

**RESOLUTION 2023 - 2996**

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

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

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

**WHEREAS**, during his term as the Town Manager, the terms and conditions of employment of Hector Gomez will be in accordance with the Employment Agreement attached hereto as Exhibit "A."

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

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

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

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

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

PASSED and ADOPTED this 17<sup>th</sup> day of May, 2023.

Motion by Vice Mayor Rose , second by Mayor Danzinger

FINAL VOTE ON ADOPTION

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

  
\_\_\_\_\_  
Shlomo Danzinger, Mayor

**Attest:**

  
\_\_\_\_\_  
Sandra McCready, MMC, Town Clerk

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

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

**EMPLOYMENT AGREEMENT**  
**TOWN MANAGER**

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

**RECITALS**

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

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

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

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

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

**Section 1. Recitals.**

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

**Section 2. Duties.**

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

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

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

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

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

### **Section 3. Salary.**

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

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

### **Section 4. Performance Evaluations.**

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

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

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

**Section 5. Holidays.**

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

**Section 6. Annual (Vacation) Leave.**

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

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

**Section 7. Sick Leave.**

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

**Section 8. Retirement Plan.**

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

**Section 9. Health Insurance.**

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

**Section 10. Life Insurance.**

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

**Section 11. Professional Dues and Expenses.**

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

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

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

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

**Section 12. Cellular.**

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

**Section 13. Travel.**

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

**Section 14. Days.**

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

**Section 15. Bonds.**

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

**Section 16. Indemnification.**

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

**Section 17. Term.**

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

**Section 18. Termination.**

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



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

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

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

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

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

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

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

**Section 19. Miscellaneous Provisions.**

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

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

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

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

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

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

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

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

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

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

For the Town Manager:

Hector Gomez

[REDACTED]

**Section 20. WAIVER OF JURY TRIAL.**

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

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

**TOWN OF SURFSIDE**

By: \_\_\_\_\_  
**Shlomo Danzinger, Mayor**

Date: \_\_\_\_\_

**ATTEST:**

\_\_\_\_\_  
**Sandra N. McCready, MMC**  
Town Clerk

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

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

**TOWN MANAGER**

\_\_\_\_\_  
**Hector Gomez**

Date \_\_\_\_\_