

RESOLUTION NO. 2022 - 2934

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, APPROVING THE APPOINTMENT OF RICHARD GENDLER LLC AS THE SPECIAL MASTER FOR THE TOWN AND THE CODE COMPLIANCE DEPARTMENT; AUTHORIZING THE TOWN MANAGER TO ENTER INTO AN AGREEMENT WITH THE SPECIAL MASTER; PROVIDING FOR IMPLEMENTATION; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town Commission of the Town of Surfside (the "Town") provides for code enforcement procedures for the Town as codified in Chapter 15 "Code Enforcement" of the Town's Code of Ordinances ("Town Code"); and

WHEREAS, the Town Code and code enforcement procedures require a special master to be appointed by the Town Manager and Town Commission to conduct the hearings and perform the duties set forth in the Town Code; and

WHEREAS, the Town Commission finds that Richard Gendler, LLC is an attorney and member of the Florida Bar and is qualified to serve as the Town's Special Master for the Code Compliance Department and System; and

WHEREAS, the Town Commission desires to authorize the Manager to enter into an agreement with Richard Gendler LLC ("Contractor") substantially in the form attached hereto as Exhibit "A", pursuant to which Contractor will provide the Town with the required special master services and perform the duties as set forth in the Town Code for a term of one (1) year and at an hourly rate of \$250 per hour, subject to the final approval of the agreement by the Town Mayor and Town Attorney; and

WHEREAS, the Town Commission finds that it is in the best interest of the Town to appoint Contractor as the Town's Special Master for the Code Compliance Department

and System and authorize him to perform the duties set forth in the Town Code and as necessary to serve the Code Compliance Department.

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. Appointment of Special Master for Code Compliance. The Town Commission hereby approves the appointment of Richard Gendler LLC as the Special Master for the Code Compliance Department and System. Richard Gendler LLC's duties and responsibilities shall be effective **immediately** upon adoption of this Resolution.

Section 3. Authorization to Town Manager to Enter into Agreement. The Town Manager is hereby authorized to enter into an agreement with the Contract for the Special Master services for a term of one (1) year (subject to renewal) and at an hourly rate of \$250 per hour, in substantially the form attached hereto as Exhibit "A", subject to the final approval of the agreement by the Town Manager and Town Attorney.

Section 4. Implementation of Agreement. The Town Manager is hereby authorized to execute the agreement and take any and all necessary action to implement the Agreement and the purposes of this Resolution.

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

PASSED AND ADOPTED this 12th day of October, 2022.

Motion By: Commissioner Landsman
Second By: Vice Mayor Rose

FINAL VOTE ON ADOPTION:

Commissioner Fred Landsman	<u>Yes</u>
Commissioner Marianne Meisheid	<u>Absent</u>
Commissioner Nelly Velasquez	<u>Absent</u>
Vice Mayor Jeffrey Rose	<u>Yes</u>
Mayor Shlomo Danzinger	<u>Yes</u>




Shlomo Danzinger, Mayor

ATTEST:



Sandra McCreedy, MMC
Town Clerk

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



Weiss Serota Helfman Cole & Bierman, P.L.
Town Attorney

**AGREEMENT BETWEEN THE TOWN OF SURFSIDE AND RICHARD GENDLER,
LLC FOR SPECIAL MASTER SERVICES**

This Agreement is entered into this ____ day of _____, 2022 (the “Effective Date”), by and between the **TOWN OF SURFSIDE, FLORIDA**, a Florida municipal corporation, (the “Town”) and **RICHARD GENDLER, LLC**, a Limited Liability Company, whose principal business is located at 11235 N.W. 18 Court, Plantation, Florida 33323 (the “Contractor”).

WHEREAS, the Town is in need of a Special Master (also known as Special Magistrate) to preside over code violation proceedings in accordance with Chapter 15 “Code Enforcement” of the Town Code and Florida Statutes Chapter 162; and

WHEREAS, the Contractor has been determined to possess the qualifications to serve as the Town’s Special Master and perform the duties as set forth in the Town Code; and

WHEREAS, on October 12, 2022, the Town Commission approved an item to engage the services of the Contractor as the Town’s Special Master.

NOW THEREFORE, in consideration of the mutual terms and conditions, promises, and covenants hereinafter set forth, the Town and the Contractor agree as follows:

Section 1
Scope of Services

Contractor agrees to provide the following services to the Town (the “Services”) during the term of this Agreement.

This Agreement is subject to, and Contractor shall provide Services in accordance with the provisions of Chapter 15 “Code Enforcement” of the Town Code and Florida Statutes Chapter 162. Those Services shall include those set forth in the Town Code and Florida law, including, but not limited to, presiding over the Town’s code compliance hearings, violations, subpoenaing evidence and alleged violators and witnesses to its hearings, taking testimony under oath, and issuing orders having the force of law to command whatever steps are necessary to bring a violation into compliance. The Town Code Compliance Director or other Town employees shall assist with the Services and the issuance of subpoenas and all notices for hearings. The Contractor shall have no powers except as provided by this Agreement or by law.

Section 2
Compensation

In consideration for the Services to be provided by the Contractor, the Town agrees to pay the Contractor at a rate of \$250 per hour which shall be payable within thirty (30) calendar days following submission of an invoice by the Contractor to the Town and in accordance with the Florida Prompt payment Act. In the event of the Town’s termination of this Agreement prior to the end of the Contract Term pursuant to Sections 4 or 7, the Town shall pay the Contractor on a prorated basis for the Services performed by the Contractor prior to the Town’s termination of this

Agreement. The Contractor shall receive no less than three hours of compensation for each session attended, plus the prorated hourly rate for any time in excess of three hours. Such initial three hour compensatory time shall be inclusive of travel time to and from the hearing in an amount of travel time not to exceed an hour. The Contractor may also be paid for reasonable hearing preparation time billed. Compensation shall only be paid for hearings held and reasonable time for preparation.

Section 3
Term of Agreement

This Agreement shall become effective upon the Effective Date and shall remain in effect for one (1) year thereafter, unless earlier terminated in accordance with Section 4. The Agreement may be extended for up to three (3) one (1) year renewal periods on the same terms and conditions, upon written notice by the Town Manager to the Contractor, at least 30 days prior to expiration of the applicable term, exercising the renewal option.

Section 4
Termination of Agreement

The Town may terminate this Agreement for convenience by giving the Contractor thirty (30) calendar days written notice. The Town may terminate this Agreement for cause by giving the Contractor five (5) calendar days written notice upon the failure of the Contractor to cure any default after being provided written notice of that default and a demand for cure within ten (10) calendar days. The termination of this Agreement shall not relieve either party of any liability that accrued prior to such termination and any such accrued liability shall survive the termination of this Agreement.

Section 5
Independent Contractor

Contractor is an independent contractor under this Agreement. Services provided by the Contractor shall be by the Contractor, and not as an officer, employee or agent of the Town. Personnel policies, tax responsibilities, social security, health insurance, employee benefits, travel, per diem policy, and purchasing policies under the Agreement shall be the sole responsibility of the Contractor. Contractor shall have no rights under the Town's worker's compensation, employment, insurance benefits or similar laws or benefits.

Section 6
Indemnification / Hold Harmless Clause

To the extent allowed by applicable law, Contractor shall indemnify, defend and hold harmless the Town, its officers, officials, and employees, from and against any and all liability, suits, actions, damages, costs, losses and expenses, including reasonable attorney's fees, demands and claims for civil actions, directly arising out of any negligent acts, errors, or omissions of the Contractor and any employee(s) of the Contractor, if applicable, in the Contractor's performance of Special Master Services pursuant to this Agreement.

Section 7
Non-Appropriation of Funds

In the event no funds or insufficient funds are appropriated and budgeted or are otherwise unavailable in any fiscal year for payments due under this Agreement, then the Town, upon written notice to the Contractor of such occurrence, shall have the unqualified right to terminate this Agreement without any penalty or expense to the Town.

Section 8
Miscellaneous

Contractor shall, without additional expense to the Town, be responsible for paying any taxes, obtaining any necessary licenses and for complying with all applicable federal, state, county and municipal laws, ordinances, and regulations in connection with the performance of the Services specified herein.

Section 9
Audit Rights

The Town may, at reasonable times, and for a period of up to three (3) years following the date of final performance of Services by the Contractor under this Agreement, audit, or cause to be audited, those books and records of the Contractor which are directly related to the Contractor's performance under this Agreement. Contractor agrees to maintain all such books and records at its principal place of business for a period of three (3) years after final payment is made under this Agreement.

Section 10
Amendments and Assignment

This Agreement constitutes the entire agreement between the Contractor and the Town and all negotiations and oral understandings between the parties are merged herein. The terms and conditions set forth in this Agreement supersede any and all previous agreements, promises, negotiations or representations. Any other agreements, promises, negotiations or representations not expressly set forth in this Agreement are of no force and effect.

No modification, amendment or alteration of the terms and conditions contained herein shall be effective unless contained in a written document executed with the same formality as this Agreement.

Contractor shall not transfer or assign the performance of Services called for in the Agreement without the prior written consent of the Town, which may be withheld or conditioned in the Town's sole discretion.

Section 11
Governing Law and Venue

This Agreement shall be construed in accordance with, and governed by, the laws of the State of Florida. Venue for any action arising out of or relating to this Agreement shall be in Miami-Dade County, Florida.

Section 12
Public Records

All records, files, documents, plans, and correspondence of the Contractor arising out of this Agreement are public records subject to the provisions of Chapter 119, Florida Statutes. Contractor shall comply with Chapter 119, Florida Statutes (Florida's Public Records Law) and maintain and provide public records as required by law. The Town may terminate this Agreement immediately upon refusal by the Contractor to allow reasonable access by the Town Mayor or his designee or by any member of the public to any records pertaining to work performed under this Agreement.

Section 13
Notices

Whenever either party desires to give notice to the other, it must be given by written notice, sent by certified United States mail, return receipt requested, addressed to the party for whom it is intended, at the place last specified in writing, and the place for giving of notice in compliance with the provisions of this paragraph. For the present, the parties designate the following as the respective places for giving of notice, to-wit:

FOR CONTRACTOR:

Richard Gendler, LLC
Richard S. Gendler, Esq.
11235 NW 18 Court
Plantation, Florida 33323
Telephone: (305) 522-6225
Email: rgendler@Miami-Law.com

TOWN:

Town Manager
Town of Surfside
9293 Harding Avenue
Surfside, Florida 33154
Telephone: (305) 861-4863
Email: ahyatt@townofsurfsidefl.gov

With a copy to:

Lillian M. Arango, Esq.
Town Attorney
Weiss Serota Helfman Cole & Bierman, P.L.
2800 Ponce de Leon Blvd., Suite 1200
Coral Gables, Florida 33134
Telephone: (305) 854-0800
Email: larango@wsh-law.com

Section 15
Conflict of Interest.

To avoid any conflict of interest or any appearance thereof, Contractor shall not, for the term of this Agreement, provide any consulting services to any private sector entities (developers, corporations, real estate investors, etc.), with any adversarial issues against the Town.

Section 16
Insurance.

16.1 Contractor shall secure and maintain throughout the duration of this agreement insurance of such types and in such amounts specified below as satisfactory to Town, including the Town as an Additional Insured on the policies required below except Professional Liability and Worker's Compensation/Employer's Liability, underwritten by a firm rated A-X or better by A.M. Best at the time of execution of this Agreement, and qualified to do business in the State of Florida. The insurance coverage affording additional insured status shall be primary insurance with respect to the Town, its officials, employees, and agents. Any insurance maintained by the Town shall be in excess of the Contractor's insurance and shall not contribute to the Contractor's insurance which affords additional insured status. The insurance coverages shall include the amounts set forth in this section and may be increased by the Town as it deems necessary or prudent, with the prior written approval of Contractor.

16.1.1 Commercial General Liability coverage with limits of liability of \$1,000,000 per Occurrence combined single limit for Bodily Injury and Property Damage. This Liability Insurance shall also include Completed Operations and Product Liability coverages and eliminate the exclusion with respect to property under the care, custody and control of Contractor. The General Aggregate Liability limit and the Products/Completed Operations Liability Aggregate limit shall be in the amount of \$2,000,000 each.

16.1.2 Workers Compensation and Employer's Liability insurance, to apply for all employees for statutory limits as required by applicable State and Federal laws. The policy(ies) must include Employer's Liability of \$1,000,000.00 each accident. No employee, subcontractor or agent of the Contractor shall be allowed to provide Services pursuant to this Agreement who is not covered by Worker's Compensation insurance.

16.1.3 **Business Automobile Liability** of \$1,000,000 per occurrence, combined single limit for Bodily Injury and Property Damage. Coverage must be afforded on a form no more restrictive than the latest edition of the Business Automobile Liability policy, as filed by the Insurance Service Office, and must include Owned, Hired, and Non-Owned Vehicles.

16.1.4 **Professional Liability Insurance** in an amount of One Million Dollars (\$1,000,000.00) per claim and in the aggregate.

16.2 **Certificate of Insurance**. Certificates of Insurance shall be provided to the Town, reflecting the Town as an Additional Insured (except with respect to Professional Liability Insurance and Worker's Compensation/Employer's Liability Insurance), no later than ten (10) days after award of this Agreement and prior to the execution of this Agreement by Town and prior to commencing Services. Each certificate shall evidence that no less than (30) thirty-day advance written notice (10-days' in the event of cancellation due to non-payment of premium) will be provided to Town prior to cancellation of said policies of insurance. The Contractor shall be responsible for assuring that the insurance required by this Section remain in full force and effect for the duration of this Agreement, including any extensions or renewals that may be granted by the Town. The Certificates of Insurance shall not only name the types of policy(ies) provided, but also shall refer specifically to this Agreement and shall state that such insurance is as required by this Agreement. The Town reserves the right to inspect and return a certified copy of such policies, upon written request by the Town. If a policy is due to expire prior to the completion of the Services, renewal Certificates of Insurance shall be furnished prior to the date of their policy expiration. Acceptance of the Certificate(s) is subject to approval of the Town.

16.3 **Additional Insured**. Except with respect to Professional Liability Insurance and Worker's Compensation/Employer's Liability Insurance, the Town is to be included as an Additional Insured for the liability of the Town resulting from Services performed by or on behalf of the Contractor in performance of this Agreement. The Contractor's insurance applicable to the Town as an Additional Insured, shall apply on a primary basis and any other insurance maintained by the Town shall be in excess of and shall not contribute to the Contractor's insurance. The Contractor's insurance affording additional insured status shall contain a severability of interest provision providing that, except with respect to the total limits of liability, the insurance shall apply to each Insured or Additional Insured (for applicable policies) in the same manner as if separate policies had been issued to each.

16.4 **Waiver of Subrogation**. The Contractor's insurance policies shall include a blanket waiver of subrogation endorsement in favor of the Town.

16.5 **Deductibles**. All deductibles or self-insured retentions must be declared to and be reasonably approved by the Town. The Contractor shall be responsible for the payment of any deductible or self-insured retentions in the event of any claim.

Section 17

Attorneys Fees and Waiver of Jury Trial.

In the event of any litigation arising out of this Agreement, the prevailing party shall be entitled to recover its attorneys' fees and costs, including the fees and expenses of any paralegals, law clerks and legal assistants, and including fees and expenses charged for representation at both the trial and appellate levels.

IN THE EVENT OF ANY LITIGATION ARISING OUT OF THIS AGREEMENT, EACH PARTY HEREBY KNOWINGLY, IRREVOCABLY, VOLUNTARILY AND INTENTIONALLY WAIVES ITS RIGHT TO TRIAL BY JURY.

Section 18

Ownership and Access to Records and Audits.

Contractor acknowledges that all inventions, innovations, improvements, developments, methods, designs, analyses, drawings, reports, compiled information, and all similar or related information (whether patentable or not) which relate to Services to the Town which are conceived, developed or made by Contractor during the term of this Agreement ("Work Product") belong to the Town. Contractor shall promptly disclose such Work Product to the Town and perform all actions reasonably requested by the Town (whether during or after the term of this Agreement) to establish and confirm such ownership (including, without limitation, assignments, powers of attorney and other instruments).

Contractor agrees to keep and maintain public records in Contractor's possession or control in connection with Contractor's performance under this Agreement. The Town Manager or his designee shall, during the term of this Agreement and for a period of three (3) years from the date of termination of this Agreement, have access to and the right to examine and audit any records of the Contractor involving transactions related to this Agreement. Contractor additionally agrees to comply specifically with the provisions of Section 119.0701, Florida Statutes. Contractor shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed, except as authorized by law, for the duration of the Agreement, and following completion of the Agreement until the records are transferred to the Town.

Upon request from the Town's custodian of public records, Contractor shall provide the Town with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided by Chapter 119, Florida Statutes, or as otherwise provided by law.

Unless otherwise provided by law, any and all records, including but not limited to reports, surveys, and other data and documents provided or created in connection with this Agreement are and shall remain the property of the Town.

Upon completion of this Agreement or in the event of termination by either party, any and all public records relating to the Agreement in the possession of the Contractor shall be delivered by

the Contractor to the Town Manager, at no cost to the Town, within seven (7) days. All such records stored electronically by Contractor shall be delivered to the Town in a format that is compatible with the Town's information technology systems. Once the public records have been delivered upon completion or termination of this Agreement, the Contractor shall destroy any and all duplicate public records that are exempt or confidential and exempt from public records disclosure requirements.

Any compensation due to Contractor shall be withheld until all records are received as provided herein.

Contractor's failure or refusal to comply with the provisions of this section shall result in the immediate termination of this Agreement by the Town.

Notice Pursuant to Section 119.0701(2)(a), Florida Statutes. IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS.

Custodian of Records: Sandra McCready, MMC
Mailing address: 9293 Harding Avenue
Surfside, FL 33154
Telephone number: 305-861-4863
Email: smccready@townofsurfsidefl.gov

Section 19.
Counterparts

This Agreement may be executed in several counterparts, each of which shall be deemed an original and such counterpart shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement on the respective dates under each signature: Town, signing by and through its Manager, attested to and duly authorized to execute same by the Town Commission of the Town of Surfside and by the Contractor, by and through Richard Gendler, attested to and duly authorized to execute same.

TOWN:

TOWN OF SURFSIDE, FLORIDA, a Florida municipal corporation

ATTEST:

Sandra McCreedy, CMC, Town Clerk

By: _____
Andrew Hyatt, Manager

Executed this ____ day of _____, 2022.

APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE USE OF AND RELIANCE BY THE TOWN OF SURFSIDE ONLY.

Town Attorney
Weiss Serota Helfman Cole & Bierman, P.L.

CONTRACTOR:

RICHARD GENDLER, LLC, a Florida limited liability company

WITNESSES:

Print Name:

By: _____
Richard S. Gendler

Date Executed: _____