

RESOLUTION NO. 10-1987

**A RESOLUTION OF THE TOWN COMMISSION OF
THE TOWN OF SURFSIDE, FLORIDA,
APPROVING AN EMPLOYMENT AGREEMENT
BETWEEN TOWN MANAGER, ROGER M.
CARLTON AND THE TOWN; AND PROVIDING AN
EFFECTIVE DATE**

WHEREAS, on September 14, 2010 by Resolution No.1952, the Town Commission approved Roger M. Carlton as Interim Town Manager; and

WHEREAS, the Town Commission desires to continue to employ the services of Roger M. Carlton as Town Manager and Roger M. Carlton wishes to serve as the Town Manager; and

WHEREAS, Roger M. Carlton has agreed to accept the terms and conditions set forth in the Employment Agreement attached hereto as Exhibit "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 incorporated herein by reference.

Section 2. Approval of Employment Agreement. The Employment Agreement between Roger M. Carlton and the Town attached hereto as Exhibit "A" be and the same is hereby approved. The terms of said Employment Agreement shall be effective December 15, 2010.

Section 3. Authorization to Execute. The Mayor shall execute the Employment Agreement on behalf of the Town.

Section 4. Effective Date. This Resolution shall be effective immediately upon adoption.

Motion by Commissioner Kapelman, Second by Commissioner Karukin.

PASSED AND ADOPTED this 14 day of Dec, 2010

FINAL VOTE ON ADOPTION

Commissioner Michael Karukin	<u>yes</u>
Commissioner Edward Kopelman	<u>yes</u>
Commissioner Marta Olchyk	<u>yes</u>
Vice Mayor Joseph Graubart	<u>no</u>
Mayor Daniel Dietch	<u>yes</u>



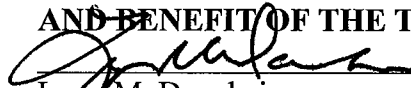
Daniel Dietch, Mayor

ATTEST:



Debra E. Eastman, MMC
Town Clerk

**APPROVED AS TO FORM AND LEGALITY FOR THE USE
AND BENEFIT OF THE TOWN OF SURFSIDE ONLY:**



Lynn M. Dannheisser
Town Attorney

EMPLOYMENT AGREEMENT
TOWN MANAGER

This Employment Agreement ("Agreement") is made and entered into this _____ day of _____ 2010, between the Town of Surfside, a Florida municipal corporation, (the "Town") and Roger M. Carlton ("Town Manager").

RECITALS:

WHEREAS, Section 34 of the Town Charter (the "Charter") requires that there shall be a Town Manger who is the Chief Administrative Officer of the Town;

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

WHEREAS, the Town desires to employ the services of Carlton as Town Manager and Carlton wishes to accept this employment; and

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, prescribed in the Charter and applicable sections of the Town Code.

2.2. The Town Manager shall carry out the policy directives of the Town Commission.

2.3. The Town Manager shall provide the Town Commission with a monthly report, which shall include a list of directives from the Town Commission and the status of achievement of the same.

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

Section 3. Salary.

3.1 The Town Manager shall receive an initial annual salary in the amount of \$121,105.00 payable in equal installments in accordance with the Town's existing pay periods. The salary shall be adjusted from time to time by cost of living adjustments consistent with other Town employees.

3.2 For purposes of this Agreement, the Town Manager's anniversary date shall be December 15 of each year.

Section 4. Relocation Expenses.

Should the Town Manager, in his discretion, relocate within the limits of the Town, the Town during the first twelve months of the contract shall provide up to \$2,500 in relocation expenses. Such expenses to be reimbursable based on receipts furnished by the Town Manager.

Section 5. Performance Evaluations.

5.1 The Town Commission shall evaluate the performance of the Town Manager at least once annually on or before December 15 of each year. This evaluation can be accomplished in individual sessions, orally or in writing, or publicly at the discretion of the Commission. It is understood and agreed that if the Town Manager receives a positive evaluation from the Commission, the Town Manager may receive a salary or benefit increase but this is solely within the discretion of the Commission, approved at a public meeting.

5.2 The evaluation specified in Sections 5.1 shall be based upon (i) the Town Manager's performance of the duties specified in Section 2 and (ii) the Town Manager's achievements of the Town Commission's policy directives.

Section 6. Holidays.

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

6.2 The Town Manager shall not use more than five (5) consecutive business days of vacation leave without prior approval of the Mayor.

6.3 Annual leave shall accrue on a calendar year basis.

Section 7. Annual Leave.

The Town Manager shall annually receive a total of twenty (20) business days of annual (vacation) leave. Such annual leave shall accrue equally per pay period.

Section 8. Sick Leave.

The Town Manager shall annually receive twelve (12) business days sick leave.

Section 9. Retirement Plan.

The Town will contribute, on a pay period basis, an amount equal to the pay period contribution it makes for its employees covered by the Town's defined benefit plan, to the ICMA retirement plan.

Section 10. Health Insurance.

The Town will pay Town Manager, on a bi-weekly basis, an amount equal to the bi-weekly contribution made by Town Manager's spouse to the Miami-Dade County medical and dental plans, i.e., \$295.95 for employee and spouse for health; \$22.89 for employee and spouse for dental. Should the Town Manager's spouse no longer be employed by Miami-Dade County, then the Town Manager at his option may a) continue to receive payment as specified herein or b) forego said payment and in lieu thereof may add himself and his spouse as participants in the Town's health insurance policy at no cost to the Town Manager.

Section 11. Life Insurance.

The Town shall pay the Town Manager annually in advance on the anniversary date an amount equal to the premium for a term life insurance policy equal to his annualized salary. The amount will be established by the Town's insurance consultant.

Section 12. Professional Dues and Expenses.

12.1 The Town shall pay for all reasonable and customary professional dues and subscriptions necessary for Town Manager's participation in municipal associations and organizations, as approved in the Town's annual budget.

12.2 The Town will pay for Town Manager's participation in those local civic and non-profit job-affiliated organizations that the Town Manager is authorized to participate in by the Town Commission.

12.3 The Town, through its Controller, shall pay reasonable non-personal job related expenses incurred by Town Manager, if incurred as part of his duties. Such payments shall be made on a reimbursement basis, based upon submittal by Town Manager's actual receipts and expense vouchers.

12.4 The Town will pay, on a bi-weekly basis, an amount equivalent to \$550 per month for automobile expenses.

Section 13. Cellular.

The Town will provide Town Manager with a cellular telephone allowance of \$60.00 per month.

Section 14. Travel.

The Town shall pay for the reasonable and customary travel expenses of Town Manager for meetings and seminars, as annually budgeted by the Town Commission or as may be directed by the Town Commission.

Section 15. Days.

Unless otherwise specified, any reference to days in this Agreement shall mean calendar days.

Section 16. Bonds.

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

Section 17. Term.

This Amended Agreement shall commence on December 15, 2010 ("Commencement Date"), and continue year to year thereafter, unless terminated earlier, provided however, in no event shall the term of this Agreement exceed two years from December 15, 2010 unless extended annually by mutual agreement.

Section 18. Termination.

18.1 In accordance with the Charter, the Town Manager shall serve at the pleasure of the Town Commission. Nothing in this Agreement shall prevent, limit, or

otherwise interfere with the right of the Town Commission to terminate the services of the Town Manager at any time.

18.2 In the event the Town Commission wishes to terminate the Town Manager prior to the expiration of the Term specified in Section 17, the Town Manager shall receive severance payment as follows: (i) if terminated between December 15, 2010, through and including the month of July, 2012, a severance payment equal to six (6) months salary; (ii) in the month of August, 2012, a severance payment equal to five (5) months salary; (iii) in the month of September, 2012, a severance payment equal to four (4) months salary; (iv) in the month of October, 2012, a severance payment equal to three (3) months salary; (v) in the month of November, 2012, a severance payment equal to two (2) months salary; (vi) in the month of December, 2012, a severance payment equal to one (1) month salary; (vii) if terminated between January 1, 2013 through and including the month of July, 2013, a severance payment equal to six (6) months salary; (viii) in the month of August, 2013, a severance payment equal to five (5) months salary; (ix) in the month of September, 2013, a severance payment equal to four (4) months salary; (x) in the month of October, 2013, a severance payment equal to three (3) months salary; (xi) in the month of November, 2013, a severance payment equal to two (2) months salary; (xii) in the month of December, 2013, a severance payment equal to one (1) month salary. For purposes of this Section, "severance payment" shall be based upon the salary specified in Section 3.1 as may be amended from time to time. All

severance payments shall be paid to Town Manager in a lump sum upon his termination or within thirty (30) days thereafter at the Town Commission's option.

18.3 Notwithstanding the provisions of Section 18.2, in the event Town Manager is terminated for cause, the Town shall have no obligation to pay Town Manager any severance pay. For the purposes of this Section "for cause" shall be defined as: (i) breach of any material term or condition of this Agreement; (ii) conviction of a felony; (iii) misconduct; (iv) gross insubordination); (v) willful neglect of duty; or (vi) adjudicated violation of the Florida Code of Ethics for Public Officers and employees, the Miami-Dade Conflict of Interest and Code of Ethics, the Town Charter, or the Town's Conflict of Interest Ordinance.

18.4 Upon payment of the severance payment specified in Section 18.2, upon termination as provided for in Section 18.5, or resignation as provided for in Section 18.6, the Town shall have no further contractual financial obligations to Town Manager. **The severance payment shall constitute agreed, stipulated, and liquidated damages and constitute the maximum amount of financial liability for which the Town may be liable in the event of termination or breach of contract.**

18.5 In the event that the Town Manager voluntarily resigns during the Term of this Agreement, the Town Manager shall provide the Town with 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, the Town Manager shall

not be entitled to receive the severance package specified in Section 18.2, but the Town shall pay the Town Manager all accrued unused vacation and sick leave calculated at the Town Manager's rate of pay in effect upon the date of termination.

18.6 In the event that the Town Manager voluntarily resigns with less than 60 days advance written notice, the Town Commission 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 either severance payment or vacation or sick leave unless the Town Commission authorizes payment of same.

18.7 If the Town Manager is unable to perform his duties as specified in Section 2 of this Agreement for a period of 30 consecutive days, or a period of 60 non-consecutive days during the Term of this Agreement, due to either disability, sickness, accident, or injury as certified by a physician, this Agreement shall be deemed terminated. In the event of the Town Manager's death, this Agreement shall be deemed terminated. If the Agreement is terminated under this Section, then the severance payment specified in Section 18.2 shall not be applicable.

18.8 Unless otherwise specified in this Agreement, or required by law, upon termination or expiration of this Agreement, the Town Manager or his beneficiary, shall be entitled to receive payment of any accrued or unused sick or vacation leave in

accordance with the terms of this Agreement, as may be amended from time to time. If the Town Manager is terminated for cause, sick and vacation leave shall not be paid.

Section 19. Miscellaneous Provisions.

19.1 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.

19.2 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.

19.3 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.

19.4 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.

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

19.6 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.

19.7 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 Commission meeting. Notice shall be sent as follows:

For the Town: Daniel Dietch, Mayor
Town of Surfside
9293 Harding Avenue
Surfside, Florida 33154
(305) 861-4863 (Telephone)
(305) 861-1302 (Fax)

With a copy to: Lynn M. Dannheisser, Esquire
Town Attorney
Town of Surfside
9293 Harding Avenue
Surfside, Florida 33154
(305) 993-1065 (Telephone)
(305) 993-5097 (Fax)

For the Town Manager: Roger M. Carlton
888 Brickell Key Drive
#1011
Miami, Florida 33131

Section 20. WAIVER OF JURY TRIAL.

BOTH THE TOWN AND THE TOWN MANAGER KNOWINGLY, VOLUNTARILY, AND IRREVOCABLY WAIVER 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 Commission in accordance with Resolution No. _____ passed on December 14, 2010, and Town Manager have signed an executed this Agreement the day and year first above written.

TOWN OF SURFSIDE

By: 

Daniel Dietch, Mayor

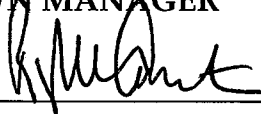
ATTEST:

Debra E. Eastman, M.M.C.
Town Clerk

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

Lynn M. Dannheisser,
Town Attorney

TOWN MANAGER



Roger M. Carlton

Date

12/17/10
