

RESOLUTION NO. 2011- 2060

**RESOLUTION OF THE TOWN COMMISSION FOR THE TOWN OF SURFSIDE, FLORIDA AUTHORIZING THE TOWN MANAGER OF THE TOWN OF SURFSIDE TO EXECUTE AN AGREEMENT WITH THE MIAMI-DADE STATE ATTORNEY'S OFFICE TO PROSECUTE CRIMINAL MUNICIPAL ORDINANCE VIOLATIONS IN SURFSIDE; AND PROVIDING FOR AN EFFECTIVE DATE.**

WHEREAS, the Town Commission of the Town of Surfside, Florida (the "Town") wishes to enter into an agreement with the Miami-Dade State Attorney's Office to prosecute criminal municipal ordinance violations in Surfside for the period of October 1, 2011 to September 30, 2012; and

WHEREAS, the Town will be billed by the State Attorney's Office at the statutorily prescribed rate of fifty (\$50.00) dollars per hour.

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

**Section 1.** The above and foregoing recitals are true and correct and are incorporated herein by reference.

**Section 2.** The Town Commission authorizes the Town Manager on behalf of the Town of Surfside, Florida to execute the agreement with the Miami-Dade State Attorney's Office (Exhibit "A")

**Section 3.** The Resolution shall become effective immediately upon its adoption.


PASSED and ADOPTED on this 13<sup>th</sup> day of December, 2011.

Motion by Commissioner Olchyk, Second by Commissioner Karukin.

FINAL VOTE ON ADOPTION

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


yes  
Absent  
yes  
yes  
yes

  
\_\_\_\_\_  
Daniel Dietch, Mayor

ATTEST:

  
\_\_\_\_\_  
Sandra Novoa, CMC  
Town Clerk

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

  
\_\_\_\_\_  
Lynn M. Dannheisser, Town Attorney



RECEIVED

OCT 31 2011

## STATE ATTORNEY

ELEVENTH JUDICIAL CIRCUIT OF FLORIDA  
E. R. GRAHAM BUILDING  
1350 N.W. 12TH AVENUE  
MIAMI, FLORIDA 33136-2111

KATHERINE FERNANDEZ RUNDLE  
STATE ATTORNEY

TELEPHONE (305) 547-0100

October 12, 2011

Mr. Roger M. Carlton  
Acting Town Manager  
Town of Surfside  
9293 Harding Avenue  
Surfside FL 33154

Dear Mr. Carlton:

Legislation passed in 2004 to implement Revision 7 to Article V of the Florida Constitution provides that the State Attorney may prosecute municipal ordinances only if (1) the ordinance violation is ancillary to a felony prosecution (s. 27.02(1), Florida Statutes), or (2) the county/municipality has entered into a contract with the State Attorney for these prosecutions (s. 27.34(1), Florida Statutes).

Enclosed please find the proposed agreement for the prosecution of ordinance violations for the period of October 1, 2011 – September 30, 2012. Please sign three originals and return to this office as soon as possible. If you desire to make changes to the contract and want an electronic version of this document, please contact me at [donlhorn@miamisao.com](mailto:donlhorn@miamisao.com) and I will forward you a copy. This contract is for the prosecution of ordinances only; the State Attorney's Office has no statutory authority to handle appeals relating to the constitutionality of ordinances. If you choose to not have the Office of the State Attorney prosecute municipal ordinance violations in accordance with sections 4 & 5 of Chapter 2004-265, Laws of Florida, you are requested to send a letter to that effect to the above address as soon as possible.

You will be billed at the statutorily prescribed rate of \$50 per hour. Our estimate is that, on average, it takes approximately 20 minutes per case; therefore, you will be charged at the rate of \$16.67 per case. Please note that this is the charge for ordinance prosecution only. Pursuant to state law, there are separate charges for indigent defense from the Public Defender and filing fees from the Clerk of the Court.

If you have any questions about the contract or if I can provide any other information, please do not hesitate to contact me at 305-547-0562 or at [donlhorn@miamisao.com](mailto:donlhorn@miamisao.com).

Sincerely,

KATHERINE FERNANDEZ RUNDLE  
State Attorney

By:

Don L. Horn  
Chief Assistant State Attorney for Administration

DLH/cj

Enclosures

**AGREEMENT BETWEEN TOWN OF SURFSIDE AND THE STATE OF  
FLORIDA, OFFICE OF THE STATE ATTORNEY FOR THE  
ELEVENTH JUDICIAL CIRCUIT OF FLORIDA TO REIMBURSE THE  
STATE FOR THE COST OF STATE ATTORNEY PROSECUTION OF  
CERTAIN CRIMINAL VIOLATIONS OF THE  
\_\_\_\_\_ CODE**

This agreement is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2011, by and between Town of Surfside, a political subdivision of the State of Florida (hereinafter referred to as the “City”) and the Office of the State Attorney for the Eleventh Judicial Circuit of Florida (hereinafter referred to as “State Attorney”).

WHEREAS, the City finds that in order to maintain and improve the health, safety, and welfare of this community, it is necessary to adequately enforce and prosecute violations of the City’s Municipal Code; and

WHEREAS, Section 27.02, Florida Statutes, authorizes the State Attorney to prosecute municipal ordinance violations punishable by incarceration if ancillary to state prosecution or, if not ancillary to state prosecution, when the State Attorney contracts with the City for reimbursement.

NOW, THEREFORE, the parties hereto agree as follows:

**ARTICLE I**  
**Services**

The State Attorney agrees to prosecute municipal ordinance violations as authorized in Sections 27.02, and 27.34, Florida Statutes. The City agrees to remit, subject to the terms outlined in Article III of this agreement, to the State Attorney the required funds to reimburse for costs associated with the prosecution of violations of the Municipal Code for the period of October 1, 2011, through September 30, 2012. The State Attorney shall provide such clerical and professional personnel as may be required for the performance of any of the functions of the State Attorney as set forth in this agreement. This agreement does not commit the City to pay for the prosecution of Municipal Code violations ancillary to state prosecution or for the prosecution of municipal ordinance violations not punishable by incarceration. This agreement specifically does not authorize the State to handle appeals of municipal ordinances on constitutional grounds, which shall remain the responsibility of the municipality that passed the ordinance.

**ARTICLE II**  
**Terms**

This agreement shall expire on September 30, 2012, unless terminated earlier pursuant to Article VII of this agreement. Under no circumstances shall the City be liable to continue or extend this agreement beyond this date. This agreement may only be amended in writing, through a document executed by duly authorized representatives of the signatories to this agreement.

**ARTICLE III**  
**Payment Schedule**

The City agrees to reimburse the State Attorney on an hourly basis for services rendered at a rate of Fifty dollars (\$50) per hour. On a quarterly basis, the State Attorney shall provide the City with an invoice including, but not limited to, the hours of services rendered, number of cases prosecuted as set forth in this agreement, and the total amount due for payment for the previous month. The City shall remit each payment within ten (10) days after receiving said invoice from the State Attorney.

**ARTICLE IV**  
**Responsibilities**

The City does not delegate any of its responsibilities or powers to the State Attorney other than those enumerated in this agreement. The State Attorney does not delegate any of its responsibilities or powers to the City other than those enumerated in this agreement.

**ARTICLE V**  
**Reporting**

All required reports shall be submitted to the \_\_\_\_\_.

**ARTICLE VI**  
**Indemnification**

It is expressly understood and intended that the State Attorney is only a recipient of the reimbursements paid by the City and is not an agent of the City. The respective parties agree, subject to the provisions of Chapter 768.28 (17), Florida Statutes, that they will hold each other harmless from any claims arising from this agreement.

**ARTICLE VII**  
**Termination**

Either party may terminate this agreement at any time with or without cause by furnishing written notice to the other party with no less than ninety (90) days notice.

**ARTICLE VIII**  
**Service Charges**

This agreement is contingent upon all City funding provided, and any interest earned thereon, not being subject to any State service charges or administrative assessments.

**ARTICLE IX**  
**Non-Discrimination**

The State Attorney agrees to abide and be governed by Title II of the Americans with Disabilities Act of 1990, Title VI and VII, Civil Rights Act of 1964 (42 USC 200d, e) and Title VIII of the Civil Rights Act of 1968, as amended, which provides in part that there will not be discrimination of race, color, sex, religious background, ancestry, or national origin in performance of this contract, in regard to persons served, or in regard to employees or applicants

for employment and it is expressly understood that upon receipt of evidence of discrimination, the City shall have the right to terminate said agreement.

IN WITNESS THEREOF, the parties have caused this agreement to be executed by their respective and duly authorized officers the day and year first above written.

ATTEST:

NAME Sandra Novog

City Commission

By: [Signature]  
POSITION Town Clerk

By: [Signature] Daniel Dietch  
Mayor

ATTEST

State Attorney's Office  
Eleventh Judicial Circuit

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

By: \_\_\_\_\_  
Don L. Horn  
Chief Assistant State Attorney  
for Administration