

1. Requested Motion:

Meeting Date: Jan. 21, 2014

Approve and authorize the SEPARATION AGREEMENT AND GENERAL RELEASE between the Town of Fort Myers Beach and Terrance E. Stewart and authorize the Mayor to execute the required documents.

Why the action is necessary:

The Town terminated Mr. Stewart's employment without cause effective January 15, 2014.

What the action accomplishes:

This agreement will fully and finally resolve, on the terms and conditions set forth in this Agreement, any and all claims and disputes the Parties have or might have related to the Employment Agreement and Mr. Stewart's employment by the Town.

2. Agenda:

Consent
 Administrative

3. Requirement/Purpose:

Resolution
 Ordinance
 Other

4. Submitter of Information:

Council
 Town Staff
 Town Attorney

5. Background:

On January 3, 2011, the Town Council entered into an employment agreement with Terrance E. Stewart as Town Manager. Effective January 15, 2014, the Town terminated Mr. Stewart's employment without cause.

Attached items:

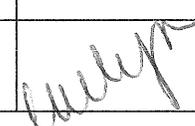
- Separation Agreement and General Release

6. Alternative Action:

none

7. Management Recommendations:

8. Recommended Approval:

Town Manager	Town Attorney	Finance Director	Public Works Director	Community Development Director	Parks & Recreation Director	Town Clerk
						

9. Council Action:

Approved Denied Deferred Other

SEPARATION AGREEMENT AND GENERAL RELEASE

THIS SEPARATION AGREEMENT AND GENERAL RELEASE (the "Agreement") is entered into by and between the TOWN OF FORT MYERS BEACH (the "Town") and TERRANCE E. STEWART ("Mr. Stewart") (collectively, the "Parties").

WHEREAS, the Town and Mr. Stewart are parties to an Employment Agreement dated January 1, 2011 (the "Employment Agreement");

WHEREAS, the Town terminated Mr. Stewart's employment without cause pursuant to paragraph 7(C) of the Employment Agreement on January 15, 2014; and

WHEREAS, the Parties desire to fully and finally resolve, on the terms and conditions set forth in this Agreement, any and all claims and disputes the Parties have or might have related to the Employment Agreement and Mr. Stewart's employment by the Town.

NOW, THEREFORE, in consideration of the mutual promises, conditions, undertakings, representations and agreements set forth herein, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties hereby agree as follows:

1. **Execution of Agreement.** Mr. Stewart and the Town shall execute this Agreement and exchange executed copies of this Agreement. An executed version of this Agreement, if transmitted by electronic means, shall be effective and binding as if it were the originally executed document. This Agreement may be signed in counterparts that together shall be deemed to comprise a single and complete Agreement.

2. **Severance Payment.** Within five (5) days of the Effective Date of this Agreement (as defined below in paragraph 6), the Town shall pay or cause to be paid in a lump sum to Mr. Stewart twenty (20) weeks of salary at his rate of pay as set forth in paragraph 3 of the Employment Agreement (the "Severance Payment"). Mr. Stewart covenants not to bring any claim which could directly or indirectly cause the Town to become liable to him for any amount other than or in excess of the Severance Payment. Mr. Stewart acknowledges and agrees that the Town's obligation to make the payment described in paragraph 2 shall only accrue after Mr. Stewart's counsel delivers a copy of this Agreement executed by Mr. Stewart to the Town and upon expiration of the revocation period described in paragraph 6 below, and only if said revocation remains unexercised. Execution of this Agreement by Mr. Stewart, delivery of the executed Agreement to the Town and non-revocation of the Agreement within the time period specified herein are conditions precedent to the obligations of the Town to make the Severance Payment to Mr. Stewart.

3. **Vacation and Sick Time.** Within five (5) days of the Effective Date of this Agreement, the Town shall pay Mr. Stewart for all of his accrued and unused vacation and sick days as of January 15, 2014 as reflected on the books of the Town.

4. **Withholding.** All payments made by the Town under this Agreement shall be reduced by any tax or other amounts required to be withheld by the Town under applicable law and all other deductions authorized by Mr. Stewart.

5. **Release by Mr. Stewart.** Mr. Stewart and his agents, representatives, administrators, affiliates, attorneys, predecessors, successors, heirs, beneficiaries, personal representatives and assigns (all in their capacities as such and not otherwise) (the “Releasing Parties”) hereby covenant not to sue, and fully, irrevocably and unconditionally release, waive, hold harmless, acquit and forever discharge, effective as of the Effective Date, the Town and its present and former mayor(s), council members, officers, directors, agents, employees, predecessors, successors, assigns, attorneys, beneficiaries, representatives, insurers, employee benefit plans and persons acting by, through, or in concert with any of them (the “Released Parties”) with respect to and from any and all claims, wages, demands, charges, complaints, liabilities, promises, controversies, causes of action, suits, proceedings, costs, losses, expenses, rights, liens, agreements, contracts, actions, suits, obligations, debts, damages, judgments of every kind and character, direct and indirect, known or unknown, suspected or unsuspected, at law or in equity, under federal, state, local or other law (including attorneys’ fees and costs actually incurred) which the Releasing Parties ever had, now have, own or hold, or claim to have, own or hold against the Released Parties, based upon any conduct, act or omission from the beginning of the world up to and including the Effective Date of this Agreement, including but not limited to any claims arising from, relating to, or concerning in any way: (i) Mr. Stewart’s employment relationship with the Town; (ii) the Employment Agreement; and (iii) the Town’s termination without cause of Mr. Stewart’s employment on January 15, 2014.

Without limiting the generality of the foregoing, this Release also specifically pertains and applies to any claim (federal, state, local, statutory, administrative, or common law) under Title VII of the Civil Rights Act of 1964 as amended; the Age Discrimination in Employment Act, as amended; Older Workers' Benefit Protection Act; Florida Civil Rights Act of 1992 (F.S. §760.01-760.11 and §509.092) as amended; Americans With Disabilities Act of 1990 (ADA); the Americans With Disabilities Act Amendments Act of 2008 (ADAAA), as amended; the Family and Medical Leave Act of 1993; the Employee Retirement Income Security Act of 1974; any common law or statutory wrongful discharge or retaliatory discharge theory; any claim for breach of contract (express or implied); any claim for breach of any covenant of good faith and fair dealing (express or implied); or any claim for additional salary, severance pay, bonus pay, sick pay, vacation pay, retirement benefits, deferred compensation benefits, life insurance, long term disability insurance, short term disability insurance, health, medical or dental insurance, vehicle allowance, mileage or other travel reimbursement, or any other fringe benefit of any kind whatsoever. Further, Mr. Stewart agrees to refrain from assisting, encouraging, or promoting the prosecution of any litigation, charge, demand, complaint, or claim for damages of whatsoever kind or nature in which monetary compensation or any other relief is sought by Mr. Stewart against the Town and represents that no such actions have been undertaken by him to date.

Notwithstanding the provisions set forth herein, the foregoing release shall not be construed as waiving or releasing (a) any claims for breach of this Agreement or (b) any claims by Mr. Stewart for indemnification pursuant to paragraph 8 of the Employment Agreement provided, however, that this Agreement does not create any indemnification rights that do not already exist pursuant to paragraph 8 of the Employment Agreement.

6. **Acknowledgements.** Mr. Stewart acknowledges and represents that he has read and understands each and every provision of this Agreement, that his agreement to it is KNOWING, VOLUNTARY, AND IS MADE FREELY AND OF HIS OWN VOLITION. Mr. Stewart further acknowledges and represents that he has been afforded a full and reasonable

opportunity of at least twenty-one (21) days to consider the terms of the Agreement and to consult with an attorney or any other person of his choosing, and that he has been advised by the Town to consult with an attorney prior to executing this Agreement. Mr. Stewart may revoke his acceptance of this Agreement, provided he does so by written notice to Fowler White Boggs, P.A., Attention: Town of Fort Myers Beach Attorney, 2235 First Street, Fort Myers, FL 33901 within seven (7) days of his execution hereof. This Agreement shall only become effective and enforceable on the date this Agreement has been executed by both the Town and Mr. Stewart and the seven-day revocation period with respect to Mr. Stewart's execution of the Agreement has expired without timely revocation (the "Effective Date").

7. **Non-Disparagement.** Mr. Stewart agrees that he will not disparage or criticize the Town, its business, or its management, and that he will not otherwise do or say anything that could harm the Town's interest or reputation.

8. **Acknowledgement of Full Payment.** Mr. Stewart acknowledges and agrees that the payments provided under this Agreement will be in complete satisfaction of any and all compensation due to him from the Town, whether for services provided to the Town or otherwise, through January 15, 2014 and that, except as expressly provided under this Agreement, no further compensation is due to him.

9. **Complete Agreement.** This Agreement constitutes the complete and entire agreement and understanding between Mr. Stewart and the Town regarding Mr. Stewart's employment by the Town and the termination without cause of Mr. Stewart's employment by the Town. This Agreement supersedes any and all prior contracts or agreements, understandings, and/or discussions relating to Mr. Stewart's employment by the Town and the termination without cause of Mr. Stewart's employment by the Town, excluding only paragraph 8 of the Employment Agreement ("Indemnification"), which provision shall remain in full force and effect in accordance with its terms.

10. **Amendment and Waiver.** This Agreement may be amended or waived if, and only if, such amendment or waiver is in writing and signed by all the parties to this Agreement. It is not, and shall not, be interpreted or construed as an admission or indication that either party has engaged in any wrongful or unlawful conduct of any kind.

11. **Severability.** If any provision herein is deemed to be unenforceable under applicable law, such provision shall be severed from the Agreement to the extent possible, consistent with the intent and purposes of the Agreement and the remaining provisions shall be given full force and effect.

12. **Authorization.** The Parties each hereby represent and authorize that he, she or it has the requisite authority and power to execute this Agreement and to perform the obligations contained herein and has not assigned or otherwise transferred any rights, claims, or other grievances to any person or entity that is not a party to this Agreement.

13. **No Representations.** Except as expressly contained herein, the Parties make no statements or representations to one another in connection with this Agreement and acknowledge that they have not relied upon any such statements or representations in connection with executing this Agreement.

14. **Computation of Time.** Should the operative date for a party's response or action under any particular provision of this Agreement occur on a Saturday or Sunday or a federal holiday, then the first business day following such day shall be the operative date for purposes of such provision.

15. **Headings.** The headings used in this Agreement are for convenience only and shall not affect the construction of any provision of this Agreement.

16. **Governing Law.** This Agreement shall be governed by and interpreted under the laws of the State of Florida. The Parties agree that the exclusive venue for any action arising out of or relating to this Agreement shall be in the Circuit Court of the Twentieth Judicial Circuit in and for Lee County, Florida.

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DATED this _____ day of _____, 2014.

TERRANCE E. STEWART

STATE OF FLORIDA

COUNTY OF LEE

THE FOREGOING INSTRUMENT was acknowledged before me this ____ day of _____, 2014, by **TERRANCE E. STEWART**, who is personally known to me or who has produced _____ as identification and who, by signing this Instrument, acknowledged that the above and foregoing is true and correct and that it was executed freely and voluntarily for the purposes expressed therein.

My Commission Expires:

Notary Public

Print/Type Name of Notary

Commission No. _____

DATED this _____ day of _____, 2014.

**THE TOWN OF FORT MYERS BEACH,
FLORIDA**

By: _____

Its: _____
Title

STATE OF FLORIDA

COUNTY OF LEE

THE FOREGOING INSTRUMENT was acknowledged before me this ____ day of _____, 2014, by _____, who is personally known to me or who has produced _____ as identification and who, by signing this Instrument, acknowledged that the above and foregoing is true and correct and that it was executed freely and voluntarily for the purposes expressed therein.

My Commission Expires:

Notary Public

Print/Type Name of Notary

Commission No. _____