

**RESOLUTION NO. 2025-3363**

**A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA APPROVING THE EMPLOYMENT AGREEMENT OF THAIS HERNANDEZ AS ACTING 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 Thais Hernandez to the position of Acting Town Attorney on December 10, 2024 ("Effective Date");

**WHEREAS**, the Town Commission now desires to formalize the terms and conditions of her employment as Acting 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 Thais Hernandez, demonstrating her acceptance of the terms and conditions by which she will serve the Town as its Acting 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 Thais Hernandez 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 and Employment Agreement shall be effective immediately upon adoption and as of the Effective Date.

**PASSED AND ADOPTED** on this 14<sup>th</sup> day of January, 2025.

Motion By: Commissioner Velasquez

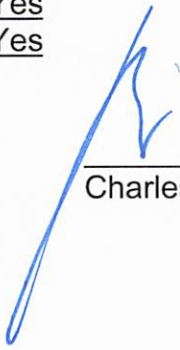
Second By: Commissioner Coto

**FINAL VOTE ON ADOPTION:**


Commissioner Ruben A. 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 N. McCready, MMC  
Town Clerk

  
\_\_\_\_\_  
Charles W. Burkett, Mayor

**Approved as to Form and Legal Sufficiency:**

  
\_\_\_\_\_  
Thais Hernandez, Esq.  
Acting Town Attorney

**EMPLOYMENT AGREEMENT**  
**TOWN ATTORNEY**  
**EXHIBIT "A"**

This Employment Agreement ("Agreement") is made and entered into this 14th day of January 2025, between the Town of Surfside, a Florida municipal corporation (the "Town") and Thais Hernandez ("Hernandez" 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 its officers in matters relating to their official duties; and

**WHEREAS**, Hernandez represents that she has the qualifications, expertise and skills to serve as the Town Attorney; and

**WHEREAS** the Town desires to employ the services of Hernandez as Town Attorney and Hernandez 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 recitals are true and correct and are incorporated herein by reference.

**Section 2. Duties.**

**2.1** The Town Attorney shall have all powers and perform all duties and responsibilities required by this Agreement, the Town's 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.

**2.4** The Town Attorney shall attend all Town Commission and Planning & Zoning Board meetings, unless excused by the Town Commission. She shall have the discretion to attend all other Town Board and/or Committee meetings, including but not limited to the Resort Tax Board and Pension Board. In addition, she shall have the discretion to attend other standing and ad hoc meetings, as appropriate to fulfill her duties as Town Attorney. The Town Attorney may designate another person to attend certain meetings in the exercise of her discretion.

**2.5** The Town Attorney shall be available to confer and/or meet with the Town's Elected Officials, as necessary.

**2.6** The Town Attorney in her sole and absolute discretion shall perform her duties and obligations on site at Town Hall or remotely.

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

**3.1** The Town Attorney shall receive an initial annual salary of **\$160,000.00**, retroactive to Dec. 10, 2024, payable in equal installments, in accordance with the Town's existing pay periods.

**3.2** For purposes of this Agreement, the Town Attorney's anniversary date for purposes of her first annual performance evaluation shall be **Dec. 10, 2024**. (the "Anniversary Date"). However, the Town Commission shall first evaluate the Town Attorney's performance by no later than **June 10, 2025**, 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 annually in a format acceptable to the majority of the Town Commission every twelve (12)

months from the Town Attorney's Anniversary Date. The Town Attorney may receive a salary or benefit increase following a positive evaluation from the Town Commission at a public meeting and in its sole and absolute discretion.

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 thirty (30) business days of annual leave per calendar year on a pro rata basis equally per pay period. The Town Attorney shall account 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 shall be payable to the Town Attorney in accordance with this Agreement and consistent with Town policy.

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 twenty (20) consecutive business days without prior verbal or written notice to and approval of the Mayor or designee.

**Section 7. Sick Leave.**

The Town Attorney shall accrue 14 business days (112 hours) of sick leave per calendar year on a pro rata basis equally per pay period. The Town Attorney shall account 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 or unused sick leave balance. The carryover and payout of accrued sick leave shall be payable to the Town Attorney in accordance with this Agreement and consistent with Town policy.

**Section 8. Retirement Plan.**

The Town Attorney shall 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).

**Section 9. Health Insurance.**

The Town shall provide the Town Attorney 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 and consistent with Town policy.

**Section 10. Life/Disability Insurance.**

The Town shall provide the Town Attorney with life insurance equal to no less than five times her 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 International/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 shall pay

for the Town Attorney to participate in other municipal and professional organizations she deems appropriate. All of the foregoing shall be subject to the Town's budget.

**11.2** The Town shall pay for the Town Attorney's participation in local civic and nonprofit job-affiliated organizations that the Town Attorney deems appropriate and subject to the Town's budget.

**11.3** The Town shall pay reasonable, non-personal job-related expenses incurred by the Town Attorney as part of her duties, retroactive to the appointment of the Town Attorney on Dec. 10, 2024. Such payments shall be made either by a credit card issued by the Town to the Town Attorney for such use, or on a reimbursement basis, based upon the Town Attorney's actual receipts and expense vouchers and subject to the Town's budget.

**Section 12. Mobile Phone/Laptop.**

The Town shall provide Town Attorney a mobile phone and laptop without cost.

**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 her attendance at this Conference does not interfere with the performance of her 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.

**Section 14. Days.**

Days in this Agreement shall mean calendar days unless otherwise specified.

**Section 15. Bonds.**

The Town shall pay for the cost of any bonds for the Town Attorney.

**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 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 **January 14, 2025**, a date after the Town Commission adopting Resolution No. 2025-3363 approving 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, subject to the provisions set forth in this Agreement.

**18.2 Termination Without Cause.** In the event the Town Commission terminates the Town Attorney without cause after **June 10, 2025**, the Town Attorney shall receive severance equal to twelve (12) weeks' pay, as authorized by Fla. Stat. §215.425, together with a payout for any accrued and unused vacation or sick leave. The Town shall continue to pay the premium for the Town Attorney's and her family members' health insurance for the duration of three (3) months following the termination date (calculated from the first complete month following the termination date to the third complete month). The Town shall not provide the Town Attorney with automobile allowance, or any other benefit or reimbursement for dues and expenses incurred after the termination date (except that specifically set forth in this paragraph) beyond her termination date. All severance



payments (excluding the continuation of her health insurance benefits) shall be paid to the Town Attorney in a lump sum within thirty (30) days of the termination date. The Town Attorney shall return the mobile phone and laptop issued by the Town on or following the termination date and prior to any final payment from the Town.

**18.3 Termination for Misconduct.** 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 Voluntary Resignation or Retirement with Notice.** Upon voluntarily resignation or retirement during the Term of this Agreement, the Town Attorney shall provide the Town with sixty (60) days' advance written notice, unless the parties otherwise agree in writing. In the event of resignation by the Town Attorney under this Section after June 10, 2025, the Town Attorney shall be entitled to receive the severance package specified in Section 18.2 (except it shall be for six weeks' pay not twelve weeks' pay), including payment for her accrued unused vacation and sick leave calculated at the Town Attorney's rate of pay in effect upon the date of resignation and consistent with Town policy.

**18.5 Voluntary Resignation or Retirement without Notice.** If the Town Attorney voluntarily resigns or retires with less than 60 days' advance written notice, the Town Commission may elect to terminate the Town Attorney immediately or allow her to continue to serve until the date specified in the Town Attorney's resignation or notice of retirement. In

the event of a resignation, retirement 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 her accrued unused vacation and sick leave calculated at the Town Attorney's rate of pay in effect upon the date of resignation and consistent with Town policy.

**18.6 Inability to Perform.** If the Town Attorney is unable to perform her 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 her statutorily protected, FMLA-approved leave in a one-year period, the Town Commission may terminate this Agreement. 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.

**18.7 Liquidated Damages.** Following payment of the severance payment specified in Section 18.2 upon the Town Attorney's termination without cause as provided for in Section 18.2 or the Town Attorney's retirement or resignation as provided for in Section 18.4, 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.

## **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, agreements, 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.

**19.6 Exclusivity.** The Town acknowledges and agrees that the Town Attorney may, individually or through a firm or other entity, from time to time, render legal services to law firms or other clients, and serve as a mediator, so long as: a) none of the work is in conflict with the matter on which the Town Attorney is providing services to the Town, unless such conflict is waived by the Town Commission.; and b) such work does not impair the Town Attorney's ability to fully undertake all obligations under this Agreement. The Town Attorney's membership in or relationship to any firm other than her own P.A. shall never obligate the Town in any way to do business with or work with said firm.

**19.7 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.

**19.8 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, FL 33154

***For the Town Attorney***

Thais Hernandez, Esq.  
Town Attorney  
9293 Harding Avenue  
Surfside, FL 33154

***For the Town Manager***


Mark Blumstein, Esq.  
9293 Harding Avenue  
Surfside, FL 33154

**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.

**IN WITNESS WHEREOF**, the Town, by signature of the Mayor, as authorized by the Town Commission, in accordance with Resolution No. 2025-3363 passed on January 14, 2025, has executed this Agreement the day and year first above written.

**TOWN OF SURFSIDE**


By:  \_\_\_\_\_  
Charles W. Burkett, Mayor

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

**ATTEST:**

\_\_\_\_\_  
Sandra N. McReady, MMC  
Town Clerk

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

  
\_\_\_\_\_  
Thais Hernandez, Esq.  
Acting Town Attorney

By:  \_\_\_\_\_  
Thais Hernandez, Esq.

Date: January 15, 2025