

RESOLUTION NO. 15 - 2297

A RESOLUTION OF THE TOWN OF SURFSIDE, FLORIDA, AUTHORIZING THE MAYOR TO ENTER INTO AN AGREEMENT WITH THE CITY OF MIAMI BEACH TO PROVIDE SEWAGE CONVEYANCE SERVICES; PROVIDING FOR AUTHORIZATION; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Miami Beach ("City") operates a sewage conveyance system for the use and benefits of its inhabitants, and has also historically provided sewage conveyance for disposal services to the neighboring Town of Surfside; most recently, pursuant to an agreement entered into between the City and Surfside, dated August 2, 1972, and approved by the City pursuant to Resolution No. 826; and

WHEREAS, on December 5, 1979, pursuant to Resolution No. 79-16114 (and in anticipation of the connection of the City System to the Virginia Key Treatment facility), the City exercised its right to terminate the 1972 Agreement; notwithstanding such termination, however, the City and Surfside's intent was not to discontinue the City's provision of the services to Surfside, but rather to continue to provide them on a month to month basis until new terms including, without limitation, new rates under an appropriate rate setting procedure (after the City's costs could be determined for operation under the new system) could be established; and

WHEREAS, the City and Surfside now wish to enter into a new agreement for sewage conveyance for disposal services; particularly insofar as memorializing the new rate of compensation to be paid by Surfside to the City is concerned; and

WHEREAS, it is in the best interest of the Town to enter with the City of Miami Beach into an Agreement for sewage conveyance for disposal services.

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

Section 1. Recitals. That the above-stated recitals are hereby adopted and confirmed.

Section 2. Authorization. The Town Commission hereby authorizes the Mayor to enter into an Agreement for sewage conveyance for disposal services (See Attachment "A").

Section 3. Implementation. The Town Manager or his designee is hereby authorized to take any and all action necessary to implement this Resolution.

Section 4. Effective Date. This Resolution shall become effective immediately upon its adoption.

PASSED AND ADOPTED this 12th day of May, 2015.

Motion by Commissioner Olchyk,

Second by Commissioner Karukin.

FINAL VOTE ON ADOPTION

Commissioner Barry Cohen

yes

Commissioner Michael Karukin

yes

Commissioner Marta Olchyk

yes

Vice Mayor Eli Tourgeman

yes

Mayor Daniel Dietch

yes



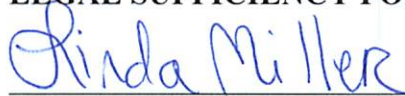
Daniel Dietch, Mayor

ATTEST



Sandra Novoa, Town Clerk

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



Linda Miller, Town Attorney

**AGREEMENT BETWEEN THE CITY OF MIAMI BEACH, FLORIDA AND
THE TOWN OF SURFSIDE, FLORIDA,
TO PROVIDE SEWAGE CONVEYANCE SERVICES**

THIS AGREEMENT is made and entered into this _____ day of _____, 2015 (Effective Date), by and between the **City of Miami Beach, Florida** ("City"), and the **Town of Surfside** ("Surfside").

WHEREAS, the City operates a sewage conveyance system (the City System) for the use and benefits of its inhabitants, and has also historically provided sewage conveyance for disposal services to the neighboring Town of Surfside; most recently, pursuant to an agreement entered into between the City and Surfside, dated August 2, 1972, and approved by the City pursuant to Resolution No. 826 (the "1972 Agreement"); and

WHEREAS, on December 5, 1979, pursuant to Resolution No. 79-16114 (and in anticipation of the connection of the City System to the Virginia Key Treatment facility), the City exercised its right to terminate the 1972 Agreement; notwithstanding such termination, however, the City and Surfside's intent was not to discontinue the City's provision of the services to Surfside, but rather to continue to provide them on a month to month basis until new terms including, without limitation, new rates under an appropriate rate setting procedure (after the City's costs could be determined for operation under the new system) could be established; and

WHEREAS, the City and Surfside now wish to enter into a new agreement ("Agreement") for sewage conveyance for disposal services (hereinafter, the "Services"); particularly insofar as memorializing the new rate of compensation to be paid by Surfside to the City is concerned.

NOW, THEREFORE, in consideration of the mutual covenants and obligations set forth herein, the City and Surfside hereby agree as follows:

1. The City shall continue to provide the Services to Surfside, to the extent capacity is available, by means of an existing transmission main from Surfside to the City-owned meters located in the City owned parking lot at 72nd Street, located in the City of Miami Beach. The Interlocal Contract Between Miami-Dade County and City of Miami Beach, Florida, dated December 17, 2014, and approved and authorized by the City pursuant to Resolution No. 2014-28655, acknowledges that the sanitary sewage received by the County from the City flows from Surfside, in addition to the Village of Bal Harbour and Town of Bay Harbor Islands. Future flows (i.e. future capacity) from Surfside under this Agreement shall be determined in accordance with, and subject to, the Interlocal Agreement.
2. Notwithstanding the City's agreement to provide the Services, or any other term or condition of this Agreement, Surfside acknowledges that any obligation that the City has to render such Services to Surfside pursuant to this Agreement shall

be limited to, subject and subordinate to, and conditioned upon any agreements, terms, covenants, conditions, and obligations between the City and Miami-Dade County, Florida (the County), whether existing as of the Effective Date or as may exist in the future, pertaining to the County's responsibility to provide sewage disposal service to the City's existing sewer service area (which service area includes and takes into account the flow from Surfside), by means of the existing transmission main from the City to the County's Central District Wastewater Treatment Plant located on Virginia Key (where the combined flow is metered). Surfside further recognizes and acknowledges that the City's standards for the Services provided to Surfside pursuant to this Agreement are also limited to, subject and subordinate to, and conditioned upon any modification(s) as a result of (i) changes to the City's agreement with the County to provide sewage disposal services to the City; and/or (ii) changes to existing or future federal, State, County, and local laws, rules, and regulations.

3. Surfside agrees, and hereby warrants to the City, that it will abide by and be bound by all present and future federal, State, County, and City laws, standards, rules, regulations, permit conditions and other requirements related to sewer service. Surfside acknowledges that the responsibility of the City to provide the Services under this Agreement shall be limited to the flow from Surfside's existing sewer service area(s) (i.e. the flow existing as of the Effective Date of this Agreement).
4. Surfside further agrees and hereby warrants to the City that it shall operate and maintain its sewage collection system (hereinafter referred to as the Surfside System, and which system includes, without limitation, any and all transmission pipe lines, main pipe lines, force mains pumps, pumping stations, meters, and any and all other facilities and equipment appurtenant thereto), and any system extensions thereof, in accordance with the requirements of all applicable federal, State, County, and City laws, rules, regulations, and permit conditions. The operation and maintenance of the Surfside System shall be the sole responsibility and cost of Surfside. The City reserves the right to inspect the Surfside System, as deemed necessary by the City, in its sole discretion and judgment, but at no cost to Surfside, to verify that the Surfside System is being properly maintained and operated in accordance with the above standards and industry standards as outlined in *Wastewater Collection Systems Management*, WEF Manual of Practice No. FD-7, 2009; and *Recommended Standards for Wastewater Facilities*, Health Education Services (a Division of Health Research, Inc.), 2004. The City shall request permission from Surfside to inspect the Surfside System, which permission shall not be unreasonably withheld, conditioned, or delayed. The City shall request permission from Surfside three (3) business days prior to inspection of the Surfside System and shall allow Surfside's representation at City's inspections. Said inspections shall be made at reasonable times and in such manner so as to least disturb Surfside's normal operations.

5. Surfside shall not allow or permit construction or installation of any connections of stormwater mains which allow stormwater to enter the Surfside System. Upon notice or discovery of such interconnections, Surfside shall, at its sole cost and expense, immediately effectuate the lawful disconnection of such interconnections to the City's satisfaction and, at a minimum, in accordance with applicable federal, State, County, and City laws, rules, regulations, and permit conditions. Surfside hereby agrees to pursue and maintain best efforts, on a regular timely basis, to reduce infiltration and inflow to comply with all local, State, and/or federal ordinances, laws and regulations regarding infiltration and inflow connection or reduction as now in effect or as may be enacted in the future. Surfside agrees that in the event any undue infiltration develops in the Surfside System, it shall make such repairs as may be required by the City in order to remedy such condition.
6. The quantity (i.e. the flow) of sewage handled by the City System for Surfside hereunder shall be measured prior to the entry point to the City System by City owned meters, or any subsequent replacement meters installed by the City, in its sole and reasonable discretion (hereinafter referred to individually as a "Meter" or collectively as the "Meters"). The Meters have been installed in structures located within the Town of Surfside right of way at 501 93rd Street and 701 89th Street. The City and Surfside shall have the right and opportunity to inspect the Meters. The City shall notify Surfside three (3) business days prior to inspection of the Meters and shall allow Surfside to attend the City's inspections. Said inspections shall be made at reasonable times and in such manner so as to least disturb Surfside's normal operations.
7. The City shall own, operate and maintain the Meters, at its sole cost and expense. The City shall also, at its sole expense, test the accuracy of each Meter, at a minimum, once every three (3) months, or at such other time intervals as it may deem appropriate. The City shall notify Surfside three (3) business days prior to testing of the Meters and shall allow Surfside's representation at City's testing. Said tests shall be made at reasonable times and in such manner so as to least disturb Surfside's normal operations. The City shall provide the results of the tests to Surfside no later than thirty (30) days after each meter is tested.
8. The Meters shall indicate flow with an error not to exceed plus or minus five percent (5%) of full scale reading (true accuracy). If found to be in error – i.e. anything exceeding five percent (5%) of true accuracy - the Meters shall be re-calibrated by the City. If such error of more than five percent (5%) is discovered, bills for the three (3) periods following the prior Meter accuracy test shall be adjusted to reflect the quantity of over-read or under-read flow. In calculating such billing adjustment, it will be assumed by the parties that the inaccuracy existed for the entire time interval between accuracy tests. The billing adjustment(s) shall be made at the same rate in effect during the time interval.

9. Surfside may request, and the City agrees to perform, additional Meter accuracy tests, upon reasonable notice to City and at a reasonable time acceptable to both parties. Said additional testing shall be completed at reasonable times. If the Meter(s) is (are) found to be in error exceeding five percent (5%) true accuracy, it shall be recalibrated by the City as described in the preceding Paragraph 8, and the entire cost for such testing and recalibration shall be paid for by the City. If the Meter(s) is (are) found performing within five percent (5%) true accuracy, the Meter accuracy test shall be paid by Surfside no later than thirty (30) days from receipt of an invoice from the City.
10. In the event of complete or partial failure of any Meter(s) to register, both parties shall mutually agree to establish consumption based on historic monthly average flows for the most recent wet or dry period as defined by the latest Miami-Dade County rate schedule in effect during the Term of this Agreement. The most recent actual readings for a period of three (3) consecutive months of a wet or dry period will be used to represent that corresponding period until the Meter(s) is (are) repaired. The City shall use reasonable commercial efforts to repair a failed Meter within sixty (60) days of a determination by the City that the Meter has completely or partially failed.
11. The City will be under no obligation at any time to perform any re-pumping of sewage delivered to the City System by Surfside.
12. Surfside agrees to pay to the City an amount, as determined by the City, to cover all costs associated with the sewage flow from the Surfside System, per 1,000 gallons of sewage passing through the City's System; which sum shall be payable monthly. The cost of service shall include direct costs of operation, maintenance, depreciation, debt service, and a one and a half percent (1.5%) administrative fee. The actual amount shall be calculated and presented in a written report to the City of Miami Beach Commission during its budget approval process, and approved by City Resolution; provided, however, that the City shall make reasonable commercial efforts to transmit the aforementioned written report to Surfside at least fourteen (14) calendar days prior to the date of the public meeting at which the written report is presented to the City Commission. The City shall also make reasonable commercial efforts to transmit the proposed Resolution to Surfside at least fourteen (14) calendar days prior to the date of the City Commission meeting at which the proposed Resolution is presented to the City Commission. The adopted Resolution shall be transmitted to Surfside as written notice of change of cost of service with an effective date.
13. Billing for services provided in accordance with this Agreement shall be rendered monthly. Invoices will be mailed by the tenth (10th) day of the month following the month for which service has been provided, based on readings of the Meters taken by the City. Amounts billed on such invoices are due when rendered. In the event Surfside disputes a bill, Surfside shall provide the City with written notice of the reasons for non-payment within thirty (30) days of receipt of the bill,

and shall escrow such portion of the bill that is disputed in an interest-bearing account. The parties shall promptly meet and use reasonable good faith efforts to resolve the dispute within forty-five (45) days of the City's receipt of Surfside's notice. Except for any portion of a bill disputed, payment not received by the City on or before twenty-five (25) days after the postmark date of the bill shall be considered past due. All past due invoices shall be subject to a late charge, as established by the City (such charge to reimburse the City for costs in processing and otherwise administering late payments). In addition, per annum interest shall accrue on the past due charges including the late charges at the maximum legal rate provided by Florida law for contracts in which no interest rate is specified, for each day, including Saturdays, Sundays and holidays, from the past due date until the date of receipt by the City. For purposes of this paragraph, date of receipt shall be the date of actual receipt by the City if hand delivered or mailed, or date of transfer to the City's bank, if electronic funds transfer is used.

14. Neither party shall be liable to the other for any failure to perform under this Agreement to the extent such performance is prevented by an event of *force majeure*, including, but not limited to, war, riots, natural catastrophe, or any other event beyond the control of the non-performing party and which could not have been avoided or overcome by the exercise of due diligence; provided that the party claiming the excused performance has (i) promptly notified the other party of the occurrence and its estimated duration; (ii) promptly remedied or mitigated the effect of the occurrence to the extent possible; and (iii) resumed performance as soon as possible.
15. To the extent provided by Florida law, both parties mutually agree to indemnify, defend, and hold harmless each other and their respective officers, agents, contractors, and employees, from any claim, loss, damage, cost, charge, or expense arising out of any acts, action, error, neglect, or omission by such officers, agents, contractors, or employees during the performance of the Agreement, except that neither party, nor its respective officers, agents, contractors, or employees, will be liable under this paragraph for damages arising out of injury or damage to persons or property directly caused by or resulting from the negligence of the other party, or any of its respective officers, agents, contractors, or employees, during the performance of this Agreement.
16. This Agreement shall be governed by the laws of the State of Florida. Any provision hereof found to be unlawful or unenforceable shall be severable and shall not affect the validity of the remaining portions hereof. Any and all suits brought by either party shall be instituted and maintained in any court of competent jurisdiction in Miami-Dade County, Florida. In all such suits, the prevailing party shall be entitled to receive reasonable costs and reasonable attorney's fees. City and Surfside waive any rights either party may have to a trial by jury in any civil litigation related to, or arising out of, this Agreement.

17. All notices required pursuant to the terms hereof may be sent by first class United States Mail, facsimile transmission, hand delivery, or express mail and shall be deemed to have been received by the end of five business days from the proper sending thereof unless proof of prior actual receipt is provided. Surfside shall have a continuing obligation to notify the City of the appropriate persons for notices to be sent pursuant to this Agreement. Unless otherwise notified in writing, notices shall be sent to the following addresses:

- If to the City:

Eric Carpenter, P.E., Director of Public Works
1700 Convention Center Drive, 4th Floor
Miami Beach, FL 33139

- If to Surfside:

Town Manager
9293 Harding Avenue
Surfside, Florida 33154

18. The term of this Agreement (Term) shall be for an initial term of five (5) years, commencing upon execution by the parties hereto, as referenced by the Effective Date on page 1 hereof. This Agreement shall be automatically renewed for subsequent, consecutive terms of five (5) years each, subject to termination by either party, upon one hundred eighty (180) days written notice to the other.

Notwithstanding the preceding paragraph, should Surfside elect at any time during the Term of this Agreement to transmit all or a portion of its current sewage flow (as of the Effective Date), Surfside shall provide the City with written notice of such intent ninety (90) days prior to October 1st, so that the City may have time to adequately evaluate and plan its future capacity demands, in order to transmit same to the County as required under the Interlocal Agreement.

19. The City agrees that if, after the Effective Date of this Agreement, it enters into an agreement for the same or substantially similar scope of services with another local government in Florida, which contains terms or conditions pertaining only to fees, charges or costs, that are more favorable than the terms in this Agreement, Surfside may provide the City with written notice explaining how the new agreement is for the same or substantially similar services and how the new agreement contains terms or conditions pertaining only to fees, charges, or costs, that are more favorable than the terms in the Agreement, and requesting to negotiate an amendment to the Agreement (a "New Agreement Notice"). The parties shall act in good faith to negotiate an amendment to the Agreement that addresses, in a manner that is fair and equitable to both parties, the matters raised by Surfside in the New Agreement Notice. If the parties fail to reach

agreement upon an amendment within ninety (90) days of the New Agreement Notice, then Surfside may terminate this Agreement without penalty or early termination fee, subject to the terms and conditions herein, by providing one hundred and eighty (180) days advance written notice to the City. Upon a termination pursuant to this Section, the City shall have no further liability and/or obligation to Surfside.

20. This Agreement constitutes the complete and final expression of the parties with respect to the subject matter hereof and supersedes all prior agreements, understandings, or negotiations with respect thereto. Changes and additions to this Agreement shall be directed by a written amendment signed by the duly authorized representatives of the City and Surfside. No alteration, change, or modification of the terms of this Agreement shall be valid unless amended in writing, signed by both Parties.

WHEREOF, this Agreement has been duly executed by the parties hereto as of the day and year first above written.

ATTEST:

CITY OF MIAMI BEACH, FLORIDA

Signature: _____

Signature: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

ATTEST:

TOWN OF SURFSIDE

Signature: _____

Signature: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____