

RESOLUTION 14 - 2278

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, APPOINTING GUILLERMO OLMEDILLO AS TOWN MANAGER; APPROVING THE EMPLOYMENT AGREEMENT BETWEEN GUILLERMO OLMEDILLO AND THE TOWN OF SURFSIDE ATTACHED HERETO AS EXHIBIT "A"; AUTHORIZING THE MAYOR TO EXECUTE THE 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; and

**WHEREAS**, the Town Commission desires to appoint and employ Guillermo Olmedillo as Town Manager effective January 5, 2015 in accordance with the Employment Agreement attached hereto as Exhibit "A;" and

**WHEREAS**, John Di Censo will proceed to support the Town in his role as Interim Town Manager until February 2, 2015 during the transition of the new Town Manager, Guillermo Olmedillo; and

**WHEREAS**, during his term as Town Manager, the terms and conditions of employment of Guillermo Olmedillo 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 appoints Guillermo Olmedillo as Town Manager effective January 5, 2015.

**Section 3. Approval of Employment Agreement.** The Employment Agreement between Guillermo Olmedillo and the Town attached hereto as Exhibit "A" is hereby approved and shall be effective on January 5, 2015.

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

PASSED and ADOPTED this 9<sup>th</sup> day of December, 2014.

Motion by Commissioner Cohen

Second by Commissioner Olchyk

FINAL VOTE ON ADOPTION

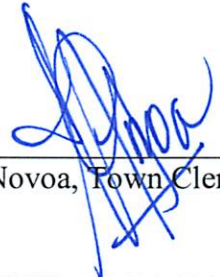
Commissioner Barry Cohen  
Commissioner Michael Karukin  
Commissioner Marta Olchyk  
Vice Mayor Eli Tourgeman  
Mayor Daniel Dietch

yes  
Absent  
yes  
yes  
yes



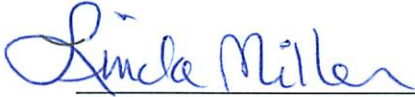
\_\_\_\_\_  
Daniel Dietch, Mayor

Attest:



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

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



\_\_\_\_\_  
Linda Miller, Esq., Town Attorney

EMPLOYMENT AGREEMENT  
TOWN MANAGER

This Employment Agreement ("Agreement") is made and entered into this 9<sup>th</sup> day of December, 2014, between the Town of Surfside, a Florida municipal corporation, (the "Town") and Guillermo Olmedillo ("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;

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

WHEREAS, the Town desires to employ the services of Olmedillo as Town Manager and Olmedillo wishes to accept this 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 carry out the policy directives as determined by a majority of the Town Commission.

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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/Design Review 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 fulfil his duties as Town Manager unless he has schedule conflicts that preclude his attendance.

2.5 The Town Manager shall perform such other duties as may be assigned by the Town Commission from time to time. Should the Town Manager be asked to make a recommendation concerning the award of a Town contract where an entity that the Town Manager previously provided services to through his consulting business, Olmedillo X 5, Inc., is an applicant, the Town Manager shall first seek a Conflict of Interest Opinion from the Executive Director of the Miami-Dade County Commission on Ethics ("MDCCE") before making a recommendation on the award of such contract. Should the MDCCE determine that a conflict of interest exists, the Town Manager shall recuse himself from the decision-making process as to the award of that contract.

2.6 The Town Manager hereby acknowledges that, prior to commencing employment with the Town, he maintained his own consulting business. The Town Manager agrees that, upon the commencement of his Town employment, he will not take on any new consulting project, will cease all consulting activities and will devote all of his time, attention, knowledge and skills to faithfully performing his duties under this Agreement. Notwithstanding the foregoing, the Town Manager may maintain his consulting business for the purpose of receiving payment for consulting work he performed prior to commencing employment with the Town. In addition, and provided he receives

advance approval from the Town Commission, the Town Manager may testify or provide documents in response to a valid subpoena served on him in any action concerning consulting work he performed before commencing Town employment.

Section 3. Salary.

3.1 The Town Manager shall receive an initial annual salary in the amount of \$155,000 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 shall be January 5<sup>th</sup> of each year.

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 six (6), twelve (12) and twenty-four (24) months of service. 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. However, the Town Manager will be credited with 5 of those 15 days of annual leave upon the commencement of his employment and will begin accruing the remaining 10 days of annual leave after he completes four months of Town employment. The Town Manager shall submit leave slips for annual leave usage in accordance with Town policy for all other Town employees. 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 The Town Manager shall not use more than five (5) consecutive business days of vacation leave without prior verbal or written approval of the Mayor. 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 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 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 commencement of his employment as Town Manager, the Town Manager shall elect either to receive a 15% contribution of his base salary into an ICMA retirement plan (such contribution to be made on a pro rata basis equally per pay period) or he may choose to participate in the Town's Retirement Plan as codified in Chapter 2 of the Town Code. 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 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.

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, 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 \$550 per month.

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

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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 commencement date of this Agreement shall be the date the Town Commission adopts Resolution No. 14-2278. 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 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(30), Florida Statutes, the Town shall have no obligation to pay the Town Manager any severance pay. 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 shall pay the Town Manager 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 either severance payment or vacation or sick leave unless the Town Commission authorizes payment of same.

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 exhausts 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.

18.8 Unless otherwise specified in this Agreement, or required by law, upon termination of this Agreement, the Town Manager or his beneficiary shall be entitled to receive payment of any accrued or unused sick or vacation leave in accordance with the terms of this Agreement, as may be amended from time to time. If the Town Manager is terminated pursuant to Section 18.3 of this Agreement, sick and vacation leave shall not be paid.

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: Daniel Dietch, Mayor  
Town of Surfside  
9293 Harding Avenue  
Surfside, Florida 33154  
(305) 861-4863 (Telephone)  
(305) 861-1302 (Fax)

With a copy to: Linda Miller, Esquire  
Town Attorney  
Town of Surfside



9293 Harding Avenue  
Surfside, Florida 33154  
(305) 993-1065 (Telephone)  
(305) 993-5097 (Fax)

For the Town Manager:

Guillermo Olmedillo



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.

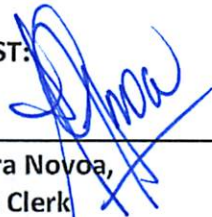
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IN WITNESS WHEREOF, the Town, by signature of the Mayor as authorized by the Town Commission in accordance with Resolution No. 14-2278 passed on December 9, 2014, has executed this Agreement the day and year first above written.

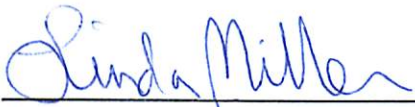
TOWN OF SURFSIDE

By:   
Daniel Dietch, Mayor


ATTEST:

  
Sandra Novoa,  
Town Clerk

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

  
Linda Miller,  
Town Attorney

TOWN-MANAGER

  
Guillermo Olmedillo

Date Dec 5, 2014