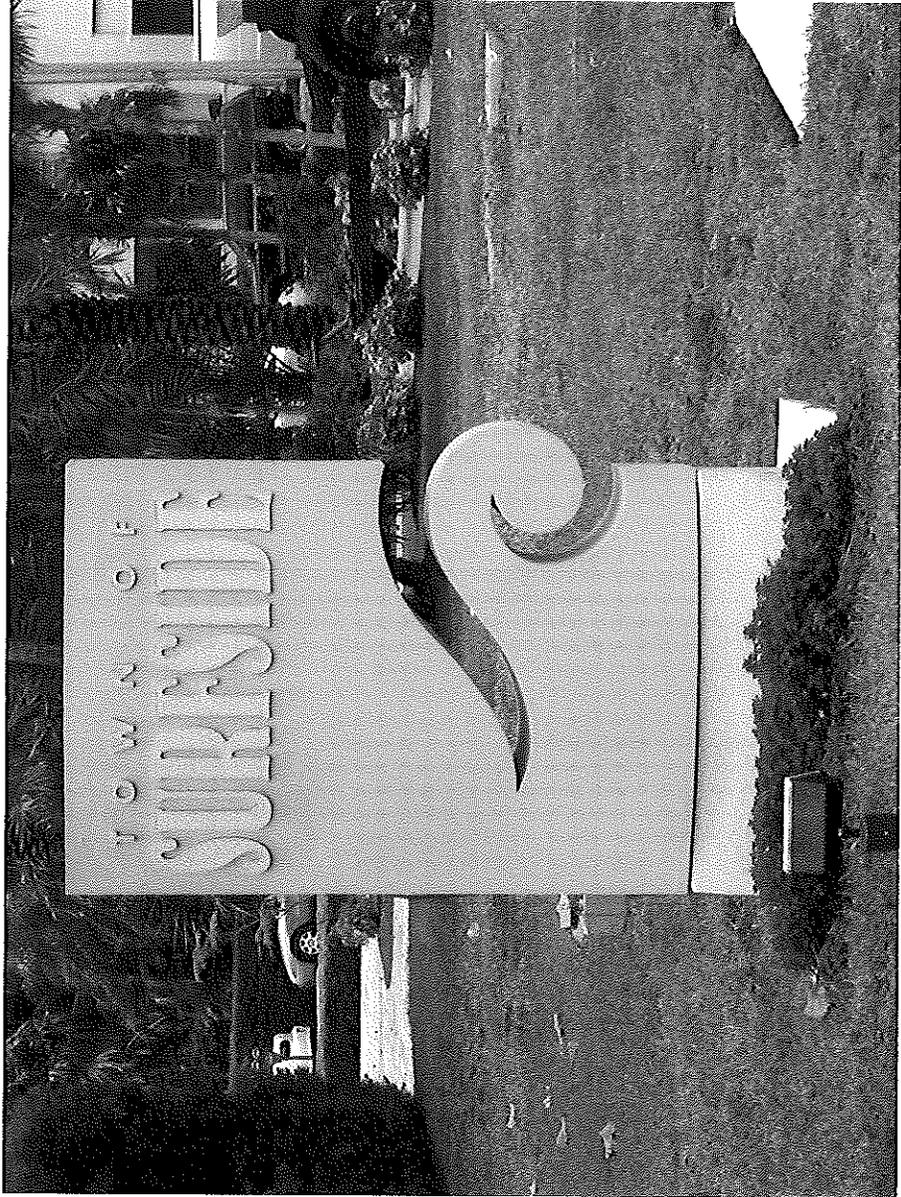
CITY ENTRANCE STRUCTURE WITHOUT A
FOUNTAIN \$7,000.00 - \$9,000.00

CITY ENTRANCE STRUCTURE WITH A FOUNTAIN
\$13,000. 00 - \$15,000.00

EXAMPLES OF CITY ENTRANCES: GOLDEN BEACH



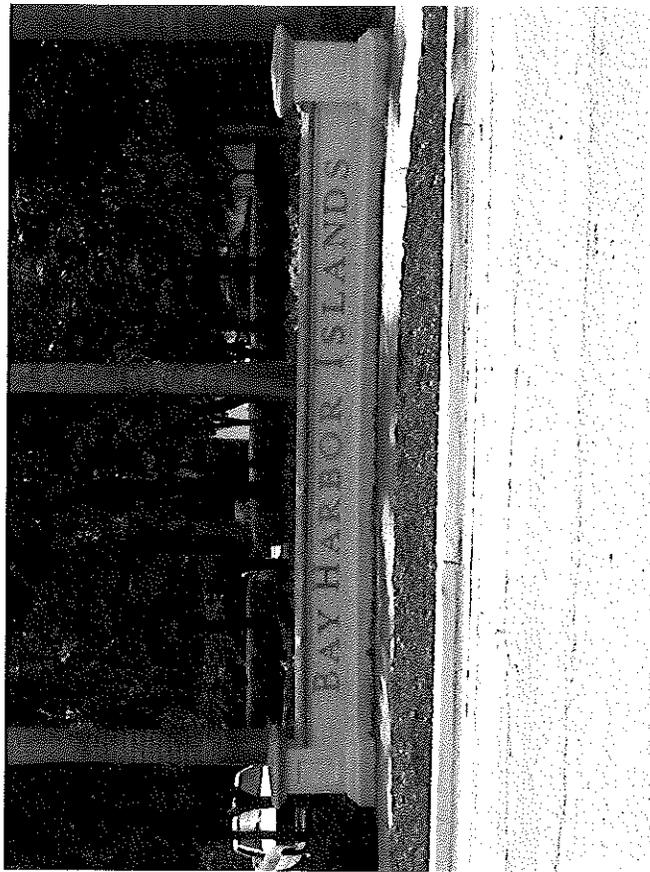
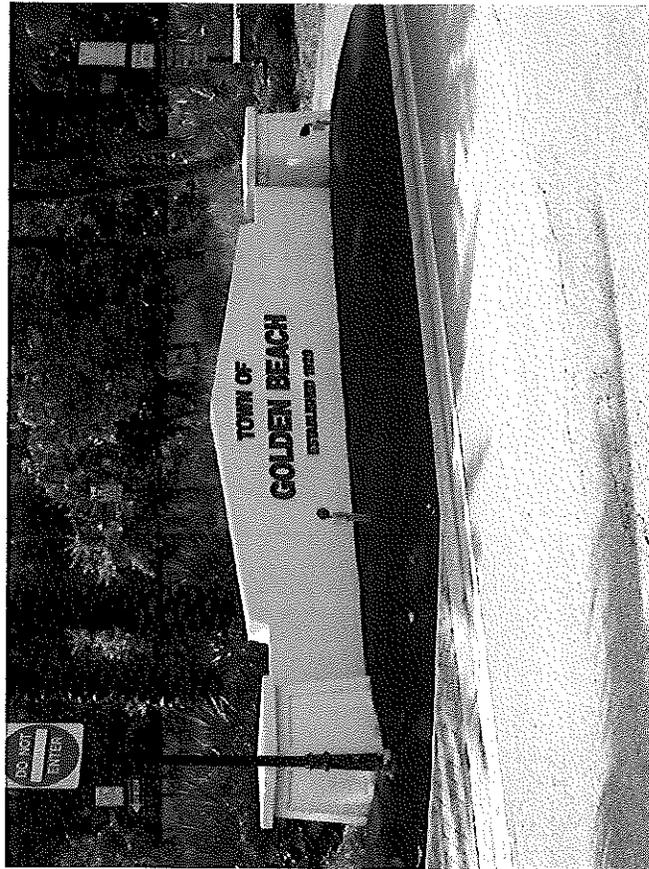
CITY ENTRANCE CONTINUED: SURFSIDE



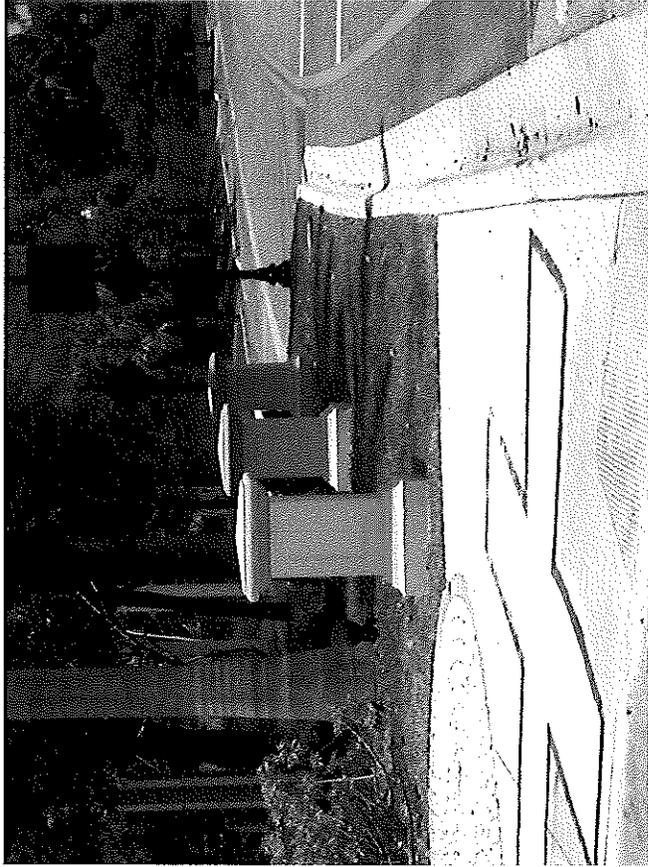
CITY ENTRANCES CONTINUED: CORAL GABLES

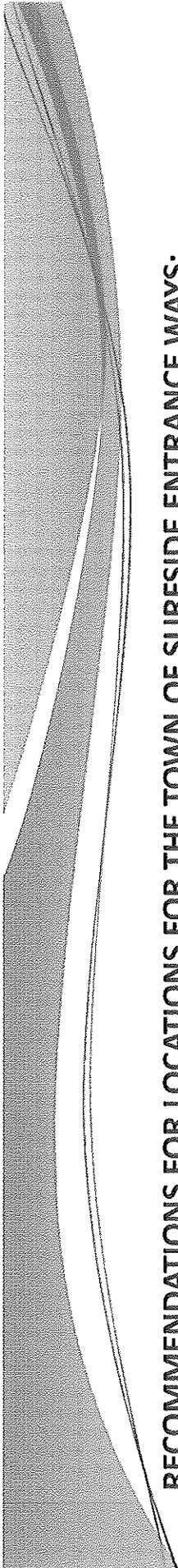


CITY ENTRANCES CONTINUED: GOLDEN BEACH & BAY HARBOR ISLANDS



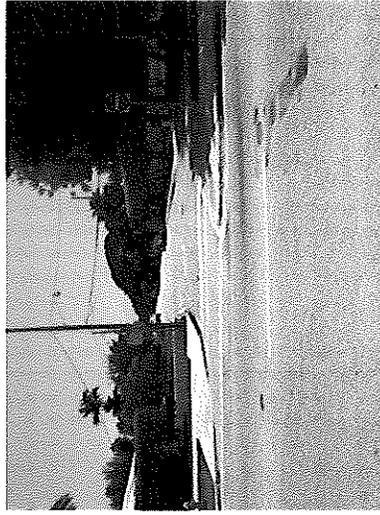
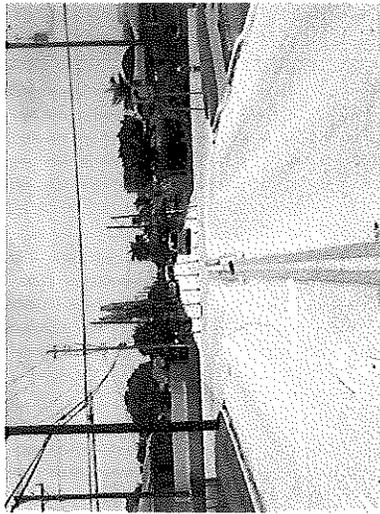
CITY ENTRANCES CONTINUED: BAY HARBOR ISLANDS & CORAL GABLES





RECOMMENDATIONS FOR LOCATIONS FOR THE TOWN OF SURFSIDE ENTRANCE WAYS:

- 87TH STREET AND BYRON AVE
- 91ST ST AND HARDING AVENUE
- 96TH ST AND BAY DRIVE





Town of Surfside Commission Communication

Agenda Item # 9H

Agenda Date: June 14, 2011

Subject: Police Communications Unit

Background: The Police Department has its own Communications Unit comprised of one supervisor and three dispatchers who operate twenty four hours a day seven days a week. The dispatchers are responsible for answering all incoming phone calls, dispatching calls for service via the radio, running records checks and interacting with the public. All 911 emergency calls are received and dispatched by the Miami-Dade Police Department (MDPD) Communications Unit.

Surfside's Communications Unit has seen a reduction in staffing (two dispatcher positions) due to budget cuts and as a result one shift per week is not covered. That shift must then be filled by taking a police officer off the street leaving only two officers on patrol or with an overtime employee if there are not enough officers on-duty. Additionally, when a dispatcher calls in sick or requests leave time that shift is filled the same way. The result is less officers patrolling Surfside.

Recently one of the dispatchers applied for and was granted Family Medical Leave and will be out for an indefinite period of time. In order to address the staffing shortage two dispatchers from the Bal Harbour Police Department have been hired as part time employees to cover some of the unfilled shifts.

The Police Department is requesting to implement a 90 day pilot program that would entail closing the Communications Unit from 11:00PM to 7:00AM daily. The program would operate as follows. Each night at 11:00PM the lobby doors would be locked and all telephone calls would be forwarded to the MDPD Communications Unit. A telephone would be installed on the outside of Town Hall at the Harding Avenue entrance. This phone will connect directly to MDPD Communications in the event someone came to Town Hall needing police assistance. MDPD Communications would dispatch calls for service and continue handling all 911 emergency calls. At 7:00AM the lobby doors would be unlocked and the telephone calls will be switched back to our Communications Unit. The Director of the Miami-Dade Police Department has authorized this program.

Budget Impact: Since the beginning of the fiscal year the Police Department has expended 551 hours of overtime (approximately \$24,795) and 191 hours of compensatory time to cover shifts in the Communications Unit created by the staffing shortage, sick time usage and leave time. This does not take into consideration the impact on public safety when an on-duty police officer has been taken off the street to cover a shift in dispatch.

Analysis: Implementing this pilot program in the Communications Unit will have no negative impact on the community or the level of service being provided. On a typical evening there are very few incoming telephone calls or walk-up customers to the Communications Unit.

Staff Impact: This program will allow us to keep our police officers on the street where they belong. There will be no lay-off or positions eliminated during this pilot program.

Recommendation: It is recommended that the Surfside Town Commission approve the 90 day pilot program to transfer the responsibilities of the Surfside Police Communications to the Miami-Dade Police Department Communications Unit between the hours of 11:00PM to 7:00AM daily only.



John Di Censo
Assistant Chief



Roger M. Carlton
Town Manager