



## Town of Surfside Commission Communication

**Agenda #:** 5B  
**Agenda Date:** January 10, 2017  
**Subject:** Voluntary Collection Agreement with Airbnb, Inc.  
**From:** Guillermo Olmedillo, Town Manager

**Background:** In May 2011, the Town Commission adopted an Ordinance on the short-term rental of single family dwellings, two-family dwellings, multi-family dwellings and townhomes under Section 90-41.1 of the Town Codes. This Ordinance provides for the payment of a resort tax on all short-term rentals.

**Analysis:** In their research, Town staff has found that many short-term rental property owners fail to register with the Town thus avoiding the payment of the resort tax due. Town staff also discovered that Airbnb, Inc. would voluntarily collect and remit to the Town any resort tax due on any host listing that was booked through the Airbnb website. In order to facilitate the reporting, collection and remittance of applicable four percent (4%) resort tax on booking transactions completed by hosts and guest on Airbnb, Inc.'s booking platform, it is necessary for the Town and Airbnb, Inc. to enter into a Voluntary Collection Agreement.

**Budget Impact:** No negative budgetary impact is anticipated by entering into this Voluntary Collection Agreement.

**Growth Impact:** None

**Staff Impact:** None

**Staff Recommendation:** Staff recommends approving the attached Voluntary Collection Agreement.

  
Guillermo Olmedillo  
Town Manager

**RESOLUTION NO. 17 - \_\_\_\_\_**

**A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, APPROVING A VOLUNTARY COLLECTION AGREEMENT FOR RESORT TAX BETWEEN AIRBNB, INC. AND THE TOWN OF SURFSIDE; PROVIDING FOR APPROVAL; PROVIDING FOR AUTHORIZATION; PROVIDING FOR IMPLEMENTATION; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, Airbnb, Inc. provides an Internet-based platform (“Platform”) through which third parties offering accommodations (“Hosts”) and third parties booking such accommodation (“Guests”) may communicate, negotiate and complete a direct booking transaction for accommodations; and

**WHEREAS**, the Town and Airbnb, Inc. enter into the Voluntary Collection Agreement (Attachment “A”) to facilitate the reporting, collection and remittance of applicable resort tax imposed pursuant to Section 70.109 of the Town of Surfside, Florida Code in the amount of 4% for Booking Transactions completed by Hosts and Guests on the Platform for accommodations located in Town of Surfside, Florida; and

**WHEREAS**, it is in the best interest of the Town to approve the Voluntary Collection Agreement with Airbnb, Inc. (Attachment “A”).

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

**Section 1. Recitals.** The above and foregoing recitals are true and correct and are incorporated herein by reference.

**Section 2. Approval.** The Town Commission hereby approves the Voluntary Collection Agreement for Resort Tax between Airbnb, Inc. and the Town of Surfside, Florida to facilitate the reporting, collection and remittance of applicable resort tax imposed pursuant to Section 70.109 of the Town of Surfside Code (Attachment “A”).

**Section 3. Authorization.** The Town Commission hereby authorizes the Town Manager to execute the Voluntary Collection Agreement for Resort Tax between Airbnb, Inc. and the Town of Surfside, Florida.

**Section 4. Implementation.** The Town Manager is hereby authorized to take any and all action necessary to implement this Resolution.

**Section 5. Effective Date.** This Resolution shall take effect immediately upon adoption.

**PASSED AND ADOPTED** this \_\_\_\_\_ day of \_\_\_\_\_ 2017.

Motion by \_\_\_\_\_,

Second by \_\_\_\_\_.

**FINAL VOTE ON ADOPTION**

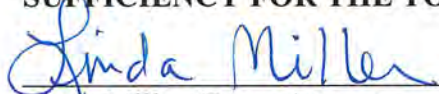
Commissioner Daniel Gielchinsky	_____
Commissioner Michael Karukin	_____
Commissioner Tina Paul	_____
Vice Mayor Barry Cohen	_____
Mayor Daniel Dietch	_____

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

**ATTEST:**

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

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

  
\_\_\_\_\_  
Linda Miller, Town Attorney

**VOLUNTARY COLLECTION AGREEMENT  
FOR RESORT TAX BETWEEN AIRBNB, INC. AND THE TOWN OF SURFSIDE,  
FLORIDA**

THIS **VOLUNTARY COLLECTION AGREEMENT** (the "**Agreement**") is dated \_\_\_\_\_, 2017 and is between **AIRBNB, INC.**, a Delaware corporation ("**Airbnb**") and the **TOWN OF SURFSIDE, FLORIDA** (the "**Town**"). Each party may be referred to individually as a "**Party**" and collectively as the "**Parties.**"

**RECITALS:**

WHEREAS, Airbnb represents that it provides an Internet-based platform (the "**Platform**") through which third parties offering accommodations ("**Hosts**") and third parties booking such accommodations ("**Guests**") may communicate, negotiate and complete a direct booking transaction for accommodations to which Airbnb is not a party ("**Booking Transaction**");

WHEREAS, the Town and Airbnb enter into this Agreement voluntarily in order to facilitate the reporting, collection and remittance of applicable resort tax imposed pursuant to Section 70.109. of the Town of Surfside, Florida Code in the amount of 4% (the applicable "**Code**") for Booking Transactions completed by Hosts and Guests on the Platform for accommodations located in Town of Surfside, Florida (the "**Taxable Booking Transactions**").

**NOW THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS, PROMISES AND AGREEMENTS CONTAINED HEREIN, THE PARTIES AGREE AS FOLLOWS:**

(A) Solely pursuant to the terms and conditions of this Agreement, including only for periods in which this Agreement is effective (defined below), and solely for Taxable Booking Transactions completed on the Platform, Airbnb agrees contractually to assume the duties of a resort tax operator as described in the Code (hereinafter referred to as a "**Operator**").

(B) Starting on March 1, 2017 (the "**Effective Date**"), Airbnb agrees to commence collecting and remitting resort tax to the Town, pursuant to the terms of this Agreement, in the amount of 4% on Taxable Booking Transactions. Except as set forth in Section "Duration/Termination" in Paragraph (L) below, Airbnb shall not assume any obligation or liability to collect resort tax for any period or for any transaction prior to the Effective Date or termination of this Agreement.

## **REMITTANCE OF RESORT TAX**

(C) Airbnb agrees reasonably to report aggregate information on the submittal of resort tax on forms prepared by Airbnb, including all resort tax that is subject to the provisions of this Agreement, and it shall remit all resort tax collected from Guests in accordance with this Agreement and Airbnb's Terms of Service ([www.airbnb.com](http://www.airbnb.com)) (the "TOS") in the time and manner described in the Code or as otherwise agreed to in writing.

## **AIRBNB LIABILITY**

(D) Pursuant to the terms of this Agreement, Airbnb agrees contractually to assume liability for any failure to report, collect and/or remit the correct amount of resort tax, including, but not limited to, penalties and interest, lawfully and properly imposed in compliance with the Town of Surfside Code. Nothing contained herein nor any action taken pursuant to this Agreement shall impair, restrict or prevent Airbnb from asserting that any resort tax and/or penalties, interest, fines or other amounts assessed against Airbnb it were not due, are the subject of a claim for refund under applicable law or otherwise bar it from enforcing any rights accorded by law.

(E) During any period for which Airbnb is not in breach of its obligations under this Agreement, the Town agrees to audit Airbnb on the basis of resort tax returns and supporting documentation, and agrees not to directly or indirectly audit any individual Guest or Host relating to Taxable Booking Transactions unless and until an audit of Airbnb by the Town has been exhausted with the matter unresolved. The Town reserves the right to audit any individual Airbnb Host for activity that has been brought to the attention of the Town in the form of a complaint or other means independent of this Agreement or independent of data or information provided pursuant to this Agreement.

(F) The Town agrees to audit Airbnb on an anonymous numbered account basis for Taxable Booking Transactions. Except as otherwise agreed herein, Airbnb shall not be required to produce any personally identifiable information relating to any Host or Guest or relating to any Booking Transaction without binding legal process served only after completion of an audit by the Town of Airbnb with respect to such users. The Town agrees that it will not audit or issue an assessment against Airbnb more than once per any consecutive thirty-six month period and that such audit will be limited to no more than a consecutive twelve (12) month tax period within any consecutive 36 month period. The Parties agree that any audit findings of the Town in the

selected twelve (12) month period may be projected against the remainder of any periods open under the applicable statute of limitations, unless Airbnb elects, at its sole discretion, to undergo further audit of such open periods by the Town.

(G) Airbnb, Inc. agrees to be the Agent on behalf of the properties registered under Airbnb for the reporting, collection and remittance of resort tax pursuant to the Town Code under this Agreement and will be the registered Operator on behalf of any affiliate or subsidiary collecting resort tax.

#### **GUEST AND HOST LIABILITY**

(H) During any period in which this Agreement is effective relating to Taxable Booking Transactions, Hosts shall be permitted but not required to register individually with the Town to collect, remit and/or report resort tax, provided Airbnb is in compliance with its obligations herein. Nothing in this Agreement shall relieve Guests or Hosts from any responsibilities with respect to resort tax for transactions completed other than on the Platform, or restrict the Town from investigating or enforcing any provision of applicable law against such users for such transactions.

#### **WAIVER OF LOOK-BACK**

(I) The Town expressly releases, acquits, waives and forever discharges Airbnb, its current or past affiliated parent or subsidiary companies, directors, shareholders investors, employees and other agents from any and all actions, causes of action, indebtedness, suits, damages or claims arising out of or relating to payment of and/or collection of resort tax or other tax indebtedness, including but not limited to penalties, fines, interest or other payments relating to resort tax on any Taxable Booking Transactions prior to the Effective Date. Nothing contained in this Paragraph of this Agreement will constitute a release or waiver of any claim, cause of action or indebtedness that the Town may have or claim to have against any Host or Guest unrelated to Taxable Booking Transactions under this Agreement.

#### **NOTIFICATION TO GUESTS AND HOSTS**

(J) Airbnb agrees, for the purposes of facilitating this Agreement, and as required by its TOS, that it will notify (i) Hosts that resort tax will be collected and remitted to the Town as of the Effective Date pursuant to the terms of this Agreement; and (ii) Guests and Hosts of the amount of resorts tax collected and remitted on each Taxable Booking Transaction.

## **LIMITATION OF APPLICATION**

(K) This Agreement is solely for the purpose of facilitating the administration and collection of the resort tax with respect to Taxable Booking Transactions and, except with respect to the rights and liabilities set forth herein, the execution of or actions taken under this Agreement shall not be considered an admission of law or fact or constitute evidence thereof under the Code or any other provisions of the laws of the United States of America, of any State or subdivision or municipality thereof. Neither Party waives, and expressly preserves, any and all arguments, contentions, claims, causes of action, defenses or assertions relating to the validity or interpretation or applicability of the Code, regulations or application of law.

## **DURATION/TERMINATION**

(L) This Agreement may be terminated by Airbnb or the Town for convenience on 30 days written notification to the other Party. Any termination under this Paragraph shall not affect the duty of Airbnb to remit to the Town any resort tax collected from Guests up through and including the effective date of termination of this Agreement, even if not remitted by Airbnb to the Town as of the date of termination.

## **MISCELLANEOUS**

(M) CHOICE OF LAW. This Agreement, its construction and any and all disputes arising out of or relating to it, shall be interpreted in accordance with the substantive laws of the State of Florida without regard to its conflict of law principles. The venue of any claim, objection, or dispute arising out of the terms of this Agreement shall be in Miami-Dade County, Florida.

(N) MODIFICATION. No modification, amendment, or waiver of any provision of this Agreement shall be effective unless in writing and signed by both Parties.

(O) MERGER AND INTEGRATION. This Agreement contains the entire agreement of the Parties with respect to the subject matter of this Agreement, and supersedes all prior negotiations, agreements and understandings with respect thereto.

(P) COUNTERPARTS. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same instrument. The Agreement shall become effective when a counterpart has been signed by each Party and delivered to the other Party, in its original form or by electronic mail, facsimile or other electronic means. The Parties hereby consent to the use of

electronic signatures in connection with the execution of this Agreement, and further agree that electronic signatures to this Agreement shall be legally binding with the same force and effect as manually executed signatures.

(Q) RELATIONSHIP OF THE PARTIES. The Parties are independent contractors. This Agreement does not create nor is it intended to create a partnership, franchise, joint venture, agency, or employment relationship between the Parties. There are no third-party beneficiaries to this Agreement.

(R) WAIVER AND CUMULATIVE REMEDIES. No failure or delay by either Party in exercising any right under this Agreement shall constitute a waiver of that right or any other right. Other than as expressly stated herein, the remedies provided herein are in addition to, and not exclusive of, any other remedies of a Party at law or in equity.

(S) FORCE MAJEURE. Neither Party shall be liable for any failure or delay in performance under this Agreement (other than for delay in the payment of money due and payable hereunder) for causes beyond that Party's reasonable control and occurring without that Party's fault or negligence, including, but not limited to, acts of God, acts of government, flood, fire, civil unrest, acts of terror, strikes or other labor problems (other than those involving Airbnb employees), computer attacks or malicious acts, such as attacks on or through the Internet, any Internet service provider, telecommunications or hosting facility. Dates by which performance obligations are scheduled to be met will be extended for a period of time equal to the time lost due to any delay so caused.

(T) ASSIGNMENT. Neither Party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other Party (which consent shall not be unreasonably withheld). Notwithstanding the foregoing, Airbnb may assign this Agreement in its entirety without consent of the other Party in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets.

(U) MISCELLANEOUS. If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision shall be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of this Agreement shall remain in effect.

(V) NON-DISCRIMINATION. Airbnb will comply with Section 3-1.1 "Non-discrimination contract requirements; waiver" of the Town of Surfside Code. By entering into this Agreement with the Town, Airbnb represents and affirms that Airbnb is not currently engaged in,



and will not engage in, a boycott as defined in Section 3-1.1. of the Town of Surfside Code of Ordinances.

(W) PUBLIC RECORDS. Pursuant to Florida Statutes Chapter 119, the Town shall provide the public with access to public records in accordance with the record maintenance, production and cost requirements set forth in Chapter 119, Florida Statutes, or as otherwise required by law.

### NOTICES

(X) All notices under this Agreement shall be in writing and shall be deemed to have been given upon: (i) personal delivery; (ii) the third business day after first class mailing postage prepaid; or (iii) the second business day after sending by overnight mail or by facsimile with telephonic confirmation of receipt. Notices shall be addressed to the attention of the following persons, provided each Party may modify the authorized recipients by providing written notice to the other Party:

**To Airbnb:**

Airbnb, Inc.  
Attn: General Counsel  
888 Brannan Street, 4<sup>th</sup> Fl  
SF, CA 94103  
[legal@airbnb.com](mailto:legal@airbnb.com)

Airbnb, Inc.  
Attn: Beth Adair  
Global Tax Director  
888 Brannan Street, 4<sup>th</sup> Fl  
SF, CA 94103  
[tax@airbnb.com](mailto:tax@airbnb.com)

**To the Town:**

Guillermo Olmedillo  
Town Manager  
9293 Harding Avenue  
Surfside, Florida 33154  
(305) 861-4863  
[golmedillo@townofsurfsidefl.gov](mailto:golmedillo@townofsurfsidefl.gov)

*IN WITNESS WHEREOF*, Airbnb and the Town of Surfside, Florida have executed this Agreement effective on the date set forth in the introductory clause.

**AIRBNB, INC.**, a Delaware corporation  
By: \_\_\_\_\_  
Beth Adair, Global Tax Director  
Airbnb, Inc.

**TOWN OF SURFSIDE, FLORIDA**  
By: \_\_\_\_\_  
Guillermo Olmedillo, Town Manager  
Town of Surfside, Florida