

RESOLUTION NO. 2024-3286

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA APPROVING THE EMPLOYMENT AGREEMENT OF MARISOL VARGAS AS INTERIM TOWN MANAGER 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 Marisol Vargas to the position of Interim Town Manager on April 9, 2024 ("Effective Date");

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

WHEREAS, the Employment Agreement attached hereto as Exhibit "A" has been executed by Marisol Vargas, demonstrating her acceptance of the terms and conditions by which she will serve the Town as Interim Town Manager.

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 Marisol Vargas 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 14th day of May, 2024.

Motion by Vice Mayor Paul.

Second by Commissioner Coto.

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>

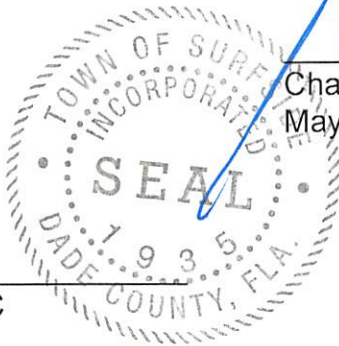


Charles W. Burkett
Mayor

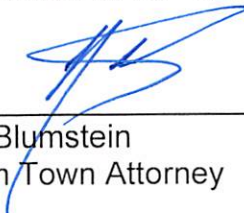
ATTEST:



Sandra N. McCready, MMC
Town Clerk



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



Mark Blumstein
Interim Town Attorney

EMPLOYMENT AGREEMENT
INTERIM TOWN MANAGER

This Employment Agreement (“Agreement”) is made and entered into this _____ day of May, 2024, between the Town of Surfside, a Florida municipal corporation (the “Town”) and Marisol Vargas (“Vargas” 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, Vargas was appointed as interim Town Manager by the Town Commission at its April 9, 2024 Special Commission Meeting; and

WHEREAS, Vargas represents that she has the expertise and skills to serve as Town Manager; and

WHEREAS, the Town desires to employ the services of Vargas as Town Manager and Vargas 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.

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

25 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 **\$120,000.00**, retroactive to April 9, 2024, the date of her appointment, 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 her first annual performance evaluation shall be April 9, 2024 (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 by July 9, 2024 and after twelve (12) and twenty-four (24) months of service from the Town Manager's Performance Evaluation Anniversary Date, if applicable. 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 progress towards 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 **30 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 her current accrued 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 the conflicting provision of this Agreement shall control. After five (5) years of continuous employment as Town Manager, she shall accrue 30 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 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 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 20 business days of sick leave per calendar-year on a pro rata basis equally per pay period. 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 her current 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 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 her 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) she may choose to continue 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 her 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 her appointment on April 9, 2024.

Section 10. Life Insurance.

The Town shall provide the Town Manager with term life insurance equal to her 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 her 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 her appointment on April 9, 2024.

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 her attendance at this Conference does not interfere with the performance of her 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 her 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 15, 2024**, a date subsequent to the Town Commission adopting Resolution No. _____ approving this Agreement. However, this effective date shall not alter the start date for her salary reflected in Section 3 or the allowance afforded by Section 11.4 of 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/Reversion.

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 revert to her Town employment as Human Resources & Risk Specialist, but at the annual salary of \$110,000.00. The Town shall not provide the Town Manager with her automobile allowance, cellular telephone allowance, or any other benefit or reimbursement (except that specifically set forth in this paragraph) beyond the date of her termination or reversion.

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 form of continued employment with the Town or 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 satisfaction of contractual provisions specified in Section 18.2, upon resignation as provided for in Section 18.5, or inability to perform as provided for in Section 18.6, the Town shall have no further contractual obligations to the Town Manager. Any 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 her position during the Term of this Agreement, the Town Manager shall provide the Town with 30 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 may elect to revert to her prior Town position, as set forth in Section 18.2 of this Agreement.

18.6 If the Town Manager is unable to perform her duties as specified in Section 2 of this Agreement for a period of 10 consecutive days or 20 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 her 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 may revert to her prior position with the Town, as set forth 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.

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

196 **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.

197 **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 W. Burkett, Mayor
Town of Surfside
9293 Harding Avenue
Surfside, Florida 33154
(305) 861-4863 (Telephone)

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

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

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.

IN WITNESS WHEREOF, the Town, by signature of the Mayor, as authorized by the Town Commission, in accordance with Resolution No. _____ passed on May 14, 2024, has executed this Agreement the day and year first above written.

TOWN OF SURFSIDE

By: _____
Charles W. 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, Esq.
Interim Town Attorney

TOWN MANAGER

Marisol Vargas

Date _____