

**1. Requested Motion:**

**Meeting Date:** January 3, 2011

Motion to approve the proposed employment contract with Town Manager Terry Stewart.

**Why the action is necessary:**

It provides the legal framework that defines conditions of employment, compensation and benefits, etc.

**What the action accomplishes:**

It establishes a contractual relationship between the Town and the Town Manager.

**2. Agenda:**

Consent  
 Administrative

**3. Requirement/Purpose:**

Resolution  
 Ordinance  
 Other

**4. Submitter of Information:**

Council  
 Town Staff  
 Town Attorney

**5. Background:**

- A. Terry Stewart was hired as the Town Manager on February 1, 2010 under the terms and conditions of an Interim Contract.
- B. The Interim Contract called for specific performance benchmarks along with a performance review within 6-8 months to determine if the town Council was satisfied with Mr. Stewart's work therefore decide to continue his employment under a regular contract.
- C. On October 4, 2010 the Town council completed Mr. Stewart's performance review with a positive appraisal and voted unanimously to offer him the regular employment contract. The Town Council also designated Council Member Alan Mandel to work together with the Town Attorney to handle contract negotiations with Mr. Stewart.
- D. Contract negotiations have been completed and a proposed employment contract is included herewith as Exhibit A.

**6. Alternative Action:**

Define desired amendments to the proposed contract.

**7. Management Recommendations:**

Approve the proposed contract.

Town Manager	Town Attorney	Finance Director	Public Works Director	Community Development Director	Cultural Resources Director	Town Clerk
						

**9. Council Action:**

Approved     Denied     Deferred     Other

## EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2011, by and between the TOWN OF FORT MYERS BEACH, FLORIDA, hereinafter referred to as "TOWN" or "TOWN COUNCIL" and TERRANCE E. STEWART, hereinafter referred to as "MANAGER" or "TOWN MANAGER."

WITNESSETH:

WHEREAS, the TOWN desires to employ Terrance E. Stewart as TOWN MANAGER for the Town of Fort Myers Beach, Florida, as provided for in Article VI of the Town Charter; and

WHEREAS, Terrance E. Stewart desires to accept employment as the TOWN MANAGER for the Town of Fort Myers Beach, Florida on the terms provided herein.

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, the parties hereto agree as follows:

1. TOWN hereby agrees to employ MANAGER to perform the functions and duties of the position of TOWN MANAGER as provided in Article VI of the Town Charter. MANAGER shall be the Chief Administrative Officer for the TOWN and shall perform all duties imposed on him by Section 6.03 of the TOWN Charter and applicable laws, ordinances, regulations and other legally permissible and proper duties as he may be directed to perform by the TOWN COUNCIL.

2. MANAGER agrees to perform the functions and duties of his office in a competent and professional manner. MANAGER agrees to devote all of his time, attention, knowledge and skills to the position of TOWN MANAGER, and will not engage in other employment without specific permission from the TOWN COUNCIL.

3. Compensation. TOWN agrees to pay MANAGER for services rendered hereunder an annual base salary of One Hundred Twenty Thousand and no/100 Dollars (\$120,000.00) payable in installments at the same time as other TOWN employees. MANAGER shall be eligible to receive an annual increase in base salary and/or benefits in such amounts and to such extent as the TOWN COUNCIL may determine. The amount of any increase in salary or benefits shall be based on the annual performance evaluation of MANAGER.

4. Term. The initial term of this Agreement shall be one (1) year. Thereafter, this Agreement shall automatically renew each year for successive terms of one (1) year each, unless either party provides not less than six (6) months' prior written notice to the other party of an intent not to renew this Agreement.

5. Performance Evaluation. The TOWN COUNCIL shall review and evaluate the performance of the MANAGER annually during the month of November. The review and evaluation shall utilize specific criteria developed jointly by TOWN and MANAGER. TOWN COUNCIL shall, as part of the evaluation process, provide MANAGER with written comments and provide an adequate opportunity for MANAGER to discuss his evaluation with the TOWN

should he so desire. MANAGER and TOWN COUNCIL shall annually, during the month of January, define such goals and performance objectives that they collectively determine are necessary for the proper operation of the TOWN and attainment of the policy objectives of the TOWN COUNCIL. The goals and objectives shall be reduced to writing and each goal and objective shall be assigned a relative priority.

6. Benefits.

A. General. Manager shall receive the following employee benefits in addition to his base salary:

B. Group Health Insurance. MANAGER shall not be entitled to receive paid major medical insurance benefits for either himself or his family. In lieu of such benefits, TOWN shall pay MANAGER an annual sum of Twenty-One Thousand Nine Hundred Thirty Dollars (\$21,930.00), payable in twenty-six equal installments.

C. Vehicle Allowance. MANAGER shall be provided with a monthly vehicle allowance of Five Hundred and no/100 Dollars (\$500.00). This vehicle allowance is intended to reimburse MANAGER for local travel only, which shall be defined as travel within Lee County. All TOWN-related travel outside of Lee County shall be reimbursed in accordance with the TOWN's travel policy.

D. Professional Dues and Development. TOWN agrees to pay professional association dues for MANAGER's membership in ICMA and FCMA and for professional development courses and seminars, within approved budgeted amounts, including, where applicable, reasonable travel expenses. All travel related to professional development courses and seminars must be approved in advance by TOWN COUNCIL.

E. Deferred Compensation. MANAGER shall be entitled to participate, at his own expense, in any TOWN-sponsored 457 Deferred Compensation Plan. MANAGER shall also be entitled to participate in a TOWN-sponsored 401A Deferred Compensation Plan, whereby MANAGER contributes eight percent (8%) of his wages and the TOWN contributes twelve percent (12%) of MANAGER's wages.

F. Vacation and Sick Time. Upon execution of this agreement, MANAGER shall be credited with 210 hours of vacation time and 120 hours of sick time. MANAGER shall accrue vacation and sick time at the same rate as regular TOWN employees as provided in Section 10 of the TOWN's Manual of Personnel Policies.

G. TOWN shall provide MANAGER with a cellular telephone and laptop computer.

H. TOWN shall provide MANAGER with dental, vision, and short and long term disability insurance coverage in the same manner as such benefits are provided to other TOWN employees.

## 7. Termination and Severance Pay.

A. Termination For Cause. This Agreement may be terminated for cause by a majority vote of the TOWN COUNCIL. For purposes of this Agreement, "for cause" shall be defined as including, but is not limited to misfeasance, malfeasance, and/or nonfeasance in the performance of his duties; conviction or a plea of guilty or no contest to any illegal act involving personal gain related to his position as TOWN MANAGER; conviction or a plea of guilty or no contest to any felony involving breach of public trust under Section 112.3172, Fla. Stat.; or a finding of violation of Chapter 112, Part III, Fla. Stat. by the Florida Commission on Ethics. In the event MANAGER is terminated for cause, MANAGER shall not be entitled to any severance payment, but would be entitled to payment for any accrued vacation and sick leave.

B. Termination Due to Disability. If MANAGER is unable to perform his duties for any reason, including, but not limited to sickness, accident, injury, or mental incapacity, for a period of four (4) successive weeks beyond any accrued sick leave, TOWN shall have the option to terminate this Agreement, in accordance with the procedures set forth in the Town Charter and Code of Ordinances, as they may be amended from time to time. Disabled, for purposes of this Agreement, means that MANAGER, due to illness or injury, is unable to perform the essential functions of his position after reasonable accommodations have been made by the TOWN. If MANAGER is terminated due to disability, he shall not be entitled to severance pay.

C. Termination Without Cause; Severance. MANAGER may be terminated without cause by a majority vote of the TOWN COUNCIL. In the event MANAGER is terminated without cause, and during such time MANAGER is willing and able to perform his duties under this agreement, then in that event TOWN agrees to pay MANAGER a lump sum severance payment equal to six (6) months of MANAGER's base salary payable within fifteen (15) calendar days after termination, unless otherwise agreed to by MANAGER and TOWN. The lump sum severance payment shall be in addition to any payment for accrued vacation and sick leave to which MANAGER may be entitled. No other benefits, including vehicle allowance, deferred compensation contributions and group health insurance for MANAGER and his spouse, shall accrue or be payable following the effective date of the termination. MANAGER agrees that the TOWN COUNCIL shall have the sole and absolute discretion to decide to terminate MANAGER without cause and that in the event of such termination, and in consideration of the payment of severance, MANAGER waives all rights to contest or challenge the TOWN COUNCIL's decision and will accept the severance payment in full satisfaction of TOWN's obligations under this agreement and in full release of any and all claims MANAGER may have against the TOWN relating to his employment.

D. Voluntary Resignation. MANAGER may voluntarily resign his employment at anytime upon sixty (60) days' advance written notice to TOWN, unless waived in the sole discretion of the TOWN COUNCIL. In the event MANAGER voluntarily resigns, MANAGER shall not be entitled to severance pay, but shall be entitled to payment for all accrued vacation and sick leave.

E. Any involuntary termination of MANAGER shall comply with Section 6.02 of the TOWN Charter.

8. Indemnification. Subject to any limitations imposed by Florida Law, the TOWN shall defend, save harmless, and indemnify MANAGER against any tort, professional liability claim or demand, or other legal action, arising out of an alleged act or omission of MANAGER while acting within the course and scope of his duties as MANAGER.

9. Governing Law. This Agreement shall be governed by the laws of the State of Florida and venue shall be in Lee County, Florida.

10. Modification. No provision of this Agreement may be modified or amended except by a written agreement executed by both parties hereto.

11. Entire Agreement. This Agreement constitutes the entire Agreement between the parties and

12. If any provision, or any portion of the Agreement is held unconstitutional, invalid or unenforceable, the remainder of this Agreement shall be deemed severable and shall not be affected and shall remain in full force and effect.

13. The rights and obligations herein granted are personal in nature and cannot be transferred by MANAGER except as provided in any of the benefits MANAGER is entitled to under this Agreement.

14. MANAGER HEREBY ACKNOWLEDGES THAT HE HAS BEEN PROVIDED WITH A COPY OF THIS AGREEMENT FOR REVIEW AND MANAGER HAS CONSULTED WITH HIS OWN ATTORNEY, TO THE EXTENT DESIRED, PRIOR TO SIGNING THIS AGREEMENT. MANAGER FURTHER ACKNOWLEDGES THAT HE FULLY UNDERSTANDS THE PURPOSE AND EFFECT OF THE TERMS OF THIS AGREEMENT.

Executed by the TOWN and MANAGER this \_\_\_ day of \_\_\_\_\_, 2011.

TOWN

MANAGER

\_\_\_\_\_  
Larry Kiker, Mayor

\_\_\_\_\_  
Terrance E. Stewart

ATTEST:

WITNESS

\_\_\_\_\_  
Michelle D. Mayer, Town Clerk

\_\_\_\_\_  
Signature

APPROVED AS TO LEGAL FORM:

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Fowler, White, Boggs, Town Attorney