



**Town of Surfside
Town Commission Meeting
Supplemental Agenda
August 9, 2011
7 p.m.**

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

1. Opening

- A. Call to Order**
- B. Roll Call of Members**
- C. Pledge of Allegiance**
- D. Mayor and Commission Remarks – Mayor Daniel Dietch**
- E. Agenda and Order of Business Additions, deletions and linkages**
- F. Community Notes – Mayor Daniel Dietch**
- G. Certificate of Appreciation, Intern Michelle Garcia**
- H. Marilyn Stevens, Partnership and Data Services Specialist, U. S. Census Bureau,
Duncan Tavares Tourism, Economic Development & Community Services Director
(Set for 7:20 p.m.)**

2. Quasi-Judicial Hearings (None)

3. Consent Agenda (Set for approximately 7:35 p.m.)

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.

Recommended Motion: To approve all consent agenda items as presented below.

**Denotes agenda items as “must haves” which means there will be significant impacts if the item is not addressed tonight. If these items have not been heard by 10 p.m., the order of the agenda will be changed to allow them to be heard.*

- A. Minutes - Town Commission Meeting – June 14, 2011 Page 1-22
Town Commission Budget Workshop – June 23, 2011 Page 23-33
Town Commission Meeting – July 12, 2011 Page 34-51**
- B. Budget to Actual Summary as of May 31, 2011 – Martin Sherwood, Finance
Director Page 52-53**
- *C. Town Manager’s Report (Points of Light) – Roger M. Carlton, Town Manager
Page 54-66**

- *D. **Town Attorney's Report** – Lynn M. Dannheisser, Town Attorney **Page 67-77**
- E. Projects Progress Report** – Calvin, Giordano and Associates, Inc. **Page 78-81**
- *F. **FDOT License Agreement -Update**– Bill Evans, Director of Public Works
- G. Beautification Committee Minutes, July 11, 2011** (draft – not adopted by Committee) – Commissioner Marta Olchyk

4. Ordinances

(Set for approximately p.m.) (Note: Good and Welfare must begin at 8:15)

A. Second Readings (Ordinances and Public Hearing)

NONE

B. First Readings Ordinances

(Set for approximately 8:00 p.m.) (Note: Good and Welfare must begin at 8:15)

- *1. **Litter Ordinance** – Roger M. Carlton, Town Manager (linked with Item 9H)
AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA AMENDING CHAPTER 34 “ENVIRONMENT” BY ADDING ARTICLE V “LITTER” AND SPECIFICALLY CREATING SECTIONS 35-78 “DEFINITIONS”, SECTION 35-79 “UNFINISHED, VACANT, UNOCCUPIED OR CLOSED STRUCTURES, CONSTRUCTION SITES OR VACANT LOTS; MAINTENANCE PROCEDURES REQUIRED OF OWNERS”; AND SECTION 35-80 “PROHIBITIONS ON OWNERS”; AND SECTION 35-80 “PROHIBITIONS ON LITTER; CIVIL FINES FOR VIOLATIONS; ENFORCEMENT; APPEALS; LIENS” OF THE TOWN OF SURFSIDE CODE OF ORDINANCES; DELETING CHAPTER 2. “ADMINISTRATION” ARTICLE I. SECTION 54-2 ENTITLED “DISTRIBUTION OF HANDBILLS”; PROVIDING FOR INCLUSION IN THE CODE; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; AND PROVIDING FOR AN EFFECTIVE DATE. Page 86-93

5. Resolutions and Proclamations

(Set for approximately 8:20 p.m.) (Note: Depends upon length of Good and Welfare)

- *A. **Ric Man Agreement Addendum Number One** – Bill Evans, Director of Public Works **Page 94-96**

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, APPROVING AN AFTER-THE-FACT ADDENDUM NUMBER ONE TO THE STANDARD FORM AGREEMENT BETWEEN THE TOWN OF SURFSIDE AND RIC-MAN INTERNATIONAL, INC. FOR THE INFRASTRUCTURE REHABILITATION PROJECT; PROVIDING FOR AN EFFECTIVE DATE.

- *B. **Interlocal Agreement with Sunny Isles Beach for Street Sweeper** – Bill Evans, Director of Public Works **Page 97-100**

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA (“TOWN”) AUTHORIZING THE TOWN TO ENTER INTO AN INTERLOCAL AGREEMENT WITH THE CITY OF SUNNY ISLES BEACH, FLORIDA TO SWEEP THE TOWN’S STREETS; AUTHORIZING THE TOWN MANAGER AND TOWN ATTORNEY TO DO ALL THINGS NECESSARY TO IMPLEMENT THE TERMS OF THE AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE.

- *C. Interlocal Agreement with Sunny Isle Beach for Expanded Shuttle Bus Service – Bill Evans, Director of Public Works Page 101-103**

A RESOLUTION OF THE TOWN COMMISSION FOR THE TOWN OF SURFSIDE, FLORIDA (“TOWN”), AUTHORIZING AND DIRECTING THE TOWN MANAGER AND TOWN CLERK TO ENTER INTO AN INTERLOCAL AGREEMENT WITH THE CITY OF SUNNY ISLES BEACH, FLORIDA (“SUNNY ISLES BEACH”) TO PROVIDE SHUTTLE BUS TRANSPORTATION SERVICES TO THE RESIDENTS OF THE TOWN AND FOR THE TOWN TO PROVIDE SHUTTLE BUS SERVICE TO THE RESIDENTS OF SUNNY ISLES BEACH WITH THE PICKUPS AND DROPOFFS ON A DESIGNATED LOCATION ON 96TH STREET; PROVIDING FOR AN EFFECTIVE DATE.

- *D. Memorandum of Understanding with Bal Harbour for the Construction of the Sewer Force Main Pipe – Roger M. Carlton, Town Manager**

Included in Supplemental Agenda

A RESOLUTION OF THE TOWN OF SURFSIDE, FLORIDA (“TOWN”), ADOPTING A MEMORANDUM OF UNDERSTANDING (“MOU”) BETWEEN THE TOWN AND BAL HARBOUR VILLAGE, FLORIDA (“BAL HARBOUR”); AUTHORIZING THE TOWN MANAGER TO TAKE ANY AND ALL STEPS NECESSARY TO EXECUTE THE NECESSARY DOCUMENTS TO CARRY OUT THE INTENT AND PURPOSE OF THIS RESOLUTION; AND PROVIDING FOR AN EFFECTIVE DATE.

- ~~***E. Agreement with (not for profit corporation) to use Town-owned Land for a Community Garden – Roger M. Carlton, Town Manager – Page 107**~~
~~**[To be delivered under separate cover]**~~ **See item 9I**

- F. Mutual Aid Agreement with Medley Police Department – Police Chief David Allen**

A RESOLUTION OF THE TOWN COMMISSION FOR THE TOWN OF SURFSIDE, FLORIDA, AUTHORIZING AND DIRECTING THE TOWN MANAGER AND TOWN CLERK TO EXECUTE A MUTUAL AID AGREEMENT FOR VOLUNTARY COOPERATION AND OPERATIONAL ASSISTANCE WITH THE TOWN OF MEDLEY, FLORIDA POLICE DEPARTMENT. Page 108-117

- 6. Good and Welfare (Set for approximately 8:15 p.m.)**

Public comments for subjects or items not on the agenda. Public comment on agenda items will be allowed when agenda item is discussed by the Commission.

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 (Set for approximately 9:15 p.m.)

A. Surfside Spice Culinary Event June 26, 2011 Video- Roger M. Carlton, Town Manager (verbal)

***B. Community Center Guest Policy –** Tim Milian, Parks and Recreation Director
Page 118-120

***C. Solid Waste Charges on Property Tax Bill Fiscal Year 2012-2013 –** Roger M. Carlton, Town Manager **Page 121-127**

***D. Summer Studies Report –** Roger M. Carlton, Town Manager (verbal)

***E. Water, Sewer, Stormwater/Collins Force Main Report on Community Meeting And Discussions with Miami Beach -** Roger M. Carlton, Town Manager (verbal)

***F. 9501 Collins Avenue, LLC Right of First Refusal (Discussion Item) –** Roger M. Carlton, Town Manager and Lynn Dannheisser, Town Attorney **Page 128-157**

***G. Deco Bike Rental Station –** Duncan Tavares, Tourism, Economic Development and Community Services Director **Page 158-184**

***H. Feral Cats –** Roger M. Carlton, Town Manager (linked to Item 4B1)
Page 185-186

I. Community Garden/Garden Club Agreement – Update Points of Light (POL) Number 8 – Roger M. Carlton, Town Manager and Duncan Tavares, Tourism, Economic Development and Community Services Director **(formerly 5E)**

10. Adjournment

Respectfully submitted,



Roger M. Carlton
Town Manager

THIS MEETING IS OPEN TO THE PUBLIC. IN ACCORDANCE WITH THE AMERICANS WITH DISABILITIES ACT OF 1990, ALL PERSONS ARE DISABLED; WHO NEED SPECIAL ACCOMMODATIONS TO PARTICIPATE IN THIS MEETING BECAUSE OF THAT DISABILITY SHOULD CONTACT THE OFFICE OF THE TOWN CLERK AT 305-893-6511 EXT. 226 NO LATER THAN FOUR DAYS PRIOR TO SUCH PROCEEDING. HEARING IMPAIRED PERSONS MAY

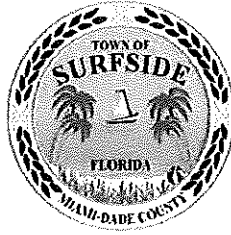
CONTACT THE TDD LINE AT 305-893-7936.

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

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

TWO OR MORE MEMBERS OF OTHER TOWN BOARDS MAY ATTEND THIS MEETING.

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



Town of Surfside Commission Communication

Agenda Item # 3F

Agenda Date: August 9, 2011

Subject: FDOT License Agreement

We have received notice from the State of Florida that the license agreement really needs to be an easement to construct the sidewalk. A representative from FDOT promises that the proposed easement will be delivered Monday to give time for Town Attorney, Lynn Dannheisser to review the document. Therefore, we are leaving the item on the agenda since construction is about to begin.

Roger M. Carlton
Town Manager



July 11, 2011
Town of Surfside
Beautification Committee
Meeting Minutes
7pm

1. Call to Order.

Meeting called to order at 7:00pm.

2. Roll Call.

In attendance were: David Steinfeld; Jennifer Brilliant; Adam Markow; Charles Kesl.

Not in attendance were: Grace Heisling.

Also in attendance were: Commissioner, Marta Olchyk; Public Works Director, Bill Evans (via phone, called in 7:20pm); Resident, Barbara McLaughlin.

3. Approval of Minutes.

June Minutes, all in favor.

4. Agenda Items.

A. Duncan Tavares, sample storefront window graphic presented for approval.

Committee is awaiting update from Duncan Tavares on status of window graphics.

B. Electronic sign and cones to be removed near CVS on Harding Avenue.

David Steinfeld would like to reiterate the request to remove the electronic sign. All members were in agreement. Additional conversation below.

C. Marta Olchyk to request from Bill Evans, a recommendation on how to procure plants for Harding Avenue.

****DISCUSSION BELOW ALSO ADDRESSES AGENDA ITEMS D. AND E.***

Marta Olchyk stated that she would like to contact Bill Evans about choices for plant options for downtown area.

David Steinfeld said that the committee was in agreement selecting the Orange Gelger tree and thinks there may be some resistance from staff.

Charles Kesl indicated that the Orange Gelger was selected because it is a flowering tree with limited problems associated with the tree.

Bill Evans was called in to meeting.

Bill Evans indicated that the Downtown Vision Advisory Committee (DVAC) has not selected signs and themes for the downtown area so the tree selection may be premature. He also expressed concern about the pricing on mature Orange Gelger trees, initial estimates were about \$1000 for a larger and more mature tree.

David Steinfeld asked if there was an option in the \$600/\$700 range and Marta Olchyk asked about the change in pricing from \$350 to \$650 to \$1000.

Bill Evans responded the price was based upon the maturity and size of the tree but stated that smaller trees that were less expensive.

Marta Olchyk stated that the Town Commission would likely not approve 15-20 trees at \$600 tree.

Charles Kesl expressed concern about productivity of putting in Improvements prior to the DVAC vision and FDOT project scheduled for April 2012.

David Steinfeld is frustrated with ability of the committee to have an impact upon the Town.

Bill Evans suggested that because of DVAC the downtown area may be the most frustrating area of Town for the committee to attempt to make recommendations and the committee may have a more meaningful impact upon other areas of the Town.

David Steinfeld suggested focusing on the beach.

Barbara McLaughlin asked Bill Evans if there was money in the budget for more dog clean-up stations in beige.

Bill Evans indicated there was for next year.

Marta Olchyk and Barbara McLaughlin expressed concern with lack of enforcement (for clean-up) on the beach.

Charles Kesl formally requested additional enforcement.

David Steinfeld requested more dog clean-up receptacles.

Bill Evans, at the request of the committee, stated he will look at finding more money in the budget to install additional receptacles at beach entrances.

Bill Evans responded to the committee's concern about the digital/electronic signs in the Town. He indicated that the signs will be up for the next 90 days, the signs are necessary for FDOT approval and must be up two weeks in advance of a project.

Charles Kesl wanted it noted that committee is opposed to the signs.

- D. Custom signage for Town, including informative signs pointing to business district; Inquire about signage from Bay Harbor and entry point into Surfside.**

David Steinfeld stated that based upon the previous discussion the committee will try to avoid items D. and E. on the agenda.

All in agreement.

See conversation above; committee agreed to direct focus on areas throughout Town to avoid conflict with DVAC.

E. Ordinance for awnings to hang over business on Harding Avenue.

See conversation above; committee agreed to direct focus on areas throughout Town to avoid conflict with DVAC.

F. Big signs for garage sales on weekends (roundabout on Byron Avenue) should be eliminated and/or controlled.

See conversation below.

David Steinfeld asked about the blue mesh walkways that are in Sunny Isles Beach at the beach entrances.

Jennifer Brilliant stated that she doesn't think they are attractive.

Bill Evans stated that they are for people to get sand off of their feet entering and exiting the beach.

Charles Kesl asked if installing them would solve problems regarding puddles at street ends.

Bill Evans said he will get pricing, application information, and alternative colors.

All in favor of obtaining more information.

David Steinfeld asked Bill Evans if while the Town is tearing up streets for the utilities project could they look into indented residential parking-similar to what he saw in the Florida panhandle.

Bill Evans responded that there are additional feasibility issues that would have to be looked at.

Charles Kesl asked if this project could be an opportunity to have a subsidized tree program.

Jennifer Brilliant said that the Vice Mayor had proposed a tree program.

Bill Evans explained that there is already money allocated for a tree program that would use two different types of trees. He also indicated that the program proposed by the Vice Mayor was cost-prohibitive because it involved moving FP&L poles.

***DISCUSSION FOR AGENDA ITEM F.**

Marta Olchyk asked about the garage sale signs.

Bill Evans responded that it is a code enforcement issue that he has passed along to Mike Garcia and Paul Gioia.

David Steinfeld asked about umbrellas on the pool deck at the community center.

Adam Markow stated that he spoke with Tim Millan (Parks and Recreation Director) and that he indicated they have already put a program into place.

Jennifer Brilliant stated that the last issue was the baskets along Harding Avenue, the Vice-Mayor asked if they could be placed back in the winter.

Charles Kesl stated that the Irrigation required is very costly. He also stated that is unable to speak in support of a tree canopy program at the upcoming Town Commission meeting (as requested) in light of the tree program that Bill Evans indicated will be implemented.
All in agreement.

David Steinfeld requested a laptop for the next meeting to look at the Charrette. He asked Bill Evans if he can get copies of the Charrette and a laptop for the meeting.

Meeting adjourned at 8:37pm.

Minutes Completed By,

s/Sarah Johnston , Recording Clerk
8/4/11

A handwritten signature in black ink, appearing to be 'Sarah Johnston', written over the printed name and date.



Town of Surfside Commission Communication

Agenda Item #: **5D**

Agenda Date: August 9, 2011

Subject: MOU between Town of Surfside and Bal Harbour Village for a Sewer Force Main Project

Background: Attached is the Memorandum of Understanding between the Town of Surfside and Bal Harbour Village for the construction along Collins Avenue of a 16 inch sewer force main from 96th Street to 72nd Street in Miami Beach. The existing force main runs on Byron Avenue. The 60 year old main is being replaced with a new main on Collins Avenue that will be interconnected to the old main once it is inspected and repaired (if repairs are feasible).

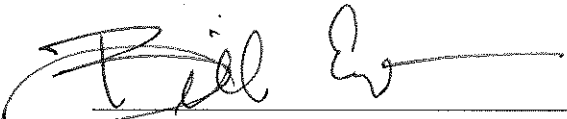
The construction contract with TB Landmark Construction Inc. was publicly bid by Bal Harbour. The Surfside Town Commission was briefed at every Town Commission meeting over the last six months regarding the need for the project and agreed to jointly implement the project with Bal Harbour during the June 14, 2011 Town Commission meeting. The justification and funding sources were defined in Agenda Item No. 5A. The Town Commission award for the water/sewer/storm drainage project was also included in the Agenda Item. Since that time contracts have been signed with both construction firms, two meetings have been held with Miami Beach officials and a permit has been issued, a Maintenance of Traffic (MOT) Plan has been approved by FDOT and the determination to utilize the Transacta Lanai site (92nd Street between Collins Avenue and Harding Avenue) as a temporary staging area as well as the northern two lanes of 91st Street (Surfside Blvd) has been reached. Finally the first of a series of publicly televised citizen involvement meetings has been held on August 3, 2011. Bottom line is that the project is underway.

The main elements of the MOU include:


1. A term of one year to allow for construction of the new line and shut down/inspection of the old line. Once the inspection is done and the cost of repairs (if feasible) to the old line are known, a permanent 50 year Interlocal Agreement will be brought to the Town Commission for approval.
2. Bal Harbour is responsible for the construction with cooperation and support from the Town of Surfside.
3. Any change orders above \$5000 must be approved by Surfside.

4. There will be a 50 percent credit to the estimated \$1.5 million Surfside share of the force main construction for the interconnection cost estimated to be \$285,000 (\$142,500/50 percent credit). The basic project cost has increased somewhat to extend the line an additional two blocks in Miami Beach. At this time the \$142,500 will likely be needed to cover our share of the basic project cost and possible change orders. The interconnect cost is included in the Town of Surfside's water/sewer/storm drainage project.
5. The new line will be jointly owned by the Town of Surfside and Bal Harbour Village. The maintenance costs will also be shared equally with Surfside having the responsibility for completing the maintenance.
6. Once the costs and feasibility of repairing the old line on Byron Avenue are known, the Memorandum of Understanding will be replaced by a 50 year Interlocal Agreement (reflecting the expected life of the new main).

In summary, the Memorandum of Understanding formalizes the relationship with the Bal Harbour Village which has been under discussion with the Surfside Town Commission for many months. It establishes the procedures for completing the construction on Collins Avenue and restoring the future of the old force main on Byron Avenue. Your approval is recommended.



Bill Evans, Public Works Director



Roger M. Carlton, Town Manager

RESOLUTION 11-_____

A RESOLUTION OF THE TOWN OF SURFSIDE FLORIDA (“TOWN”), ADOPTING A MEMORANDUM OF UNDERSTANDING (“MOU”) BETWEEN THE TOWN AND BAL HARBOUR VILLAGE, FLORIDA (“BAL HARBOUR”); AUTHORIZING THE TOWN MANAGER TO TAKE ANY AND ALL STEPS NECESSARY TO EXECUTE THE NECESSARY DOCUMENTS TO CARRY OUT THE INTENT AND PURPOSE OF THIS RESOLUTION; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, on August 22, 1946, Surfside granted Miami Beach Heights, Inc., a Florida corporation, amongst other things, the right to construct and install a water line and a sanitary sewer force main under certain designated streets in Surfside pursuant to Surfside Ordinance No. 132 (the “1946 Ordinance”); and

WHEREAS, the grant under the 1946 Ordinance was for a term of thirty (30) years from the effective date thereof; and

WHEREAS, subsequent to the 1946 Ordinance, Miami Beach Heights, Inc., a Florida corporation assigned, amongst other things, all of its rights under 1946 Ordinance to Bal Harbour; and

WHEREAS, on July 26, 1977, Surfside and Bal Harbour entered into an agreement renewing and modifying certain terms of the 1946 Ordinance (“1977 Extension”); and

WHEREAS, on May 15, 2004, Bal Harbour adopted Resolution Number 661 amending certain terms of the 1946 Agreement and the 1977 Extension (the 1946 Ordinance, the 1977 Extension and Resolution Number 661 being collectively referred to as the “Existing Water and Sewer Agreements”); and

WHEREAS, the Existing Water and Sewer Agreements are now expired and Surfside and Bal Harbour wish to enter into an agreement providing for the design, development, construction, operation and maintenance of a new sanitary sewer force main through Bal Harbour and Surfside (“New Sewer Line”); and

WHEREAS, the Town and Bal Harbour wish to enter into this MOU to memorialize certain of the terms and conditions that will serve as the basis for the preparation of a New Sewer Line agreement (the “New Sewer Line Agreement”); and

WHEREAS, the Town Commission finds that this Resolution is in the best interest and welfare of the residents of the Town.

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

Section 1. Recitals. The above recitals are true and correct and are incorporated herein by this reference.

Section 2. Adoption of Memorandum of Understanding. The Town Commission hereby approves the Memorandum of Understanding between the Town and Bal Harbour attached hereto as Exhibit "A,"

Section 3. Authorization. The Town Manager is hereby authorized to take any and all steps necessary to execute the necessary documents to carry out the intent and purpose of this Resolution.

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

PASSED AND ADOPTED this _____ day of August, 2011

FINAL VOTE ON ADOPTION

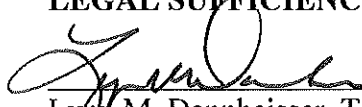
Commissioner Michael Karukin	_____
Commissioner Edward Kopelman	_____
Commissioner Marta Olchyk	_____
Vice Mayor Joseph Graubart	_____
Mayor Daniel Dietch	_____

Daniel Dietch, Mayor

Attest:

Debra E. Eastman, MMC
Town Clerk

**APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:**



Lynn M. Dannheisser, Town Attorney

EXHIBIT A

MEMORANDUM OF UNDERSTANDING BETWEEN THE TOWN OF SURFSIDE, FLORIDA AND BAL HARBOUR VILLAGE , FLORIDA

THIS MEMORANDUM OF UNDERSTANDING (this “MOU”) is made as of this ____ day of _____, 2011 by and between the undersigned representatives of the Town of Surfside, Florida, (“Surfside”) and Bal Harbour Village, Florida, (“Bal Harbour”)

BACKGROUND:

WHEREAS, on August 22, 1946, Surfside granted Miami Beach Heights, Inc., a Florida corporation, amongst other things, the right to construct and install a water line and a sanitary sewer force main under certain designated streets in Surfside pursuant to Surfside Ordinance No. 132 (the “1946 Ordinance”);

WHEREAS, the grant under the 1946 Ordinance was for a term of thirty (30) years from the effective date thereof;

WHEREAS, subsequent to the 1946 Ordinance, Miami Beach Heights, Inc., a Florida corporation assigned, amongst other things, all of its rights under 1946 Ordinance to Bal Harbour;

WHEREAS, on July 26, 1977, Surfside and Bal Harbour (each, a “Party” and sometimes hereinafter referred to collectively, as the “Parties”), entered into an agreement renewing and modifying certain terms of the 1946 Ordinance (“1977 Extension”);

WHEREAS, on May 15, 2004, Bal Harbour adopted Resolution Number 661 amending certain terms of the 1946 Agreement and the 1977 Extension (the 1946 Ordinance, the 1977 Extension and Resolution Number 661 being collectively referred to as the “Existing Water and Sewer Agreements”); and

WHEREAS, the Existing Water and Sewer Agreements are now expired and the Parties desire, amongst other things, to enter into an agreement providing for the design, development, construction, operation and maintenance of a new sanitary sewer force main through Bal Harbour and Surfside (“New Sewer Line” or “Project”). Further, the Parties wish to enter into this MOU to memorialize certain of the terms and conditions that will serve as the basis for the preparation of a New Sewer Line agreement (the “New Sewer Line Agreement”).

TERMS:

1. Subject to the terms hereof, the Parties shall jointly undertake the construction of a new 16” HDPE sewer main that shall run through Bal Harbour, Surfside and the

City of Miami Beach to be constructed in the locations as more particularly shown on Exhibit "A" attached hereto and made a part hereof.

2. Bal Harbour has entered into that certain contract with TB Landmark Construction, Inc., a Florida corporation ("Contractor") for the design, development, construction and installation of the New Sewer Line ("Construction Agreement"). Additionally, on June 21, 2011, Bal Harbour issued a change order to the Contractor requesting certain modifications to the Construction Agreement as more specifically set forth therein (a copy of the Construction Agreement and the change order are attached hereto as Exhibit "B", hereinafter the term "Construction Agreement" shall be deemed to include all change orders and modifications thereto).
 - A. Contractor acknowledges and agrees that Surfside is third party beneficiary under the Construction Agreement. Contractor's joinder in this MOU is for the sole purpose of acknowledging Surfside's rights under the Construction Agreement. To the extent that the Construction Agreement requires amendments or change orders which result in additional fees and/or costs of \$5,000.00 or less, as quoted by the Contractor, Bal Harbour shall be authorized to approve such modifications without the need for Surfside's consent. Any modifications to the Construction Agreement which result in additional fees and costs of greater than \$5,000.01, as quoted by the Contractor, shall require the written consent of both Parties prior to being authorized.
 - B. Subject to the terms contained in section 4 hereof, each Party shall be responsible for one half of all of the costs for the design, development, construction and installation of the New Sewer Line as set forth in the Construction Agreement.
 - C. Each Party shall be responsible for one half of all of the costs for the construction costs and engineering fees of the interconnection of the existing force main on Byron Avenue at two locations in Surfside in the amount not to exceed \$285,000.00. Any costs in excess of \$285,000.00 with respect to the interconnection of the existing force main on Byron Avenue shall require the written consent of both Parties prior to being authorized.
3. Bal Harbour shall provide notice to Surfside of any subsequent modifications or change orders pertaining to the Construction Agreement and Design Agreement (Attachment "C") which result in additional fees or costs to the Parties within ten (10) days after the date of such modifications or changes.

(Attachment "C") which result in additional fees or costs to the Parties within ten (10) days after the date of such modifications or changes.

4. If Bal Harbour finances and/or advances any or all of the costs of the construction of the New Sewer Line on behalf of Surfside through the use of municipal bonds or other financing arrangements, Surfside shall repay Bal Harbour for the borrowed funds at the rate of 15 basis points (.15%) over the interest rate paid by Bal Harbour to the applicable lender or bondholders and otherwise upon the same terms and conditions as Bal Harbour is responsible to repay the same. For purposes hereof, "costs of the construction" shall be deemed to include all hard costs and soft costs related to the design, development, construction and installation of the New Sewer Line.
5. The Parties shall each own an undivided fifty percent (50%) interest in the New Sewer Line.
6. Each Party shall be responsible for one half of the costs of maintaining and repairing the New Sewer Line subsequent to the completion of its construction. Surfside shall have in the first instance the initial responsibility for the routine maintenance and repair of the New Sewer Line and shall submit invoices to Bal Harbour for payment of its one half share of the maintenance costs, which sums shall be due and payable within thirty (30) days from the date of Bal Harbour's receipt of the applicable invoice.

Notwithstanding the forgoing, prior to performing any routine maintenance or repairs of the New Sewer Line, Surfside shall provide an estimate of the costs thereof to Bal Harbour and such repairs shall require the reasonable consent of both Parties prior to being authorized. Bal Harbour shall approve or reject the proposed maintenance costs within thirty (30) days from the date of the receipt of the estimate. Bal Harbour shall not be required to pay for any repairs or maintenance charges unless such charges are authorized in accordance with this section. Additionally, the Bal Harbour charter requires council approval of expenditures in excess of \$2,500.00. To the extent that Bal Harbour's consent is required for repairs and maintenance of the New Sewer Line and such consent would result in expenditures in excess of \$2,500.00, such consent shall be conditioned on approval of the Bal Harbour Village council.

In the event Surfside fails to perform the required non-emergency maintenance on the New Sewer Line to Bal Harbour's reasonable satisfaction, Bal Harbour, shall notify Surfside in writing and Surfside shall have thirty (30) days to perform the repairs to Bal Harbour's reasonable satisfaction. In the event Surfside fails to perform the repairs to Bal Harbour's reasonable satisfaction Bal Harbour shall have the right to perform such maintenance and Surfside shall, within thirty (30) days after its receipt of the invoice from Bal Harbour, be required to reimburse Bal Harbour for one half of such maintenance costs. Notwithstanding the foregoing, in the event either Party hereunder causes damage to the New Sewer

repairs are required with respect to the New Sewer Line, Surfside shall in its reasonable discretion perform such emergency repairs and send an invoice to Bal Harbour for one half of the costs of the repair which shall be due and payable within thirty (30) days after receipt; provided however, if Surfside fails to immediately respond to such emergency, Bal Harbour may, upon notice to Surfside given by reasonably appropriate manner under such circumstances, perform such emergency repairs or contract with third parties to perform such repairs which Surfside, subject to the terms hereof, being responsible for one half of such emergency repair costs. Each Party shall have the right to enter upon and open roadways under which the New Sewer Line is laid for the purpose of maintenance and repair as may reasonably be required.

7. In addition to the New Sewer Line, pursuant to the Existing Water and Sewer Agreements, Bal Harbour owns the sewer main located at Byron Avenue which is currently being used by both Parties (“Existing Sewer Main”). Bal Harbour shall, contemporaneously with the mutual execution and delivery of the New Sewer Line Agreement, transfer an undivided one half ownership interest in and to the Existing Sewer Main to Surfside; thereafter, the Parties shall maintain the Existing Sewer Main in the same manner as set forth in Section 6 hereof. Thereafter, the Parties shall mutually determine whether to repair or replace the Existing Sewer Main as may be required.
8. In lieu of any obligation under Section 164.1052, Florida Statutes, in the event a claim or dispute shall arise between the Parties relating to any term or provision of the New Sewer Line Agreement or the Construction Agreement, such claim or dispute shall be settled by binding arbitration in the state of Florida. The Parties shall have thirty (30) days from the date a claim or dispute arises between them to attempt to resolve the matter through mediation, failing which the parties will resolve the dispute through neutral binding arbitration in Miami-Dade County. The arbitrator may not alter the contract terms or award any remedy not provided for in the Construction Agreement or the New Sewer Line Agreement. The award will be based on the greater weight of the evidence and will state findings of fact and the contractual authority on which it is based. If the parties agree to use discovery, it will be in accordance with the Florida Rules of Civil Procedure and the arbitrator will resolve all discovery-related disputes. Arbitration will be in accordance with the rules of the AAA or other arbitrator agreed on by the Parties. Each Party to any arbitration will pay its own fees, costs and expenses, including attorneys’ fees, and will equally split the arbitrators’ fees and administrative fees of arbitration. Any decision or award as a result of any such arbitration proceeding shall be in writing and shall provide an explanation for all conclusions of law and fact and shall include the assessment of costs, expenses, and reasonable attorneys’ fees. Any such arbitration shall be conducted by an arbitrator experienced in municipal construction matters and shall include a written record of the arbitration hearing.

9. This MOU reflects the current understanding and intent of the Parties with respect to the matters described herein and shall serve as an interim agreement between the parties until such time as a more complete Interlocal Agreement has been executed for the duration of expected life of the New Sewer Line. Said Interlocal Agreement shall be executed no later than one (1) year from the date of this Agreement.

IN WITNESS WHEREOF, the Parties have executed this MOU as of the day and year first written above by their duly authorized representatives.

BAL HARBOUR VILLAGE, FLORIDA

BY: _____
Ellisa Horvath , Village Clerk

BY: _____
Alfred J. Treppeda, Village Manager

APPROVED AS TO LEGAL SUFFICIENCY:

BY: _____
Richard Jay Weiss , Village Attorney

TOWN OF SURFSIDE, FLORIDA

BY: _____
Debra Eastman, Town Clerk

BY: _____
Roger Carlton, Town Manager

APPROVED AS TO LEGAL SUFFICIENCY:

BY: _____
Lynn M. Dannheisser, Town Attorney

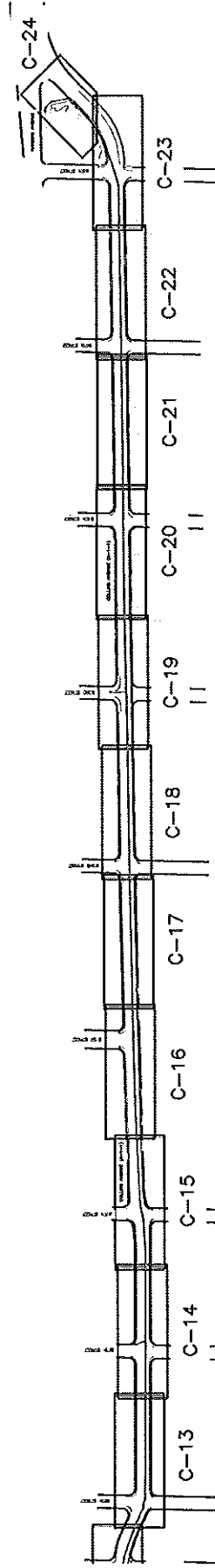
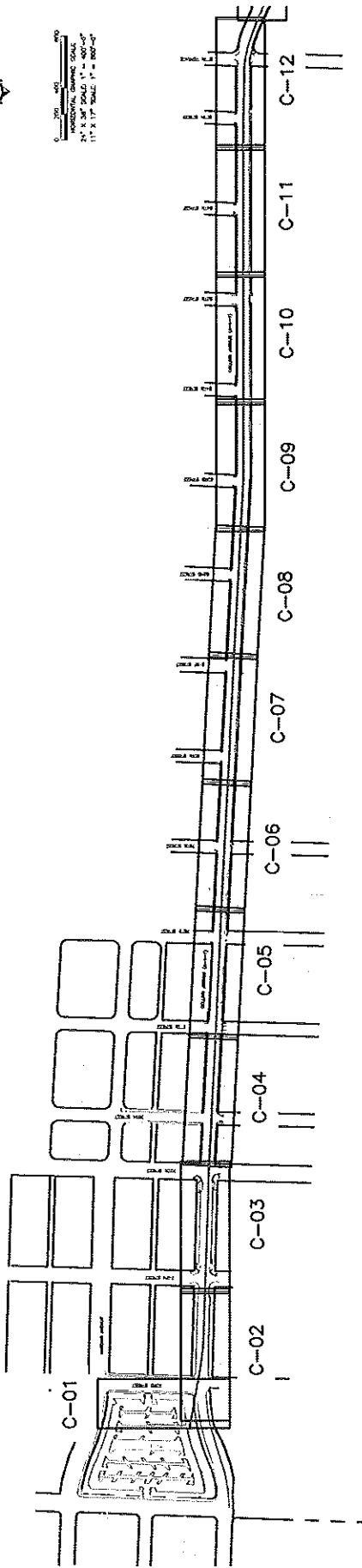
TB Landmark Construction Inc hereby acknowledges that Town of Surfside is a third party beneficiary of the construction agreement between it and the Village of Bal Harbor for the design, development, construction and installation of the New Sewer Line as outlined above.

T B Landmark Construction, Inc

EXHIBIT A



0 500 1000
 GRAPHIC SCALE
 1" = 100'-0"
 1" X 17" SCALE: 1" = 200'-0"



FOR CONSTRUCTION

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EXHIBIT B

SECTION 00500

AGREEMENT

THIS AGREEMENT, made and entered into on this 17th day of May, 2011, by and between TB Landmark Construction, Inc., Party of the First Part, and BAL HARBOUR VILLAGE (OWNER), Party of the Second Part:

WITNESSETH:

That, the First Party, for the consideration hereinafter fully set out, hereby agrees with the Second Party as follows:

1. That the First Party shall furnish all the materials, and perform all of the work in manner and form as provided by the Drawings Identified in section 00015 List of Drawings, Specifications Identified in section 00010, and Documents which are attached hereto and made a part hereof, as if fully contained here:
2. That the First Party shall commence the work to be performed under this Agreement on a date to be specified in a written order of the Second Party and shall complete all work hereunder within the length of time stipulated in the BID.
3. That the Second Party hereby agrees to pay to the First Party for the faithful performance of this Agreement, subject to additions and deductions as provided in the Specifications of Proposal, in lawful money of the United States, the amount of **\$2,691,819.55**:

**TWO MILLION SIX HUNDRED NINETY ONE THOUSAND EIGHT HUNDRED
NINETEEN AND 55/100 DOLLARS**

(Written Total Amount)

based on the estimated quantities and Unit or Lump Sum Prices contained herein.

4. That the Second Party shall make monthly partial payments to the First Party on the basis of a duly certified and approved estimate of work performed during each calendar month by the First Party, LESS the retainage provided in the General Conditions, which is to be withheld by the Second Party until work within a particular part has been performed strictly in accordance with this Agreement and until such work has been accepted by the Second Party.
5. That upon submission by the First Party of evidence satisfactory to the Second Party that all payrolls, material bills, and other costs incurred by the First Party in connection with the construction of the work have been paid in full, final payment on account of this

Bal Harbour Village
Sanitary Force Main Improvements
Project No. 3
09-1556 / 06-27-2011

00500-1

Agreement

this Agreement shall be made within 60 days after the completion by the First Party of all work covered by this Agreement and the acceptance of such work by the Second Party.

6. In the event that the Contractor shall fail to complete the work within the time limit or the extended time limit agreed upon, as more particularly set forth in the Contract Documents, liquidated damages shall be paid at the rate of **One Thousand Nine Hundred and 20/100 Dollars (\$1,920.00) per day**, plus any monies paid by the OWNER to the Engineer for additional engineering and inspection services associated with such delay. (Refer to Tab 'A')
- ~~7. All work, including all required restoration, paving, striping, testing of tracer wire systems, air release valves, plug valves and related appurtenances within the area defined as Milestone One, shall be completed within 90 calendar days following the 30 day Material Acquisition allowance. The Contractor will receive an incentive payment of \$10,000.00 per day for each day or part thereof that the project is substantially complete prior to 12:00 mid-night on the date stipulated for substantial completion as defined above. The incentive payments will be made up to a maximum limit of \$150,000.00 for a maximum of 15 days prior to the date of substantial completion. The Contractor will be assessed as a disincentive the per day amount stipulated in the paragraph above for each day or part thereof that the project phase is not substantially complete by 12:00 mid-night on the date stipulated for substantial completion. The disincentive assessment will continue without limitation until the Engineer notifies the Owner of substantial completion in accordance with the provisions of Article 14.9 of the General Conditions. The Owner may deduct the total accrued disincentive assessment from the final payment due to the Contractor if sufficient monies are available. Otherwise, the Contractor shall pay to the Owner the total accrued disincentive assessment. (Refer to Tab 'A')~~
- ~~8. All work, including all required restoration, paving, striping, testing of tracer wire systems, air release valves, plug valves and related appurtenances within the area defined as Milestone Two shall be completed within 30 calendar days following the substantial completion of Milestone One as detailed above. The Contractor will receive an incentive payment of \$5,000.00 per day for each day or part thereof that the project is substantially complete prior to 12:00 mid-night on the date stipulated for substantial completion as defined above. The incentive payments will be made up to a maximum limit of \$25,000.00 for a maximum of 5 days prior to the date of substantial completion. The Contractor will be assessed as a disincentive the per day amount stipulated in the paragraph above for each day or part thereof that the project phase is not substantially complete by 12:00 mid-night on the date stipulated for substantial completion. The disincentive assessment will continue without limitation~~

~~limitation until the Engineer notifies the Owner of substantial completion in accordance with the provisions of Article 14.9 of the General Conditions. The Owner may deduct the total accrued disincentive assessment from the final payment due to the Contractor if sufficient monies are available. Otherwise, the Contractor shall pay to the Owner the total accrued disincentive assessment. (Refer to Tab 'A')~~

9. It is further mutually agreed between the parties hereto that if, at any time after the execution of this Agreement and the Surety Bond hereto attached for its faithful performance and payment, the Second Party shall deem the Surety or Sureties upon such bond to be unsatisfactory, or if, for any reason such bond ceases to be adequate to cover the performance of the work, the First Party shall, at its expense within 5 days after the receipt of notice from the Second Party so to do, furnish an additional bond or bonds in such form and amount and with such Surety or Sureties as shall be satisfactory to the Second Party. In such event, no further payment to the First Party shall be deemed to be due under this Agreement until such new or additional security for the faithful performance of the work shall be furnished in manner and form satisfactory to the Second Party.
10. No additional work or extras shall be done unless the same shall be duly authorized by appropriate action by the Party of the Second Part.

SECTION 00931
CHANGE ORDER

DATE OF ISSUANCE: June 21, 2011

No. 1

PROJECT: BAL HARBOUR VILLAGE – COLLINS AVENUE SANITARY FORCE MAIN IMPROVEMENTS PROJECT

OWNER: BAL HARBOUR VILLAGE
655 96TH STREET
BAL HARBOUR, FL 33154

CONTRACTOR: TB LANDMARK CONSTRUCTION, INC.

ENGINEER: CRAIG A. SMITH & ASSOCIATES


YOU ARE DIRECTED TO MAKE THE FOLLOWING CHANGES IN THE CONTRACT DOCUMENTS.

DESCRIPTION: EXTEND THE POINT OF CONNECTION FURTHER SOUTH, AT 72ND STREET, AS PER CITY OF MIAMI BEACH REQUIREMENTS. RESIZE PIPELINE DIAMETER TO 16-INCH DR 11 HDPE WITHIN THE COLLINS AVENUE FDOT RAW.

THE ATTACHED REVISION TO THE INCENTIVE/DISINCENTIVE PROVISIONS WILL BE ADOPTED FOR THE PROJECT.

CHANGE IN CONTRACT PRICE:	CHANGE IN CONTRACT TIME:
Original Contract Price \$2,691,819.55	Original Contract Time 150 Days
Previous Change Orders NONE	Net change from previous Change Orders NONE
Contract Price prior to this Change Order \$2,691,819.55	Contract Time prior to this Change Order 150 Days
Net increase of this Change Order \$448,926.99	Net Increase of this Change Order 30 Days
Contract Price with all approved Change Orders \$3,140,746.54	Contract Time with all approved Change Orders 180 Days

RECOMMENDED:
by 
CRAIG A. SMITH & ASSOCIATES

ACCEPTED:
by 
CONTRACTOR

APPROVED:
by 
BAL HARBOUR VILLAGE

END OF SECTION
00931-1

Bal Harbour Village
Sanitary Force Main Improvements
Project No. 3
09-1556 / 06-16-2011

Change Order No. 1

Project Incentive/Disincentive for work within the Collins Avenue/FDOT Right-of-Way

The construction timeline for this project is very limited, as FDOT is planning to begin the milling and paving of Collins Avenue in early 2012. The main goal of this project is to have the work within the Collins Avenue/FDOT Right-of-Way completed on or before November 30, 2011.

The Project Incentive/Disincentive for work within the Collins Avenue/FDOT Right-of-Way is amended as follows:

1. The Contractor will receive an incentive payment of **\$150,000** for the substantial completion of all work, including all required restoration, paving, striping, testing of tracer wire systems, air release valves, plug valves and related appurtenances within the Collins Avenue/FDOT Right-of-Way on or before November 30, 2011.
2. Should any unknown or unforeseen conditions develop that causes a justifiable project time delay or additional work is added to the scope of work, additional time will be added to the Contract Time, and the incentive goal date will be moved back to a date mutually agreed upon between the Contractor and the Village.
3. The Project Disincentive is eliminated from this Contract.

Project Incentive/Disincentive for work outside the Collins Avenue/FDOT Right-of-Way

The Project Incentive/Disincentive for work outside the Collins Avenue/FDOT Right-of-Way is amended as follows:

1. The Contractor will receive an incentive payment of **\$25,000** for the substantial completion of all work outside the Collins Avenue/FDOT Right-of-Way on or before December 31, 2011.
2. Should any unknown or unforeseen conditions develop that causes a justifiable project time delay or additional work is added to the scope of work, additional time will be added to the Contract Time, and the incentive goal date will be moved back to a date mutually agreed upon between the Contractor and the Village.
3. The Project Disincentive is eliminated from this Contract.

Liquidated Damages

The Contract provisions regarding liquidated damages will remain the same. In the event that the Contractor shall fail to complete the work within the time limit or the extended time limit agreed upon, as more particularly set forth in the Contract Documents, liquidated damages shall be paid at the rate of **One Thousand Nine Hundred and 20/100 Dollars (\$1,920.00) per day**, plus any monies paid by the OWNER to the Engineer for additional engineering and inspection services associated with such delay.

Tab 'A'

Project Incentive/Disincentive for work within the Collins Avenue/FDOT Right-of-Way

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and date first above written, in three (3) counterparts, each of which shall, without proof or accounting for the other counterpart be deemed an original Contract.

WITNESSES:
[Signature]
[Signature]

CONTRACTOR: TB LANDMARK CONSTRUCTION, INC.

BY: [Signature]
NAME: TIMOTHY C BENSLEY
TITLE: V.P.

OWNER: BAL HARBOUR VILLAGE

BY: [Signature]
NAME: ALFRED J. TREMPER
TITLE: VILLAGE MANAGER

AUTHENTICATION:

BY: [Signature]
NAME: ELLISA L. HOVVATH
TITLE: Village Clerk

APPROVED AS TO FORM:

BY: [Signature]
NAME: Matthew Reed
TITLE: Village Attorney

END OF SECTION

ATTACHMENT C

CRAIG A. SMITH & ASSOCIATES

PROPOSED SCOPE OF SERVICES AND PROPOSED FEE

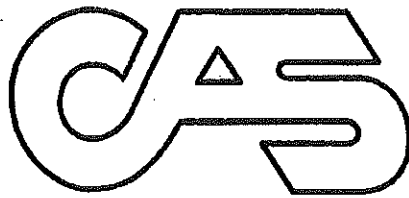
FOR

SEWER FORCEMAIN REPLACEMENT (COLLINS AVENUE)
FROM PS-2 TO CITY OF MIAMI BEACH
POINT OF CONNECTION ON 74TH STREET

CAS PROPOSAL NUMBER: P 2461

BAL HARBOUR VILLAGE

DATED: October 13, 2009



CRAIG A. SMITH & ASSOCIATES

Engineers•Surveyors•Utility Locators•Grant Specialists

7777 Glades Road, Suite 410

Boca Raton, FL 33434

Tel. (561) 791-9280 Fax. (561) 791-9818



CRAIG A. SMITH & ASSOCIATES

PROPOSED SCOPE OF SERVICES AND PROPOSED FEE

**PROJECT NAME: BAL HARBOUR VILLAGE
SEWER FORCEMAIN REPLACEMENT (COLLINS
AVENUE) FROM PS-2 TO CITY OF MIAMI BEACH
POINT OF CONNECTION ON 74TH STREET**

PROPOSAL NO: P 2461

PROJECT DESCRIPTION:

The purpose of this project is to replace the existing cast-iron sewer forcemain that begins at the Bal Harbour Sewer Master Pumping Station No. 2 (PS-2) and extends to the City of Miami Beach point of connection located on 74th Street.

This existing forcemain has been in service since 1946 and has experienced numerous age-related leaks and line breaks over the past fifteen years and is in need of replacement.

The preliminary estimated construction budget for this project is **\$2,500,000.00**

OWNER/CLIENT:

Name: Bal Harbour Village
Attention: Alfred J. Treppeda, Village Manager
Address: 655 96th Street
Bal Harbour, FL 33154
Phone: (305) 866-4633
Facsimile: (305) 868-6575

GENERAL:

Craig A. Smith & Associates will provide engineering services during the design, permitting, and bidding of the wastewater improvements associated with the Sewer Forcemain Replacement Project (Collins Avenue) from PS-2 to City of Miami Beach Point of Connection.

More specifically, the scope of work is as follows:



PHASE I DESIGN AND PERMITTING

Task 1: Project Initiation Meeting with Bal Harbour Village

A meeting with the Village's Utility Staff and the CAS project team will be held immediately after the authorization to commence the project. This purpose of this meeting is to discuss any modification to the proposal, discuss and finalize the schedule of each major activity, and to discuss design criteria and design modification requirements, if any exist. The Village should also inform CAS in this meeting if there are planned developments or additional items that would influence the final design.

Lump sum for Task 1: \$8,800.00

Task 2: Field Survey

Survey will physically locate all above ground, visible improvements within the existing right of way of Harding Ave. from Master Pump Station PS-2 and from the centerline of 96th Street to its north right of way east to Collins Ave. Said improvements will then be located within the right of way of Collins Ave. extending south to 74th Street, west to the proposed tie-in point on 74th Street. Survey baselines will be established at 100 foot intervals along all streets and cross-sections taken at 50 foot intervals in the corridors as described above. Plan view elevations will be shown as relative to National Geodetic Vertical Datum of 1929 at each section and at pertinent points for facilitation of Engineering Design. A base map will be created and provided to the Engineering Department as well as a Map of Topographic Survey for submittal to entities of interest.

Lump Sum for Task 2: \$88,000.00



Task 3: UTILITY LOCATES

All visible, above ground utilities will be located and shown as well as those utilities as marked by CAS utility locates department on the surface. Up to 100 vacuum excavation areas ("soft digs") will be performed to identify the type, size, and material as well as depth to the top of potentially conflicting and/or newly identified or previously unknown facilities.

Lump Sum for Task 3: \$66,000.00

Task 4: Preliminary Engineering Design and Drawings

CAS will prepare preliminary design drawings. The preliminary design drawings will show the design concept for the Village to review and finalize.

As a part of this design, the following items will be undertaken:

- Review of existing plans and field conditions with Bal Harbour Village, the City of Surfside, and the City of Miami Beach
- CAS will prepare base sheets with a preliminary site plan
- Review of pipeline sizing flow and head requirements
- Maintenance of Traffic (MOT) evaluation due to site locations

Lump sum for Task 4: \$12,375.00

Task 5: Preparation of Detailed Design Drawings and Specifications

The preparation of detailed design drawings and the technical specifications will be prepared under this task. The approved recommendations in the preliminary engineering design will be incorporated on the drawings and the technical specifications will be reviewed and modified to conform to the project requirements.

Lump sum for Task 5: \$116,875.00



Task 6: Preparation of Quantity Take-Off and Construction Cost Estimate

A quantity take-off and estimate of the construction costs will be performed under this task. A preliminary cost estimate will be prepared based on these quantities.

Lump sum for Task 6: \$5,500.00

Task 7: Discussion of Village's Review Comments and Preparation of Final Design Documents

CAS will submit the design drawings, specifications, quantities, and construction cost estimate to the Village for their review and comments. CAS will review and discuss the Village's comments with the Village's Utility Staff. The final agreed comments will be incorporated in the drawings and specifications and, if necessary, the design will be revised accordingly.

Lump sum for Task 7: \$10,450.00

Task 8: Permits

CAS will prepare and submit permit applications to the regulatory departments and agencies as required. The Village shall pay all permit fees. Drawings and specifications will also be modified to conform to any comments these agencies might have.

Lump sum for Task 8: \$56,375.00



Task 9: Bidding Services

CAS will assist the Village during bidding. Solicit Contractors, conduct and attend pre-bid meeting, respond to questions during bidding, conduct and attend bid opening, prepare bid tabulation and recommend Award of Contract.

Lump sum for Task 9: **\$22,825.00**



Our fee for the above-described work would be a lump sum fee of Three Hundred Eighty Seven Thousand Two Hundred Dollars (\$387,200.00).

Any services requested or required in addition to those listed in the scope will be considered additional services and will be billed at our standard hourly rates.

We look forward to assisting Bal Harbour Village on this project. If the scope of services and fee are acceptable to you, please authorize below and/or process for necessary approvals.

Should you have any questions, please feel free to contact our office.

Yours sincerely,

CRAIG A. SMITH & ASSOCIATES

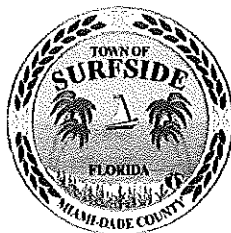
Stephen C. Smith, P.E., Sr. Vice President - CAS

cc: William H. Landis, P.E., Village Engineer
Gene R. Schriener, P.E., President - CAS
Peter A. Kunen, P.E., Project Manager - CAS

**APPROVED: ENGINEERING PROPOSAL
BAL HARBOUR VILLAGE
SEWER FORCEMAIN REPLACEMENT (COLLINS AVENUE)
FROM PS-2 TO CITY OF MIAMI BEACH
POINT OF CONNECTION ON 74TH STREET**

Authorized Signature

10/21/09
Date



Town of Surfside Commission Communication

Agenda Item # 9I

Agenda Date: August 9, 2011

Subject: Community Garden / Garden Club Agreement


Thirteen (13) residents interested in forming a non-profit Garden Club (The Surfside Urban Gardeners) to manage the Community Garden proposed for Dickens Avenue at 89th Street met on August 3, 2011. To date twenty eight (28) Surfside residents have expressed interest, and have maintained communication with staff, regarding this initiative.

At that meeting Ms. Melissa Moonves was appointed President of the proposed organization. On August 4, 2011 she received the Federal Employer Identification Number (EIN) for the Garden Club as required by the IRS and has applied for non-profit status with the State of Florida.

The attached draft of a yearly License Agreement allows for the Garden Club to manage the Community Garden for the Town. The Town will construct the planting beds, fence and watering system as budgeted in this Fiscal Year. The Garden Club will maintain and manage the planting beds for the exclusive use of their Surfside resident members.

This report and proposed License Agreement has been placed on the Town Commission Agenda to demonstrate that the deadline imposed by the Town Commission during the July 12, 2011 meeting has been met.

Staff and the Town Attorney will continue the process and bring the final agreement to the Town Commission for adoption as part of the September 13, 2011 meeting agenda.



Department Head



Town Manager

DRAFT

REVOCABLE LICENSE AGREEMENT

This **Revocable License Agreement** (“Agreement” or “RLA”) is made this day of between the Town of Surfside (the “Town ”) a municipal corporation of the State of Florida and The Surfside Urban Gardeners, a Florida not for profit compliant corporation incorporated under the laws of the State of Florida (the “Licensee”).

RECITALS

WHEREAS, the Town and Licensee (“the Parties”) desire and intend to enter into a Revocable License Agreement for the use of town -owned property located at Lot 10, Block 16, of the **SECOND AMENDED PLAT OF NORMANDY BEACH** (also known as shown on Exhibit “A”), Surfside , Florida as a community garden; and

WHEREAS, this revocable license agreement is for this purpose only and not assignable; and

WHEREAS, this Agreement is revocable-at-will by the Town, acting by through the Town Manager and without the consent of the Licensee; and

WHEREAS, this Agreement does not transfer an interest in real property including any leasehold interest in real property owned by the Town ; and

WHEREAS, this Agreement does not confer a right to use any real property for any general purposes; and

WHEREAS, this Agreement does not convey or transfer any right to exclude the Town from any real property; and

WHEREAS, this Agreement permits only certain, enumerated, specific, listed permitted use of a community garden , and does not permit any further uses; and

WHEREAS, the Parties jointly and voluntarily stipulate as to the accuracy of these recitals; and

NOW THEREFORE, in consideration of the mutual covenants set forth herein, the parties hereby agree as follows:

DRAFT

1. **Recitals.** The Recitals contained above are hereby incorporate into this Agreement by reference.

2. **Definitions.**

A. "Area" shall mean the area included in this Agreement as available for the Permitted Uses (but excluding all other areas) as depicted in Exhibit "A" attached hereto and made a part hereof.

B. "Town Manager" is the Town Manager for the Town of Surfside or his designee.

C. "Director" shall mean the Director of Tourism, Economic Development & Community Services for the Town of Surfside.

D. "Effective Date" shall mean _____ or the date that this Agreement is executed by the Town Manager. In the event the Effective Date does not fall on the first day of the month, the Effective Date shall be adjusted to be the first day of the following month.

E. "Permitted Uses" shall mean the establishment, operation, maintenance and care of a "Community Garden" by Surfside Residents at the Area. For purposes of this Agreement "Community Garden" shall mean the planting, maintenance including (planting beds, seeding, watering, trimming) and care of vegetables, fruits, plants and flowers by Surfside Residents. The Licensee will maintain the actual plant beds to an acceptable level to be determined on an ongoing basis by the Town Manager or his designee. No illegal, invasive, prohibited, or nuisance species as defined by the Miami-Dade County ("County") Landscape Manual and applicable State of Florida And County Laws, Codes, Ordinances, Rules and Regulations shall be permitted. Notwithstanding the foregoing, the Town will, subject to the availability of funds and personnel, provide the planting beds, fencing for the Area, and a watering system. Licensee will provide general landscaping, maintenance, planting, and watering of the Area.

F. "Use Fee" shall mean a nominal fee charged to the Licensee as a Florida nonprofit corporation serving a public purpose pursuant to this Agreement.

3. Purpose.

The Town is the owner of the Area and desires to assist the Licensee in accomplishing its purpose and in furtherance thereof wishes to authorize the Licensee to occupy and use the Area or Property for the Permitted Use, under the conditions hereinafter set forth. The use of the Area or Property is strictly limited to the Permitted Use and is not to be used for any other purpose whatsoever. Any use of the Area or Property not authorized under Permitted Use must receive the prior written consent of the Town Manager or his designee, which consent may be withheld, denied or conditioned for any or no reason, including, but not limited to additional financial consideration.

4. Interest Conferred By This Agreement.

This Agreement confers no exclusive possession of the Area or Property. The Licensee cannot exclude the Town or the public from the Property.

This Agreement solely authorizes Licensee to the temporary use of the Area for the limited purposes set forth herein and for no other purpose. The parties hereby agree that the provisions of this Agreement do not constitute a lease. The rights of Licensee hereunder are not those of a tenant, but are a mere personal privilege to do certain acts of a temporary character on the Area and to use the Area, subject to the terms of this Agreement. The Town retains dominion, possession and control of the Area. Therefore, no lease interest in the Area or Property is conferred upon Licensee under the provisions hereof. Licensee does not and shall not claim at any time any interest or estate of any kind or extent whatsoever in the Area by virtue of this Agreement or its use of the Area hereunder and acknowledges the Town may terminate the interest conferred hereunder at any time for any reason. Additionally, Licensee does not and shall not claim at any time any interest or estate of any kind or extent whatsoever in the Area by virtue of any expenditure of funds by the Licensee for improvements, construction, repairs, partitions, or alterations to the Area which may be authorized by the Town .

5. Common Areas.

Licensee shall have the non-exclusive right (in common with other occupants of the Property) to use the Common Areas of the Property identified as "Common Area" in Exhibit "B" attached hereto and made a part hereof, for the right of any needed egress and ingress to the Area for the purposes intended as "Permitted Uses" but for no other purpose whatsoever, subject to such rules and regulations as Town may establish from time to time.

6. Occupancy and Use Period.

This Agreement shall commence on the October 1, 2011 and shall continue for the period of one (1) year and thereafter on a year -to- year basis, in conjunction with the Town's Fiscal Year Calendar, until the first to occur of the following:

- i. Cancellation for convenience pursuant to the applicable paragraphs herein; or
- ii. Change of the President of the Licensee without prior written approval of the Manager or Director; or
- iii. The Licensee is dissolved, abandons the Area, or otherwise ceases to use the Area as provided in this Agreement; or
- iv. Termination by the Town Manager for cause including, without limitation, Licensee's failure to comply with any provisions of this Agreement or excessive consumption of water by Licensee in the sole discretion and opinion of the Town Manager

7. Continuous Duty to Operate.

Except where the Area is rendered unusable by reason of fire, Acts of God, storms or other casualty, Licensee shall at all times constituting "Access Hours" during this Agreement, the "Access Hours" will be from Sunup or 8:00 a.m. (whichever occurs first) until Sunset or 8:00 p.m. (whichever occurs first) operate the premises in good safe condition.

8. Use Fee.

Monthly Use Fee.

Commencing on the Commencement Date of this Agreement (October 1, 2011), Licensee shall pay to Town the following Monthly Use Fee of (\$1.00 per month) payable in total (\$12.00) at the beginning of each Fiscal Year's Agreement.

A. Manner of Payment.

Commencing on the Commencement Date of this Agreement (October 1, 2011), Licensee shall pay to the Town the Annual Use Fee in the total amount of twelve (\$12.00) dollars for the license to use the Area. Licensee may also be responsible for payment of water and other utility bills as specified in Paragraph 9. hereinbelow.

Payments shall be made payable to "Town of Surfside" and shall be received at 9293. Harding Avenue, Finance Department, Surfside Florida 33154, by the first day of each Fiscal Year's Agreement (October 1st), or such other address as may be designated from time to time from the Town Manager or his designee.

9. Services and Utilities.

A. Licensee's responsibilities.

The Town Manager reserves the right to impose on the Licensee, at its sole cost and expense, any utilities except those specifically set forth in Paragraph 0 below to be provided by Town which may include, but is not limited to, electricity, water, storm water fees, gas, telephone, garbage and sewage disposal used by Licensee during its occupancy of the Area or Property, as well as all costs for installation of any lines and equipment necessary. Licensee, at shall not install any utilities required for its use without prior permission from the Town Manger. Separate utility meters may be required thereby and shall be billed directly by the applicable utility company to the Licensee for such services.

Licensee, at its sole cost and expense, may need to hire a pest control company, as determined by the Town Manager, to insure that the Area or Property will at all times be in a clean and sanitary condition and free from vermin.

Licensee agrees to provide any and all security it deems necessary to protect its operations and equipment. Licensee shall insure that all appropriate equipment and lights have been turned off and appropriate doors, if any, locked at the close of operations within the Area or Property each day.

B. Town's responsibilities.

Town, at its sole cost, shall provide for the following utilities or services, subject to budgetary and personnel availability:

Installation and maintenance of basic fencing, landscaping (excluding planting beds), and watering system as well as the installation of planting beds:

Routine, general property maintenance services for the Area;

Water service for the Community Garden providing Licensee shall utilize prudent water conservation methods and procedures (see above 9. Services and Utilities). Licensee will use its best efforts to adhere to those current water preservation methods and water conservation measures including following all water conservation laws, rules, codes, and resolutions. Licensee shall consult with the Town from time to time on the issue of best practices for water conservation. Licensee shall use environmentally sensitive plantings and materials whenever available and practicable.

The Town reserves the right to interrupt, curtail or suspend the provision of any utility service provided by it, including but not limited to, electricity, water and sewer systems and equipment serving the Area or Property, to which Licensee may be entitled hereunder, when deemed necessary in the sole discretion of the Town Manager or Director by reason of accident or emergency, or for repairs, alterations or improvements in the judgment of Town desirable or necessary to be made or due to difficulty in obtaining supplies or labor or for any other cause beyond the reasonable control of the Town. The work of such repairs, alterations or improvements shall be prosecuted with reasonable diligence. The Town shall in no respect be liable for any failure of the utility companies or governmental authorities to supply utility service to Licensee or for any limitation of supply resulting from governmental orders or directives. Licensee shall not claim any damages by reason of the Town's or other individual's interruption,

curtailment or suspension of a utility service, nor shall the Revocable License or any of Licensee's obligations hereunder be affected or reduced thereby.

10. Condition of the Property and Maintenance; Compliance with Laws

Licensee accepts the Area or Property "as is", in its present condition and state of repair and without any representation by or on behalf of Town , and agrees that Town shall, under no circumstances, be liable for any latent, patent or other defects in the Area or Property. Licensee, at its sole cost, shall maintain the Community Garden Area in good order and in an attractive, clean, safe and sanitary condition and shall suffer no waste or injury thereto. Licensee shall maintain all planting beds on an on-going basis and until termination of this agreement.

Licensee agrees use to the Community Garden Area and all its activities under this Agreement in full compliance with all applicable Town, County, and State Statutes, code requirements, ordinances, rules, resolutions relating in any manner for Licensee's use thereof. Licensee shall not permitted any illegal plant, flower, fruit, or vegetable nor allow any unlawful activity, or an activity that would constitute a nuisance, loitering, public intoxication, consumption of alcoholic beverages, or lewd and lascivious conduct , or a violation of the noise ordinance, under applicable State, County and Town laws, ordinances, codes, rules and resolutions

11. Alterations, Additions or Replacements,

Except in the event of an emergency, Licensee shall not make any repair without first receiving the written approval of the Town Manager or his/her designee, which approval may be conditioned or withheld for any or no reason whatsoever, including a condition to pay additional fees if such alteration will affect the cost of services being provided by the Town. If the Town Manager or his/her designee approves such request, no repair or alteration shall be commenced until plans and specifications therefore shall have been submitted to and approved by the Town Manager or his/her designee.

The Licensee shall be solely responsible for applying and acquiring all necessary permits, if any, including but not limited to, building permits as may be applicable. The Licensee shall be responsible for any and all costs associated with any alterations including, but not limited to,

design, construction, and installation and permitting costs. All alterations to the Area or Property, whether or not by or at the expense of the Licensee, hereto, immediately upon their completion become the property of the Town and shall remain and be surrendered with the Area or Property. In the event of an emergency, Licensee may reasonably proceed to perform such repair work and shall immediately notify Town of such work.

All alterations must be in compliance with all statutes, laws, ordinances and regulations of the State of Florida, Miami-Dade County, Town of Surfside and any other agency that may have jurisdiction over the Area or Property as they presently exist and as they may be amended hereafter.

12. Violations, Liens and Security Interests.

The Licensee shall not suffer or permit any statutory, laborers, material person, or construction liens to be filed against the title to the Property, nor against any Alteration by reason of work, labor, services, or materials supplied to the Licensee or anyone having a right to possession of the Property. Nothing in this Agreement shall be construed as constituting the consent or request of the Town, expressed or implied, by inference or otherwise, to any contractor, subcontractor, laborer or material man for the performance of any labor or the furnishing of any materials for any specific Alteration, or repair of or to the Property nor as giving the Licensee the right, power or authority to contract for or permit the rendering of any services or the furnishing of any materials that would give rise to the filing of any mechanics liens against the Property.

13. Town Access to Area.

Town and its authorized representative(s) shall have at all times access to the Area. Town will maintain a complete set of keys (if any are made) to the Area. Licensee, at its sole cost and expense, may duplicate or change key locks to the Area but not until first receiving written approval from the Director for such work. In the event Licensee changes key locks as approved by the Director, Licensee, at its sole cost and expense, must also provide to Town a copy or copies of said keys, if more than one copy is required.

The Town shall have access to and entry into the Area at any time to (a) inspect the Area and Property, (b) to perform any obligations of Licensee hereunder which Licensee has failed to

perform after written notice thereof to Licensee, Licensee not having cured such matter within ten (10) days of such notice, (c) to assure Licensee's compliance with the terms and provisions of this Agreement and all applicable laws, ordinances, rules and regulations, (d) to show the Property, inclusive of the Area or Property, to prospective purchasers or tenants, and (e) for other purposes as may be deemed necessary by the Town Manager in the furtherance of the Town 's corporate purpose;. The Town shall not be liable for any loss, cost or damage to the Licensee by reason of the exercise by the Town of the right of entry described herein for the purposes listed above. The making of periodic inspection or the failure to do so shall not operate to impose upon Town any liability of any kind whatsoever nor relieve the Licensee of any responsibility, obligations or liability assumed under this Agreement.

14. Indemnification and Hold Harmless.

Licensee, its, officers, members, employees, volunteers and agents shall and do hereby indemnify, defend and hold harmless the Town and its officials, employees and agents (collectively referred to as "Indemnitees") and each of them from and against all loss, costs, penalties, fines, damages, claims, expenses (including attorney's fees) or liabilities (collectively referred to as "Liabilities") by reason of any injury to or death of any person or damage to or destruction or loss of any property arising out of, resulting from, or in connection with (i) the performance or non-performance of the services contemplated by this Agreement which is or is alleged to be directly or indirectly caused, in whole or in part, by any act, omission, default or negligence (whether active or passive) of Licensee or its officers, members, employees, volunteers and agents (collectively referred to as "Licensee"), regardless of whether it is, or is alleged to be, caused in whole or part (whether joint, concurrent or contributing) by any act, omission, default or negligence (whether active or passive) of the Indemnitees, or any of them or (ii) the failure of the Licensee to comply with any of the paragraphs herein or the failure of the Licensee to conform to statutes, ordinances, or other regulations or requirements of any governmental authority, federal or state, in connection with the performance of this Agreement. Licensee expressly agrees to indemnify and hold harmless the Indemnitees, or any of them, from and against all liabilities which may be asserted by officers, members, employees, volunteers or agents of the Licensee, as provided above, for which the Licensee's liability to such employee or

former employee would otherwise be limited to payments under state Workers' Compensation or similar laws. Any volunteers are volunteers for the Licensee, and not for the Town.

Licensee further acknowledges that, as lawful consideration for being granted the right to utilize and occupy the Area, Licensee, on behalf of himself, his officers, members, employees, volunteers and agents does hereby release from any legal liability the Town, its officers, agents and employees, from any and all claims for injury, death or property damage resulting from Licensee's use of the Area. This section shall survive the termination or cancellation of this Agreement.

15. No Liability.

The Area to be Licensed is to be used in "AS IS" Condition. In no event shall the Town be liable or responsible for injury, loss or damage to the Area, improvements, fixtures and/or equipment belonging to or rented by Licensee, officers, members, employees, volunteers and agents occurring in or about the Area that may be stolen, destroyed, or in any way damaged, including, without limitation, fire, flood, steam, electricity, gas, water, rain, vandalism or theft which may leak or flow from or into any part of the Area, or from the breakage, leakage, obstruction or other defects of the pipes, sprinklers, wires, appliances, plumbing, air conditioning or lighting fixtures of the Area, or from hurricane or any act of God or any act of negligence of any user of the facilities or occupants of the Area or any person whomsoever whether such damage or injury results from conditions arising upon the Area or upon other portions of the Area or from other sources. Licensee, its officers, members, employees, volunteers or agents shall execute a waiver of liability form and deliver to the Town prior to beginning work in the garden.

16. Cancellation by Request of Either of the Parties Without Cause.

Either party may cancel this Agreement, for convenience, at any time by giving thirty (30) days written notice to the non-canceling party prior to the effective date of the cancellation.

17. Termination By Town Manager For Cause.

If, at the sole and complete discretion of the Town Manager, Licensee in any manner violates the restrictions and conditions of this Agreement, then, and in the event, after ten (10)

days written notice given to Licensee by the Town Manager within which to cease such violation or correct such deficiencies, and upon failure of Licensee to do so after such written notice within said ten (10) day period, this Agreement shall be automatically canceled without the need for further action by the Town. The Town Manger, at his sole and complete discretion, may issue a preliminary written “warning” notice affording the Licensee a specified time not to exceed five (5) days prior to issuing the actual notice of violation. The Parties shall have no recourse against the other for a Cancellation under the Cancellation Section or a Termination under this Section.

18. Notices.

All notices or other communications which may be given pursuant to this Agreement shall be in writing and shall be deemed properly served if delivered by personal service or by certified mail addressed to Town and Licensee at the address indicated herein or as the same may be changed from time to time. Such notice shall be deemed given on the day on which personally served; or if by certified mail, on the fifth day after being posted or the date of actual receipt, whichever is earlier:

TOWN OF SURFSIDE

LICENSEE

Town of Surfside
Office of the Manager
9293 Harding Ave.
Surfside, FL 33154

Melissa Moonves
President – Surfside Urban Gardeners
8842 Emerson Ave.
Surfside, FL 33154

WITH A COPY TO
Director
Town of Surfside
Department of Tourism, Economic
Development & Community Services
9293 Harding Ave.
Surfside, FL 33154

19. Advertising.

Licensee shall not permit any signs or advertising matter to be placed either in the interior or upon the exterior of the Area without having first obtained the approval of the Director or his designee, which approval may be withheld for any or no reason, at his sole discretion. Licensee

shall, at its sole cost and expense, install, provide, maintain such sign, decoration, advertising matter or other things as may be permitted hereunder in good condition and repair at all times. Licensee must further obtain approval from all governmental authorities having jurisdiction, and must comply with all applicable requirements set forth in the Town of Code and Zoning Ordinance. Upon the cancellation of this Agreement, Licensee shall, at its sole cost and expense, remove any sign, decoration, advertising matter or other thing permitted hereunder from the Area or Property. If any part of the Area or Property is in any way damaged by the removal of such items, said damage shall be repaired by Licensee at its sole cost and expense. Licensee hereby understands and agrees that the Town may, at its sole discretion, erect or place upon the Area or Property an appropriate sign indicating Town's having issued this Agreement.

20. Hazardous Materials Prohibited.

The Licensee shall, never itself allow, store or permit (“Hazardous Materials Laws”),, any Hazardous Materials Laws on the Area as defined by all federal, state and local laws, statutes, ordinances and regulations, rules, rulings, policies, orders and administrative actions and orders relating to hazardous materials relating to, environmental protection or the use, storage, disposal or transportation of any, toxic substances or other hazardous, contaminated or polluting materials, substances or wastes, including, without limitation, any “Hazardous Substances”, “Hazardous Wastes”, “Hazardous Materials” or “Toxic Substances” (collectively “Hazardous Materials”), under any such laws, ordinances or regulations are all strictly forbidden on the Licensed area in compliance with, all applicable governmental requirements. The requirements of this Paragraph of the License shall survive the cancellation or revocation of this License.

The Town represents that to the best of its knowledge there are no known environmental violations, whether under federal, state, or local laws, and no known Hazardous Materials presently existing on the Area.

21. Licenses, Authorizations and Permits.

Licensee shall obtain, or cause to be obtained, and maintain in full force and effect throughout the term of this Agreement, at its sole expense, any licenses, authorizations and permits that are legally necessary for Licensee to conduct its activities.

Licensee shall be responsible for paying the cost of said applications and obtaining said licenses, authorizations and permits.

Licensee must be an incorporated non-profit and must maintain in good standing this designation for the entire period of every Agreement or said Agreement shall be cancelled or terminated.

22. Compliance With All Laws Applicable.

Licensee accepts this Agreement and hereby acknowledges that Licensee's strict compliance with all applicable federal, state and local laws, ordinances and regulations is a condition of this Agreement, and Licensee shall comply therewith as the same presently exist and as they may be amended hereafter. This Agreement shall be construed and enforced according to the laws of the State of Florida.

23. Ownership of Improvements.

As of the Effective Date and throughout the Use Period, all improvements thereon and title to all improvements made in or to the Area, whether or not by or at the expense of Licensee, shall, unless otherwise provided by written agreement, immediately upon their completion become the property of the Town and shall remain and be surrendered with the Area.

24. Surrender of Area or Property.

In either event of cancellation pursuant to Paragraph 16 or Paragraph 17 hereinabove, or at the expiration of the time limited by the notice, Licensee shall peacefully surrender the Area or Property broom clean and in good condition and repair together with all alterations, fixtures, installation, additions and improvements which may have been made in or attached on or to the Area or Property. Upon surrender, Licensee shall promptly remove all its personal property, and Licensee shall repair any damage to the Area or Property caused thereby. Should Licensee fail to repair any damage caused to the Area or Property within ten (10) days after receipt of written notice from Town directing the required repairs, Town shall cause the Area or Property to be repaired at the sole cost and expense of Licensee. Licensee shall pay Town the full cost of such repairs within ten (10) days of receipt of an invoice indicating the cost of such required repairs.

At Town's option, Town may require Licensee to restore the Area or Property so that the Area or Property shall be as it was on the Effective Date.

25. Severability.

It is the express intent of the parties that this Agreement constitutes a license and not a lease. To further this intent, the parties agree as follows: (i) if any provision of this Agreement, or the application thereof to any circumstance, suggest that a lease, rather than a license, has been created, then such provision shall be interpreted in the light most favorable to the creation of a license and (ii) if any provision of this Agreement, or the application thereof to any circumstance, is determined by a court of competent jurisdiction to have created a lease rather than a license, then such provision shall be stricken and, to the fullest extent possible, the remaining provisions of this Agreement shall not be affected thereby and shall continue to operate and remain in full force and effect.

With regard to those provisions which do not affect the parties intent for this Agreement, should any provision, section, paragraph, sentence, word or phrase contained in this Agreement be determined by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable under the laws of the State of Florida or the Town of Surfside , such provision, section, paragraph, sentence, word or phrase shall be deemed modified to the extent necessary in order to conform with such laws, or if not modifiable, then same shall be deemed severable, and in either event, the remaining terms and provisions of this Agreement shall remain unmodified and in full force and effect or limitation of its use.

26. Invalidity.

In the event that any non-material provision of this Agreement shall be held to be invalid for any reason, such invalidity shall not affect the remaining portions of this Agreement and the same shall remain in full force and effect.

27. No Assignment or Transfer; No Change in Presidency without the prior approval of Town.

Licensee cannot assign or transfer its privilege of occupancy and use granted unto it by this Agreement. Any assignment, sale or disposition of this Agreement or any interest therein by Licensee shall result in the automatic termination of this Agreement without notice by the Town Manager. Licensee agrees that if the current President of Licensee, who is executing this Agreement changes, due to end of term, resignation, or any other cause, the new President of the Licensee must be approved in writing by the Town Manager or this Agreement will be cancelled or terminated.

28. Public Records.

Licensee understands that the public shall have access, at all reasonable times, to Town contracts, subject to the provisions of Chapter 119, Florida Statutes, and agrees to allow access by the Town and the public to all documents subject to disclosure under applicable law.

29. Conflict of Interest.

Licensee is aware of the conflict of interest laws of the Dade County, Florida (Dade County Code, Section 2-11.1 et. seq.) and of the State of Florida as set forth in the Florida Statutes, and agrees that it will fully comply in all respects with the terms of said laws and any future amendments thereto.

30. Nondiscrimination.

In the performance of this Agreement or any extension thereof, Licensee and/or its authorized agents shall not discriminate in connection with its occupancy and use of the Area and improvements thereon, or against any employee, volunteer, or applicant of Licensee for employment because of sex, age, race, color, religion, ancestry or national origin.

31. Amendments and Modifications.

No amendments or modifications to this Agreement shall be binding on either party unless in writing, approved as to form and correctness by the Town Attorney, and signed by both parties. The Town Manager is authorized to amend or modify this Agreement as needed.

32. Attorney(s)' Fees.

In the event it becomes necessary for either party to institute legal proceedings to enforce the provisions of this Agreement, each party shall bear its own attorneys' fees through all trial and appellate levels.

33. Litigation.

Any dispute herein shall be resolved in the courts of Miami-Dade County, Florida. The parties shall attempt to mediate any dispute without litigation. However, this is not intended to establish mediation as a condition precedent before pursuing specific performance, equitable or injunctive relief.

34. Waiver.

Any waiver by either party or any breach by either party of any one or more of the covenants, conditions or provisions of this Agreement shall not be construed to be a waiver of any subsequent or other breach of the same or any covenant, condition or provision of this Agreement, nor shall any failure on the part of the Town to require or exact full and complete compliance by Licensee with any of the covenants, conditions or provisions of this Agreement be construed as in any manner changing the terms hereof to prevent the Town from enforcing in full the provisions hereto, nor shall the terms of this Agreement be changed or altered in any manner whatsoever other than by written agreement of the Town and Licensee.

35. Time of Essence.

It is expressly agreed by the parties hereto that time is of the essence with respect to this Agreement. If the final day of any period falls on a weekend or legal holiday, then the final day of said period or the date of performance shall be extended to the next business day thereafter.

36. No Interpretation against Draftsmen.

The parties agree that no provision of this Agreement shall be construed against any particular party and each party shall be deemed to have drafted this Agreement.

37. Third Party Beneficiary.

This Agreement is solely for the benefit of the parties hereto and no third party shall be entitled to claim or enforce any rights hereunder.

38. No Partnership.

Nothing contained herein shall make, or be construed to make any party a principal, agent, partner or joint venturer of the other.

39. Headings.

Title and paragraph headings are for convenient reference and are not a part of this Agreement.

40. Authority.

Each of the parties hereto acknowledges it is duly authorized to enter into this Agreement and that the signatories below are duly authorized to execute this Agreement in their respective behalf.

41. Entire Agreement.

This instrument and its attachments constitute the sole and only agreement of the parties hereto and correctly sets forth the rights, duties and obligations of each to the other as of its date.

Any prior agreements, promises, negotiations or representations not expressly set forth in this Agreement are of no force or effect.

42. Special Provisions.

TO BE COMPLETED AS REQUIRED by the TOWN –if none please remove

IN WITNESS WHEREOF, the parties hereto have executed this Agreement of the day and year first above written.

ATTEST:

TOWN OF SURFSIDE, a Florida
municipal corporation

By: _____
Town Clerk

By: _____
Roger Carlton
Town Manager

APPROVED AS TO CONTENT:
:

APPROVED AS TO LEGAL FORM &
CORRECTNESS:

By: _____
Director
Department of Tourism, Economic
Development & Community Services

By: _____
Lynn Dannheisser
Town Attorney

WITNESS:

LICENSEE:

By: _____
Signature

By: _____
Signature of President

Print Name

Print Name of President

By: _____
Signature

Date

Print Name

EXHIBIT A
DESCRIPTION OF AREA

DRAFT

EXHIBIT B
COMMON AREA (if applicable)

DRAFT