

RESOLUTION NO. 2024-3279

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA APPROVING THE EMPLOYMENT AGREEMENT OF MARK BLUMSTEIN AS INTERIM TOWN ATTORNEY PURSUANT TO THE EMPLOYMENT AGREEMENT ATTACHED HERETO AS EXHIBIT "A"; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town Commission of the Town of Surfside (Town") appointed Mark Blumstein to the position of Interim Town Attorney on March 25, 2024 ("Effective Date");

WHEREAS, the Town Commission now desires to formalize the terms and conditions of his employment as Interim Town Attorney in accordance with the Employment Agreement attached hereto as Exhibit "A";

WHEREAS, the Employment Agreement attached hereto as Exhibit "A" has been executed by Mark Blumstein, demonstrating his acceptance of the terms and conditions by which he will serve the Town as Interim Town Attorney.

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 Employment Agreement. The Employment Agreement between Mark Blumstein and the Town attached hereto as Exhibit "A" is hereby approved as of the Effective Date.

Section 3. Implementation of Contract. The Mayor is hereby authorized to take any and all necessary or further action to execute and implement said Employment Agreement.

Section 5. Effective Date. This Resolution shall be effective immediately upon adoption and the Employment Agreement as of the Effective Date.

PASSED AND ADOPTED this 9th day of April, 2024.

Motion by: Commissioner Nelly Velasquez.

Second by: Commissioner Gerardo Vildostegui.

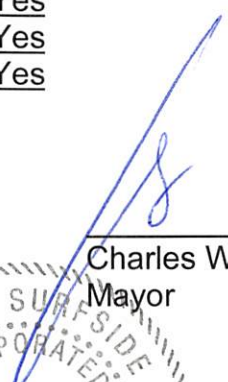
FINAL VOTE ON ADOPTION

Commissioner Ruben Coto	<u>Yes</u>
Commissioner Nelly Velasquez	<u>Yes</u>
Commissioner Gerardo Vildostegui	<u>Yes</u>
Vice Mayor Tina Paul	<u>Yes</u>
Mayor Charles W. Burkett	<u>Yes</u>

ATTEST:



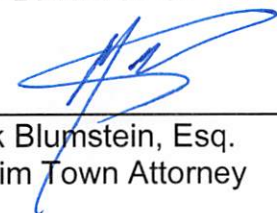
Sandra McCready, MMC
Town Clerk



Charles W. Burkett
Mayor



APPROVED AS TO FORM AND LEGALITY FOR THE USE AND BENEFIT OF THE TOWN OF SURFSIDE ONLY:



Mark Blumstein, Esq.
Interim Town Attorney

EMPLOYMENT AGREEMENT
INTERIM TOWN ATTORNEY

This Employment Agreement (“Agreement”) is made and entered into this 25th day of March, 2024, between the Town of Surfside, a Florida municipal corporation (the “Town”) and Mark Blumstein (“Blumstein” or “Town Attorney”).

RECITALS

WHEREAS, Section 28 of the Town Charter (the “Charter”) requires that there shall be a Town Attorney who shall act as the legal adviser to, and attorney and counsellor for, the Town and all of its officers in matters relating to their official duties; and

WHEREAS, on March 21, 2024, the Town received the resignation of its prior counsel, Weiss Serota Helfman Cole & Bierman, P.L., by and through its attorneys, Lillian M. Arango, Esq. and Tony Recio, Esq., which was accepted by the Town Commission at a duly noticed Special Meeting held on March 25, 2024;

WHEREAS, at said duly noticed Special Meeting of the Town Commission held on March 25, 2024, Blumstein was appointed as interim Town Attorney; and

WHEREAS, Blumstein represents that he has the qualifications, expertise and skills to serve as the Town Attorney; and

WHEREAS, the Town desires to employ the services of Blumstein as Town Attorney and Blumstein wishes to accept such employment.

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 Attorney 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 Attorney shall also perform such other duties and carry out such policy directives, as determined by the majority of the Town Commission from time to time.

2.3 The Town Attorney 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 same. The report shall be included in the monthly Commission agenda package.

24 The Town Attorney 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, as necessary. In addition, he shall attend other standing and ad hoc committee meetings and other meetings, as appropriate to fulfill his duties as Town Attorney, unless he has schedule conflicts that preclude his attendance. The Town Attorney may designate another person to attend certain meetings, if unavailable.

25 The Town Attorney shall be available to confer and/or meet with the Mayor and Commissioners, as necessary.

Section 3. Salary.

3.1 The Town Attorney shall receive an initial annual salary of **\$186,000.00**, retroactive to March 25, 2024, payable in equal installments, in accordance with the Town's existing pay periods.

32 For purposes of this Agreement, the Town Attorney's anniversary date for purposes of his first annual performance evaluation shall be March 25, 2024 (the "Performance Evaluation Anniversary Date"). However, the Town Commission shall first evaluate the Town Attorney's performance by no later than September 9, 2024 to determine any adjustments to this Agreement, including annual salary and/or benefits.

Section 4. Performance Evaluations.

4.1 The Town agrees to conduct formal performance evaluations of the Town Attorney in a

format acceptable to the majority of the Town Commission after twelve (12) and twenty-four (24) months of service from the Town Attorney's Performance Evaluation Anniversary Date. The Town Commission shall thereafter evaluate the performance of the Town Attorney at least annually, on or before the Performance Evaluation Anniversary Date of each subsequent year. It is understood and agreed that if the Town Attorney receives a positive evaluation from the Commission, the Town Attorney may receive a salary or benefit increase, but any such increase is solely within the discretion of the Commission, as approved at a public meeting.

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

Section 5. Holidays.

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

Section 6. Annual (Vacation) Leave.

6.1 The Town Attorney shall accrue 30 business days of annual leave per calendar year on a pro rata basis equally per pay period. The Town Attorney shall submit leave slips for annual leave usage in accordance with Town policy for all other Town employees. The Town Attorney shall be permitted to roll over any accrued or unused vacation leave balance. 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 this Agreement shall govern.

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 Attorney shall not be absent or take leave more than ten (10) consecutive business days without prior verbal or written notice to and approval of the Mayor or designee. Prior to such leave, the Town Attorney shall notify the Commission of the Acting Town Attorney during that leave and how the Town Attorney may be reached while on leave in case of an emergency.

Section 7. Sick Leave.

The Town Attorney shall accrue 12 business days of sick leave per calendar year on a pro rata basis equally per pay period. However, the Town Attorney shall be credited with four (4) of those 12 days of sick leave immediately and begin accruing the remaining 8 days of sick leave upon completion of four months of Town employment from March 25, 2024. The Town Attorney shall submit leave slips for sick leave usage in accordance with Town policy for all other Town employees. The Town Attorney shall be permitted to roll over any accrued sick leave balance. 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 this Agreement shall govern.

Section 8. Retirement Plan.

By April 30, 2024, the Town Attorney 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 Attorney shall make such election in writing to the Town's Human Resource Director. If no such election is made, the Town Attorney shall participate in the ICMA/Mission Square retirement plan as set forth above.

Section 9. Health Insurance.

The Town shall provide the Town Attorney 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 March 25, 2024.

Section 10. Life/Disability Insurance.

The Town shall provide the Town Attorney with term life insurance equal to no less than five times his annual salary without charge. The Town shall also provide the Town Attorney with short-term and long-term disability policies without charge.

Section 11. Professional Dues and Expenses.

11.1 The Town shall pay for all customary professional expenses, dues, subscriptions, computerized legal research, travel and seminar fees, including those required by The Florida Bar, to remain in good standing and active status with any licensing authority, and to continue professional development or adequately pursue necessary official and other functions of the Town, including Local Government Lawyers' seminars and the Internation/Florida Municipal Attorneys Association Seminar or its equivalent. Also, the Town shall pay any dues and subscriptions necessary for the Town Attorney's participation in ICMA/Mission Square, FCCMA and AICP. In addition, the Town Attorney'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 Attorney's participation in those local civic and non-profit job-affiliated organizations that the Town Attorney 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 Attorney as part of his duties. Such payments shall be made on a reimbursement basis, based upon the Town Attorney'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 Attorney with an automobile allowance of \$750 per month, retroactive to the appointment of the Town Attorney on March 25, 2024.

Section 12. Cellular.

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

Section 13. Travel.

The Town Attorney is hereby approved to attend the annual FMAA 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 Attorney. In addition, the Town shall pay for the reasonable and customary registration and travel expenses of the Town Attorney 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 Attorney, as required by Florida Law or the Town Charter.

Section 16. Indemnification.

The Town shall indemnify the Town Attorney 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 Attorney's duties. This provision shall not apply to acts or omissions of the Town Attorney 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 April 10, 2024, a date subsequent to the Town Commission adopting Resolution No. _____. approving this Agreement. The Town Attorney 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 Attorney 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 Attorney 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 Attorney at any time during a regular or Special Town Commission meeting.

18.2 In the event the Town Commission terminates the Town Attorney without cause, the Town Attorney shall receive no severance. The Town shall continue to pay the premium for the Town Attorney's health insurance for 4 weeks (calculated to the closest end of the month to the 4th week) after the effective termination date. The Town shall not provide the Town Attorney with his automobile allowance, cellular telephone allowance, or any other benefit or reimbursement (except that specifically set forth in this paragraph) beyond his termination date. All severance payments (excluding the continuation of his health insurance benefits) shall be paid to the Town Attorney in a lump sum upon his termination or within thirty (30) days thereafter, at the Town Commission's discretion.

18.3 Notwithstanding the provisions of Section 18.2, in the event Town Attorney is terminated for misconduct as defined in Section 443.036(29), Florida Statutes, the Town shall have no obligation to provide the Town Attorney 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 Attorney. 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 Attorney voluntarily resigns or retires during the Term of this Agreement, the Town Attorney 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 Attorney under this Section, the Town Attorney shall not be entitled to receive the severance package specified in Section 18.2, but the Town Attorney shall receive payment for his accrued unused vacation and sick leave (if applicable) calculated at the Town Attorney'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 Attorney voluntarily resigns with less than 60 days' advance written notice, the Town Commission may elect to terminate the Town Attorney immediately or allow the Town Attorney to continue to serve until the date specified in the Town Attorney's resignation. In the event of a resignation or termination under this paragraph, notwithstanding any other provisions of this Section, the Town Attorney shall not be entitled to receive a severance payment but the Town Attorney shall receive payment for his accrued unused vacation and sick leave (if applicable) calculated at the Town Attorney'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 Attorney 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 Attorney takes FMLA-approved leave and exceeds his statutorily protected, FMLA-approved leave in a one-year period, the Town Commission may terminate this Agreement. In the event of the Town Attorney's death, this Agreement shall be terminated. If this Agreement is terminated under this Section, the Town Attorney 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 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 Attorney, except that the Town Attorney is hereby authorized to engage outside professionals at Town expense, on an hourly basis and at customary rates, in his sole and absolute discretion, to assist and benefit the Town, its elected officials, officers and/or employees.

19.6 **Exclusivity.** The Town Attorney shall remain in the exclusive employment of the Town and neither accept other employment nor become employed by any other employer. "Employed" or "Employer" shall not be construed to include teaching, writing, other legal consulting or representation individually or through a firm so long as the representation is not a legal conflict of interest, does not impair the Town Attorney's ability to fully undertake all obligation under this Agreement or is an ethical conflict

of interest as an employee of the Town or in the performance of military service, unless waived by the Town. The Town Attorney's membership in or relationship to any firm other than his own P.A. shall never obligate the Town in any way to do business with or work with said firm.

19.7 **Paralegal/Legal Assistant/Clerk.** The Town agrees to retain and employ, at the Town Attorney's sole and absolute discretion, the services of a full-time paralegal, legal assistant and/or law clerk to provide services to the Town Attorney's office, subject to the Town Charter and Town Code.

19.8 **Governing Law.** Florida law shall govern this Agreement and any litigation arising out of or 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 **Waiver of Conflict of Interest.** The Town hereby irrevocably and unconditionally waives any conflict of interest between the Town and Town Attorney as it pertains to the preparation, negotiation and/or approval of this Agreement as to form and/or for legal sufficiency.

19.9 **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: Charles Burkett, Mayor
Town of Surfside
9293 Harding Avenue
Surfside, Florida 33154
(305) 861-4863 (Telephone)

With a copy to: Mark Blumstein, Esq.
Town Attorney
Town of Surfside
9293 Harding Avenue
Surfside, Florida 33154
(305) 861-4863 x 225 (Telephone)

For the Town Manager: Town Manager
Town of Surfside
9293 Harding Avenue
Surfside, Florida 33154
(305) 861-4863

Section 20. WAIVER OF JURY TRIAL.

BOTH THE TOWN AND THE TOWN ATTORNEY 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 April 9, 2024, has executed this Agreement the day and year first above written.

TOWN OF SURFSIDE

By: _____
Charles Burkett, 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:**

Mark Blumstein
Town Attorney

TOWN ATTORNEY

Mark Blumstein

Date _____