

**EMPLOYMENT AGREEMENT**  
**TOWN MANAGER**

This Employment Agreement ("Agreement") is made and entered into this \_\_\_\_\_ day of September 2017, between the Town of Cutler Bay, a Florida municipal corporation (the "Town"), and Rafael G. Casals ("Town Manager").

**RECITALS**

**WHEREAS**, Section 3.1 of the Town Charter (the "Charter") requires that there shall be a Town Manager who is the Chief Administrative Officer of the Town;

**WHEREAS**, the Town Manager represents he has the expertise and skills to serve as the Town Manager; and

**WHEREAS**, the Town desires to employ the services of Rafael G. Casals as Town Manager and Mr. Casals wishes to accept this employment.

**NOW, THEREFORE**, in consideration of the premises and mutual covenants contained in this Agreement, the parties agree as follows:

**Section 1. Recitals.**

The above and foregoing recitals are true and correct and are incorporated herein by this reference.

**Section 2. Duties.**

2.1 The Town Manager shall have all powers and perform all duties and responsibilities required by this Agreement and prescribed in the Charter and applicable sections of the Town Code.

2.2 The Town Manager shall carry out the policy directives as determined by a majority of the Town Council.

2.3 The Town Manager shall provide the Town Council with a monthly report, which shall include a list of directives from the Town Council and the status of achievement of the same. The report shall be included in the monthly Council Agenda Package.

2.4 The Town Manager shall attend all Council meetings unless excused by the Council. He shall also attend other meetings, including committee meetings, as directed by the Town Council. The Town Manager shall appoint an Acting Town Manager who shall be a member of the Town Manager's staff to carry out these duties whenever the Town Manager is to be absent from the town for more than five (5) consecutive days and shall so advise the Town Council, staff, attorney and clerk in a written memorandum.

2.5 The Town Manager shall perform such other duties as may be assigned by the Town Council from time to time.

### **Section 3. Salary.**

3.1 The Town Manager shall receive an annual salary in the amount of ~~\$181,400.00~~ \_\_\_\_\_, payable in equal installments in accordance with the Town's existing pay periods.

3.2 The Town Council shall evaluate the performance of the Town Manager in accordance with Town Resolution 2013-10. The Town Council may enhance the Town Manager's annual salary and/or benefits based upon the result of the performance evaluations or for any other reason that the Town Commission, in its sole discretion, deems in the Town's best interest. The Town Council may not reduce the Town Manager's annual salary and/or benefits without the Town Manager's consent.

3.3 The Town Manager shall be entitled to receive a cost of living adjustment ("COLA") in an amount equal to the COLA provided by the Town to its general employees.

3.4 For purposes of this Agreement, the Town Manager's anniversary date shall be June 19 of each year (the "Anniversary Date").

### **Section 4. Term.**

4.1 This Agreement shall have a ~~two~~ three year term commencing on ~~June 19, 2015~~ June 18, 2017 and ending on June 18, 2020 (the "Term").

4.2 This Agreement shall automatically renew on its Anniversary Date for successive ~~two~~ three year terms, under the same terms and conditions as set forth herein, unless either party advises the other party in writing at least sixty (60) calendar days in advance of the Anniversary Date that it shall not be renewed.

4.3 Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the Town Council to terminate the services of the Town Manager at any time, subject only to the provisions set forth in Section 5 of this Agreement.

#### **Section 5. Termination.**

5.1 In accordance with Section 3.2 of the Charter, the Town Manager shall serve at the pleasure of the Town Council. Nothing in this Agreement shall prevent, limit, or otherwise interfere with the right of the Town Council to terminate the services of the Town Manager at any time during a Regular or Special Town Council meeting. The Town Manager may be removed by the affirmative vote of no less than three (3) Council Members, but such removal shall not take place within ninety (90) days after any election at which any Council Member is elected to office.

5.2 In the event the Town Council wishes to terminate the Town Manager for convenience, the Town shall: (i) provide the Town Manager with a lump sum severance payment equal to twenty (20) weeks of his regular base salary at the time of termination ("Severance Payment"); and (ii) continue to pay the premium for the Town Manager's health insurance for twenty (20) weeks after the effective date of his termination ("Health Care Continuation"). The Town shall not provide the Town Manager with his automobile allowance, cellular telephone allowance, or any other benefit or reimbursement (except as is specifically set forth in this paragraph) beyond the date of his termination. The Severance Payment shall be paid to the Town Manager in a lump sum upon his termination or within thirty (30) days thereafter at the Town Council's option.

5.3 Notwithstanding the provisions of Section 5.2, the Town Council may terminate the Town Manager at any time during a Regular or Special Town Council meeting for misconduct as defined in Section 443.036(30), Florida Statutes, and/or for violating the ICMA's Code of Ethics. If the Town Manager is terminated for misconduct and/or for violating the ICMA's Code of Ethics, the Town Manager shall not receive the Severance Payment or the Health Care Continuation; however, his termination under this Section shall have no impact on the Town Manager's entitlement to any pay or benefits earned prior to the date of his termination.

5.4 With the exception of his entitlement to any payout for his accrued and unused leave benefits under Section 6 of this Agreement, upon issuance of the Severance Payment and Health Care Continuation specified in Section 5.2, upon resignation or retirement as provided for in Section 5.5, or resignation as provided for in Section 5.6, the Town shall have no further contractual financial obligations to the Town Manager. The severance payment shall constitute

stipulated and liquidated damages and the maximum amount of financial liability for which the Town may be liable in the event of termination or breach of contract.

5.5 In the event that the Town Manager voluntarily resigns or retires during the Term of this Agreement, the Town Manager shall provide the Town with at least sixty (60) days' advance written notice, unless the parties agree in writing to a different period of time. In the event of resignation by the Town Manager under this Section or timely notice of non-renewal of the Agreement by either party pursuant to Section 4.2 of the Agreement, the Town Manager shall not be entitled to receive the Severance Payment or Health Care Continuation as specified in Section 5.2 of this Agreement.

5.6 In the event that the Town Manager voluntarily resigns with less than sixty (60) days' advance written notice, the Town Council may elect to terminate the Town Manager immediately or allow the Town Manager to continue to serve until the date specified in the Town Manager's resignation. In the event of a resignation or termination under this paragraph, notwithstanding any other provisions of this Section, the Town Manager shall not be entitled to receive the Severance Payment or Health Care Continuation as specified in Section 5.2 of this Agreement.

#### **Section 6. Vacation Leave, Sick Leave and Holidays.**

6.1 The Town Manager shall be entitled to accrue leave benefits in accordance with the Town's Employee Policies and Procedures Manual (the "Manual"). Notwithstanding any conflicting provision in the Manual, the Town Manager shall accrue 23 days of vacation per year and shall be entitled, upon termination pursuant to Sections 5.2 or 5.5 of this Agreement only, to a payout for his accrued vacation leave up to a maximum of 480 hours and ~~for the balance of his accrued sick leave up to a maximum of 300 hours~~. If the Town Manager's employment is terminated pursuant to Sections 5.3 or 5.6 of this Agreement, the Town Manager shall not be entitled to a payout for any accrued vacation or sick leave.

6.2 The Town Manager shall be entitled to all holidays recognized by the Town.

6.3 The Town Manager shall not use more than five (5) consecutive business days of vacation leave without prior verbal or written approval of the Town. Prior to such leave, the Town Manager shall notify the Council of who the Acting Town Manager will be during that leave and how the Town Manager may be reached while on leave in case of an emergency.

6.4 The Manager shall be allowed to elect payment of accrued, unused vacation leave in lieu of time off to a maximum of one hundred and twenty (120) hours per fiscal year. Any such election may only be made once per fiscal year and must be made before October 1<sup>st</sup> of the

new fiscal year. The Manager is prohibited from electing payment for any of his accrued, unused vacation leave less than sixty (60) days prior to his separation from the Town. In the event the Manager elects payment of his accrued, unused vacation leave less than sixty (60) days prior to his separation from the Town, the amount of any such payout shall be deducted from the Manager's final paycheck. If the final paycheck is insufficient to cover the amount of the payout, the Manager will immediately reimburse the Town upon request, within the timeframe requested by the Town and, in the event that the Manager fails to reimburse the Town and the Town is required to obtain the services of any attorney to collect the sums owed by the Manager, any attorney's fees and court costs incurred by the Town in doing so will be added to the amounts owed by the Manager to the Town.

**Section 7. Retirement Plan.**

The Town shall enroll the Town Manager in the Florida Retirement System ("FRS") Senior Management Class and shall make the employer contribution in the amount set by FRS. The Town Manager shall be required to make the necessary employee contribution in the amount set by FRS.

**Section 8. Insurance.**

8.1 The Town shall provide the Town Manager with health, vision, short-term and long-term disability and dental insurance benefits in the same manner as provided to all other Town employees.

8.2 If the Town Manager is underwritten for the highest rating for a Standard Plus Non-Tobacco user by the Town's insurance carrier, the Town agrees to obtain and pay the required premiums for a convertible ten (10) year term life insurance policy for the Town Manager, which shall provide a death benefit for the Town Manager's designated beneficiary(s) of \$310,000.00. This policy will permit the Town Manager to retain the policy following the termination of his employment with the Town, provided he pays the required premiums following his termination. If the Town Manager is not underwritten for such a policy, the Town, so long as the Town Manager remains employed by the Town, shall continue to enroll the Town Manager in its group life insurance policy, with a death benefit for the Town Manager's designated beneficiary(s) of \$200,000.00.

**Section 9. Professional Enhancement, Expenses and Allowances**

9.1 The Town agrees to pay travel and subsistence expenses for the Town Manager's travel to and attendance at the International City/County Manager's Association annual conference, Florida City/County Manager's Association annual conference and the Florida League of Cities annual conference in accordance with the expense schedule set forth in Chapter 112, Florida Statutes for public officials or as otherwise provided by the Town Council. The Town may choose to pay for the Town Manager's attendance at other seminars, conferences and committee meetings as it deems appropriate and approved by Town Council Action.

9.2 The Town recognizes the desirability of representation in and before local civic and other organizations, and encourages the Town Manager to participate in these organizations to foster a continuing awareness of the Town's activities as well as the community's attitudes and ideas. Where an expense is involved for such participation, the Town Manager may request reimbursement and Mayor may approve reimbursement of individual expenses up to \$250.00. The Town Council shall consider and may ratify individual expenses exceeding \$250.00.

9.3 The Town shall pay the Town Manager \$600 per month for automobile expenses.

9.4 The Town shall provide the Town Manager with a cellular telephone allowance of \$200 per month.

9.5 The Town agrees to budget and pay for the reasonable professional dues and subscriptions necessary for the Town Manager's participation in national, state and/or local associations and organizations that the Town agrees are necessary and desirable for both the Town Manager's professional growth and advancement and for the good of the Town.

**Section 10. Hours of Work.**

The Town Manager agrees to remain in the exclusive employment of the Town and shall not accept any other employment during the Term. The Town Manager further agrees to devote that amount of time and energy which is reasonably necessary for the Town Manager to faithfully perform his duties and responsibilities under the Agreement.

**Section 11. Bonds.**

The Town shall pay for the cost of any bonds for the Town Manager required by Florida Law or the Town Charter.

**Section 12. Indemnification.**

12.1 To the extent permitted by Section 768.28, Florida Statutes, the Town shall indemnify the Town Manager against any tort, professional liability claim or demand, or other non-criminal legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring in the course and scope of the performance of the Town Manager's duties. The Town's indemnification of the Town Manager under this paragraph shall extend to any and all losses, damages, judgments, interest, settlements, fines, court costs and other reasonable costs and expenses of legal proceedings, including attorneys' fees and any other liabilities incurred by, imposed upon, or suffered by the Town Manager in connection with or resulting from any claim, action, suit or proceeding, actual or threatened, arising out of or in connection with the course and scope of the performance of his duties. This provision shall not apply to any intentional or knowing violation of law by the Town Manager, to any acts or omissions of the Town Manager committed while acting outside the course and scope of his employment, committed in bad faith or with malicious purpose, or committed in a manner exhibiting wanton and willful disregard of human rights, safety, or property.

12.2 The Town Manager may request that the Town provide him with independent legal representation at the Town's expense if the Town Manager believes that there is a conflict of interest between his interests and those of the Town in connection with a matter brought against the Town Manager for which Section 12.1 above is applicable. If the Town determines that such a conflict of interest exists, the Town shall provide independent legal counsel to the Town Manager. Legal counsel provided by the Town shall extend until a final determination of the legal action. This provision shall not apply to any litigation or dispute between the Town and Town Manager.

12.3 Any settlement of any claim made against the Town Manager for which Section 12.1 above is applicable must be made with the prior approval of the Town Council in order for indemnification pursuant to Section 12.1 above to apply. The Town Manager acknowledges that the Town shall have the right to compromise such claims against it or against the Town Manager in his official capacity, in its sole discretion, provided that the Town notifies the Town Manager of its intention to compromise such claims prior to entering into a compromise.

**Section 13. Miscellaneous Provisions.**

13.1 Complete Agreement. It is understood and agreed that this document incorporates and includes all prior negotiations, correspondence, conversations, agreements, or understandings applicable to the matters contained herein and that the parties agree that there are no commitments, agreement, or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, it is agreed that no deviation



from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.

13.2 Amendment. No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed with the same formality and with equal dignity herewith.

13.3 No Waiver. The waiver by either party of a breach of any provision of this Agreement by the other shall not operate or be construed as a waiver of any subsequent breach by that party.

13.4 Severability. If any provision, or any portion thereof, contained in this Agreement is held to be unconstitutional, illegal, invalid, or unenforceable, the remainder of this Agreement, or portions thereof, shall not be affected and shall remain in full force and effect.

13.5 Non-Assignment. The rights and obligations herein granted are personal in nature and cannot be transferred or assigned by the Town Manager.

13.6 Governing Law. Florida law shall govern this Agreement and any litigation which may arise from this Agreement shall be filed and litigated in the Circuit Court in and for Miami-Dade County, Florida, or, if in Federal Court, in the Southern District of Florida.

13.7 Notice. Notice to either party shall be deemed given if sent by certified mail, return receipt requested, by recognized public or private postal facilities, by hand delivery, or delivered at a Town Council meeting. Notice shall be sent as follows:

For the Town: Peggy R. Bell, Mayor  
Town of Cutler Bay  
10720 Caribbean Boulevard, Suite # 105  
Cutler Bay, Florida 33189

With a copy to: Mitchell Bierman, Esquire  
Town Attorney  
Weis Serota Helfman Cole & Bierman  
2525 Ponce De Leon Blvd, Suite # 700  
Coral Gables, Florida 33134



For the Town Manager:   Rafael G. Casals  
28595 SW 170<sup>th</sup> Avenue  
Homestead, Florida 33030

**Section 14. WAIVER OF JURY TRIAL.**

BOTH THE TOWN AND THE TOWN MANAGER KNOWINGLY, VOLUNTARILY, AND IRREVOCABLY WAIVE THEIR RIGHT TO A TRIAL BY JURY IN ANY CIVIL PROCEEDINGS THAT MAY BE INITIATED BY EITHER PARTY WITH RESPECT TO ANY TERM OR CONDITION OF THIS AGREEMENT.

IN WITNESS WHEREOF, the Town, by signature of the Mayor as authorized by the Town Council in accordance with Resolution No. \_\_\_\_ passed on \_\_\_\_\_, 2017, has executed this Agreement the day and year first above written.

TOWN OF CUTLER BAY

By: \_\_\_\_\_  
Peggy R. Bell, Mayor

ATTEST:

\_\_\_\_\_  
Debra E. Eastman, MMC  
Town Clerk

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

\_\_\_\_\_  
WEISS SEROTA HELFMAN COLE & BIERMAN, P.L.  
Town Attorney

TOWN MANAGER  
\_\_\_\_\_  
Rafael G. Casals  
  
Date \_\_\_\_\_