

RESOLUTION NO. 2021-2799

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA EXTENDING THE TERM OF THE AGREEMENT FOR FOOD AND BEVERAGE CONCESSION SERVICES WITH HAMSA HAMSA, LLC D/B/A SURF-N-SIDES FOR FOOD AND BEVERAGE CONCESSION SERVICES AT THE SURFSIDE COMMUNITY CENTER; AUTHORIZING THE TOWN MANAGER TO EXECUTE A SECOND AMENDMENT TO THE AGREEMENT FOR THE SERVICES; PROVIDING FOR IMPLEMENTATION; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town of Surfside (“Town”) issued Request for Proposals (RFP) No. 2018-003 seeking to competitively procure food and beverage concession services at the Surfside Community Center (“Services”); and

WHEREAS, Hamsa Hamsa, LLC D/B/A Surf-N-Sides (“Contractor”) submitted the sole proposal in response to the RFP, the Town selected the proposal of the Contractor, and on November 19, 2018 the parties entered into an Agreement for Food and Beverage Concession Services with the Contractor (the “Agreement”); and

WHEREAS, at the Town Commission meeting of November 12, 2019, the Town Commission approved an amendment to the Agreement providing for a six (6) month probationary renewal term, subject to satisfactory performance by the Contractor to be evaluated by the Town Manager at the conclusion of the six (6) month probationary renewal term (the “First Amendment”); and

WHEREAS, prior to reaching the end of the six (6) month probationary term, the Community Center and Concession were closed on March 13, 2020 due to the Covid-19 pandemic; and

WHEREAS, during the three (3) months of operation prior to the closing of Surf-N-Sides due to the Covid-19 pandemic, Town administration found that the Contractor was operating at a satisfactory level and providing quality service to community center/pool patrons and complying with all other conditions of the Agreement; and

WHEREAS, Community Center operations re-opened to normal programming on May 24, 2021, and Contractor is requesting to forgo the remaining three (3) months of the probationary term and further renewal of the Agreement; and

WHEREAS, based upon the recommendation of Town administration, the Town Commission wishes to renew the term of the Agreement for a one (1) year renewal term, and provide for four (4) additional one (1) year renewal terms, subject to annual performance reviews by the Town Manager, all as set forth in the Second Amendment to the Agreement, substantially in the form attached hereto as Exhibit "A" ("Second Amendment"); and

WHEREAS, at the Town Commission meeting on June 8, 2021, the Town Commission directed that Beach Service be deleted from the Agreement and that such deletion be incorporated in the Second Amendment; and

WHEREAS, the Town Commission finds that the renewal of the term of the Agreement and the Second Amendment are in the best interest and welfare of the Town.

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

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

Section 2. Approval of Renewal of Term and Second Amendment. The Town Commission hereby approves the renewal of the term of the Agreement for a one (1) year period and further approves the Second Amendment with the Contractor for the Services, substantially in the form attached hereto as Exhibit "A", subject to final approval as to form, content, and legal sufficiency by the Town Manager and Town Attorney. The Town Manager is hereby authorized to execute the Second Amendment once approved in final for content and legal sufficiency by the Town Manager and Town Attorney.

Section 4. Implementation of Agreement. The Town Manager and/or designee is authorized to take any and all necessary action to implement the Second Amendment and the purposes of this Resolution, including approving and authorizing any additional renewal terms pursuant to the Second Amendment.

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

PASSED AND ADOPTED this 8th day of June, 2021.

Motion By: Vice Mayor Paul

Second By: Commissioner Salzhauer

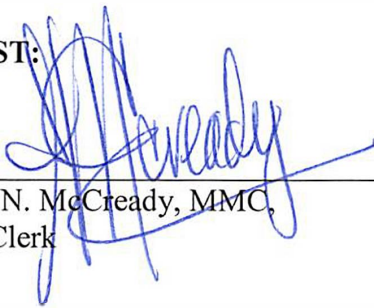
FINAL VOTE ON ADOPTION

Commissioner Charles Kesl	<u>Yes</u>
Commissioner Eliana Salzhauer	<u>Yes</u>
Commissioner Nelly Velasquez	<u>Yes</u>
Vice Mayor Tina Paul	<u>Yes</u>
Mayor Charles W. Burkett	<u>Yes</u>




Charles W. Burkett, Mayor

ATTEST:



Sandra N. McCready, MMC,
Town Clerk

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



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

**SECOND AMENDMENT TO AGREEMENT FOR FOOD AND BEVERAGE CONCESSION
SERVICES BETWEEN
TOWN OF SURFSIDE AND HAMSA HAMSA, LLC D/B/A SURF-N-SIDES
SURFSIDE COMMUNITY CENTER**

THIS SECOND AMENDMENT TO AGREEMENT FOR FOOD AND BEVERAGE CONCESSIONS SERVICES (this "Amendment") is made as of the ____ day of _____, 2021, by and between the **TOWN OF SURFSIDE, FLORIDA**, a Florida Municipal Corporation (hereinafter referred to as "Town"), and **HAMSA HAMSA, LLC, a Florida Limited Liability Company, D/B/A Surf-N-Sides** (hereinafter referred to as "Contractor").

WHEREAS, the Town and Contractor entered into that certain Agreement for Food and Beverage Concession Services, Surfside Community Center, dated November 19, 2018 (the "Agreement"); and

WHEREAS, pursuant to Section 4 of the Agreement, the Services were to be provided for an initial term of one year through November 18, 2019, with an automatic renewal for a term of three (3) years provided Contractor was not in default of the Agreement and subject to the Contractor performing satisfactorily as determined by the Town Manager, in his sole discretion; and

WHEREAS, as further provided for in Section 4 of the Agreement, the Town Manager evaluated the performance of the Contractor for satisfactory performance 60 days prior to the expiration of the initial term, and the Town Manager issued a letter of default for non-performance of the Agreement dated September 25, 2019 finding that the Contractor was not performing satisfactorily in accordance with the terms and requirements of the Agreement; and

WHEREAS, the matter was addressed by the Town Commission at its November 12, 2019 meeting, and the result was to grant the Contractor a six (6) month probationary renewal term or period ("Probationary Six Month Renewal Term"), with any further renewals to be evaluated by the Town Manager at the conclusion of the Probationary Six Month Renewal Term and subject to satisfactory performance by the Contractor; and

WHEREAS, as directed by the Town Commission, a First Amendment to the Agreement was entered into between the Town and Contractor on December 13, 2019 providing for the Probationary Six Month Renewal Term, with any further renewals to be evaluated by the Town Manager at the conclusion of the Probationary Six Month Renewal Term and subject to satisfactory performance by the Contractor; and

WHEREAS, prior to reaching the end of the Probationary Six Month Renewal Term, the Community Center and Concession were closed on March 13, 2020 due to the Covid-19 pandemic; and

WHEREAS, during the three (3) months of operation prior to the closing of Surf-N-Sides due to the Covid-19 pandemic, the Town administration found that the Contractor was operating at a satisfactory level and providing quality service to Community Center and pool patrons and complying with all other conditions of the Agreement; and

WHEREAS, Community Center operations re-opened to normal programming on May 24, 2021, and Contractor is requesting to forgo the remaining three (3) months of the Probationary Six Month Renewal Term and seeking further renewal terms pursuant to the Agreement; and

WHEREAS, based upon the recommendation of Town administration, the Town Commission wishes to renew the term of the Agreement for a one (1) year renewal term, and provide for four (4) additional one (1) year renewal terms, subject to annual performance reviews by the Town Manager, all as set forth in this Second Amendment to the Agreement; and

WHEREAS, the parties wish to amend the Agreement to revise Section 4 pertaining to renewals of the term, and delete Section 10.1 c. (Beach Service) of the Agreement as set forth in this Amendment.

NOW, THEREFORE, for and in consideration of the mutual promises set forth herein, the parties do hereby agree as follows:

1. **Recitals Adopted.** The above recitals are true and correct and are incorporated herein by this reference. All initially capitalized terms used but not otherwise defined herein shall have the meaning ascribed thereto in the Agreement.

2. **Services.** Section 4 of the Agreement is hereby amended and replaced with the following:

“4. **TERM.** This Agreement shall be for an initial term of one (1) year commencing on November 19, 2018 and ending on November 18, 2019 (hereinafter the “Term”) unless sooner terminated pursuant to paragraph 12 of this Agreement. Services shall commence within sixty (60) days of the Effective Date of this Agreement (the “Commencement Date”), which date shall be documented in writing by the parties. In no event shall the Commencement Date, and Contractor’s obligation to pay the Town a concession fee exceed beyond sixty (60) days from the Effective Date. Any change in fee, terms or conditions shall be accomplished by written amendment to this Agreement and approval by the Town. The Term of this Agreement shall be renewed for a six (6) month probationary term commencing November 19, 2019, which terminated early on March 13, 2020 due to the closure of the Community Center and Concession caused by the Covid-19 pandemic and terminating on May 18, 2020 (‘Probationary Six Month Renewal Term’). ~~Sixty (60) days prior to the expiration of the Probationary Six Month Renewal Term, the Town Commission shall be provided with an update or status of the Contractor’s performance pursuant to this Agreement, and the Town Commission may provide direction to the Town Manager as to any further renewals of the Agreement. Thirty (30) days prior to the expiration of the Probationary Six Month Renewal Term, and provided (i) Contractor is not in default of this Agreement and is performing satisfactorily during the Probationary Six Month Renewal Term as determined by the Town Manager,~~

~~in his sole discretion, and (ii) the Town Commission has provided favorable review or direction of the Contractor's performance during the Probationary Six Month Renewal Term, the Term of this Agreement shall renew for a successive one (1) year term ("First Renewal Term").~~ The Town Manager and/or administration shall evaluate the performance of the Contractor during the three (3) months of operations during the Probationary Six Month Renewal Term prior to the closing of the Concession due to the Covid-19 pandemic, and found that the Contractor was operating at a satisfactory level and providing quality service to Community Center and pool patrons and complying with all other conditions of the Agreement. The Term of the Agreement is hereby extended for one (1) additional year commencing on July 1, 2021 and terminating on June 30, 2022 ("First Renewal Term"). The Agreement may be renewed for up to four (4) successive one (1) year renewal terms, subject to annual satisfactory performance reviews of the Contractor and evaluation by the Town Manager and/or administration, sSixty (60) days prior to the expiration of the First Renewal Term and any successive annual renewal terms thereafter, and the Town Manager shall have the authority evaluate the performance of the Contractor during the prior year to determine whether Contractor is performing satisfactorily, and if the Contractor's performance is determined by the Town Manager and/or administration to be satisfactory, the Town Manager may authorize a successive one (1) year term to commence upon the expiration of the First Renewal Term and successive annual renewal terms thereafter ("Second Successive Renewal Terms"). In determining whether Contractor is performing satisfactory, the Town Manager and/or administration may consider certain performance standards, including, but not limited to, operating hours, adequate personnel and staffing, legitimate complaints received from patrons or guests, food and beverage quality, and availability of menu or food and beverage items. Any subsequent or further annual renewals beyond the ~~Second~~ First Renewal Term shall be at the sole and absolute discretion of the Town."

3. **Beach Service.** Section 10.1 c. of the Agreement (Beach Service) is hereby deleted in its entirety as follows:

~~"10.1. e. **Beach Service.** Contractor may provide food and beverage service to the beach area of the Facility, subject to any and all approvals for such service as may be required by the State of Florida, Miami-Dade County, or any other applicable entity regulating beach service. The Town Manager may impose additional requirements for such beach services, in his discretion, including trash and debris removal, hours of operation or location of deliveries."~~

4. **Conflict; Amendment Prevails.** In the event of any conflict or ambiguity between the terms and provisions of this Second Amendment and the terms and provisions of the Agreement, the terms and provisions of this Second Amendment shall control.

5. **Agreement Ratified.** Except as otherwise specifically set forth or modified herein, the all terms and pricing in the Agreement are hereby ratified and affirmed and shall remain unmodified and in full force and effect in accordance with its terms.

1. Additions to the text are shown in double underline. Deletions are shown in ~~strikethrough~~.

IN WITNESS WHEREOF, the parties have executed this Amendment as of the date first set forth above.

TOWN:

TOWN OF SURFSIDE, a Florida municipal corporation

By: _____
Andrew Hyatt, Town Manager

Date Executed: _____

Attest:

Town Clerk

Approved as to Legal Form and
Legal Sufficiency:

Town Attorney

IN WITNESS WHEREOF, the parties have executed this Amendment as of the date first set forth above.

CONTRACTOR:

Witnesses:

HAMSA HAMSA, LLC, a Florida Limited Liability Company, D/B/A SURF-N-SIDES

By: _____

Print Name: _____

Name: _____

Title: _____

Date Executed: _____

Print Name: _____