

## EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT, made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2014, by and between the TOWN OF FORT MYERS BEACH, FLORIDA, hereinafter referred to as "TOWN" or "TOWN COUNCIL" and DONALD D. STILWELL, hereinafter referred to as "MANAGER" or "TOWN MANAGER."

WITNESSETH:

WHEREAS, Donald D. Stilwell has been serving as the INTERIM TOWN MANAGER for the TOWN pursuant to an Employment Agreement (the "Interim Employment Agreement");

WHEREAS, the TOWN desires to employ Donald D. Stilwell as TOWN MANAGER for the TOWN, as provided for in Article VI of the Town Charter; and

WHEREAS, Donald D. Stilwell desires to accept employment as the TOWN MANAGER for the TOWN on the terms provided herein.

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

1. Position. 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. Duties. 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. During TOWN MANAGER'S employment, as compensation for all services performed by him for TOWN, TOWN agrees to pay MANAGER 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 described in greater detail in section 5 below. The base salary described in this section 3 shall be referred to as the base salary. All payments made by TOWN under this Agreement shall be reduced by any tax or other amounts required to be withheld by TOWN under applicable law.

4. Term of Employment. Subject to earlier termination as hereafter provided, TOWN MANAGER's employment hereunder shall be for a term of 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. The review and evaluation shall utilize specific goals and performance objectives developed jointly by TOWN and MANAGER. MANAGER and TOWN COUNCIL shall define such goals and performance objectives that they collectively determine are necessary for the proper operation of the TOWN and shall assign a relative priority to those goals and performance objectives. 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.

6. Benefits.

- A. General. Manager shall receive the following employee benefits in addition to the base salary:
- B. Medical, Dental and Vision Insurance. Except as otherwise specifically provided in this Agreement and subject to any contribution generally required of TOWN employees, MANAGER shall be entitled to participate in any and all employee benefit plans from time to time in effect for employees of the TOWN generally including, without limitation, medical, dental and vision insurance. Such participation shall be subject to the terms of the applicable plan documents and generally applicable TOWN policies.
- 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, including, where applicable, reasonable travel expenses, within approved amounts budgeted by TOWN on an annual basis.
- E. Deferred Compensation. MANAGER shall be entitled to participate in and contribute to a TOWN-sponsored 457 Deferred Compensation Plan. In addition, TOWN shall contribute on behalf of MANAGER the total amount of Seven Thousand Dollars and no/100 (\$7,000.00) on an annual basis to such 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. Paid Annual Leave. Upon execution of this agreement, MANAGER shall be credited with 210 hours of vacation time and 120 hours of sick time. MANAGER shall accrue paid annual leave at the highest accrual rate for Department Directors as provided in the TOWN's Personnel Manual.
- G. Phone and Computer. TOWN shall provide MANAGER with a cellular telephone and laptop computer.

7. Termination and Severance Pay.

- A. Termination For Cause. This Agreement and MANAGER'S employment 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 112.3173, 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 but unpaid annual 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 annual leave, TOWN shall have the option to terminate this Agreement and MANAGER'S employment, in accordance with any 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, but would be entitled to payment for any accrued but unpaid annual leave.
- C. Termination Without Cause During First Six Months of Agreement; No Severance. This Agreement and MANAGER'S employment may be terminated without cause by a majority vote of the TOWN COUNCIL during the first six months following the execution of this Agreement ("the first six months of the Agreement"). In the event MANAGER is terminated without cause during the first six months of the Agreement,

MANAGER shall not be entitled to any severance payment, but would be entitled to payment for any accrued but unpaid annual leave.

- D. Termination Without Cause After First Six Months of Agreement: Severance. This Agreement and MANAGER'S employment may be terminated without cause by a majority vote of the TOWN COUNCIL at any time after the first six months of the Agreement including any renewal term. In the event MANAGER is terminated without cause at any time after the first six months of the Agreement, 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 the lesser of twenty (20) weeks of MANAGER's base salary or the maximum amount of severance pay permitted under Florida law at the time of any such termination. The lump sum severance payment shall be in addition to any payment for accrued but unpaid annual leave to which MANAGER may be entitled. No other benefits, including, without limitation, vehicle allowance, deferred compensation contributions and medical, dental and vision insurance 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. MANAGER further agrees that he will execute a separation agreement containing a general release of claims as a condition to receiving the severance payment and that the timing of the payment of the severance payment will be as set forth in the separation agreement.
- E. Voluntary Resignation. MANAGER may voluntarily resign his employment at any time 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 but unpaid annual leave.
- F. 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, hold harmless, and indemnify MANAGER against any tort, professional liability claim or demand, or other legal action, arising out of any alleged act or omission of MANAGER while acting within the course and scope of his duties as MANAGER. TOWN MANGER agrees

to promptly notify TOWN of any actual or threatened claims arising out of or as a result of his employment with TOWN.

9. Governing Law and Venue. This Agreement is a Florida contract and shall be governed in all respects by the laws of the State of Florida without regard to the conflicts of laws principles thereof. Venue for any disputes related to this Agreement shall be exclusively in the state courts located 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 supersedes all prior communications, agreements and understandings, written or oral, with respect to the terms and conditions of the MANAGER'S employment by the TOWN including, without limitation, the Interim Employment Agreement. MANAGER agrees that the TOWN has provided him with the requisite notice for the termination of the Interim Employment Agreement.

12. Severability. If any provision, or any portion of the Agreement is held unconstitutional, illegal, invalid or unenforceable by a court of competent jurisdiction, then the remainder of this Agreement shall be deemed severable and shall not be affected and shall remain in full force and effect to the fullest extent permitted by law.

13. Non-Assignment. 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. Acknowledgment. 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.

*[The remainder of this page is left intentionally blank.]*

Executed by the TOWN and TOWN MANAGER this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

TOWN

TOWN MANAGER

\_\_\_\_\_  
Anita T. Cereceda, Mayor

\_\_\_\_\_  
Donald D. Stilwell

WITNESS:

APPROVED AS TO LEGAL FORM

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Buchanan, Ingersoll & Rooney/  
Fowler White Boggs, Town Attorney

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