

Contract Differences

Elizabeth Mascaro Employment Contract: Sept 2022 -August 2025

Salary \$106,000. 2nd and 3rd year increase of 4% may have additional 2% increase based on performance

Car Allowance \$200.

Gas allowance \$0

Annual Leave: 120 hours

Town equipment: One cell phone and one computer

Severance: Termination without cause 4 months (4x4=16 weeks)

Marie Smith Employment Contract Feb 2026

Salary \$120,000. Cost of living increases same as staff (3%). Or above at Commission discretion.

Car Allowance \$200.

$+14,000 \div 12 = \$1,166.67$

Gas Allowance \$0

Annual Leave 120 hours, second year 160 hours

Town Equipment; One cell phone and one computer

Severance: Termination without cause 16 weeks

EMPLOYMENT AGREEMENT
TOWN MANAGER

THIS EMPLOYMENT AGREEMENT ("Agreement") is entered into as of the last date executed below by the TOWN OF MELBOURNE BEACH, FLORIDA, a Florida municipal corporation ("Town") and ELIZABETH MASCARO ("Manager").

Purpose of Agreement

The purpose of this Agreement is to set forth and terms and conditions of the Manager's employment by the Town.

Understandings

In consideration of the mutual promises below, the Town and the Manager agree as follows:

1. **Appointment.** The Town hereby appoints ELIZABETH MASCARO as its Town Manager. ELIZABETH MASCARO hereby accepts such appointment.

2. **Duties.** The Manager will be the chief administrative officer of the Town and report to, and be directly responsible to, the Town Commission for all Town affairs. The Manager will perform all functions and duties as specified in the Town Charter (including Section 3.03), Town ordinances, Commission resolutions, any job description approved by the Commission, and as may be directed by the Commission. The Manager shall attend all Commission meetings, unless excused by the Commission, and shall have the right to take part in discussions, but not vote. As reasonably possible, the Manger will also attend meetings of the Town's advisory and appointment boards, including the Planning and Zoning Board, Board of Adjustment and Code Enforcement Board.

3. **Performance.** The Manager agrees to devote the Manager's full time and attention to the business of the Town and to perform all such duties and functions diligently, competently and professionally and within the time frames and deadlines imposed by law, Town policy, the Commission or, if no required deadline, within a reasonable period of time. The Commission shall be the sole judge of whether the Manager has performed such duties and functions in a competent, professional, efficient and effective manner. Except as approved by the Commission, the Manager will not undertake any outside employment or business activities. However, this paragraph will not be construed to prohibit or restrict the Manager from serving on non-profit boards or providing any other charitable or civic services.

4. **Compensation and Benefits.**

(a) **Salary.** The Town will pay the Manager a salary of \$2,038.46 per week (\$106,000.00 annualized) for the Manager's active employment during the first year of this Agreement (beginning October 1, 2022). In the second and third year of this Agreement, Manager shall be entitled to a minimum amount of increase of 4% of the then-annualized salary

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and may be entitled to up to an additional 2% increase (for a total maximum possible annual increase of 6%) of the then-annualized salary based on performance-based incentive as approved annually by the Town Commission. Any periods of inactive employment will be compensated in accordance with the Town's policies and procedures concerning paid leave. The Commission will conduct an annual review of the Manager's performance and, in consultation with the Manager, set goals and performance objectives. The Commission may from time to time in its discretion increase the Manager's salary based on performance and/or cost of living increases. The Town will not reduce the Manager's salary during the term of this Agreement without the consent of the Manager.

(b) **Benefits.** The Manager will be eligible to participate in such medical, retirement, paid leave (annual leave, sick leave, etc.), and other standard fringe benefits as may be provided from time to time generally to other full-time employees of the Town. Except as otherwise specified in this Agreement, the Manager's participation in such benefits will be governed by the normal requirements, terms and conditions of any applicable plans, policies or procedures, and as may from time to time be amended, changed or terminated by the Town in its discretion. The Manager will receive 120 hours of annual leave per year. The Manager will not be eligible for compensatory ("comp") time. The Manager is eligible for payment of unused sick leave during employment or upon termination of employment consistent with the Town's employment policies.

(c) **Retirement.** In lieu of participating in the Town's FRS retirement plan, the Manager may elect to have the Town contribute an amount equal to an amount paid by the Town for that year as a contribution for Regular Class Town Employees to the Town's retirement plan into a deferred compensation plan, such as the International City Manager's Association (ICMA) Deferred Compensation Plan, that satisfies federal Internal Revenue Service deferred compensation plan requirements. Payment into a deferred compensation plan by the Town will negate the Town's responsibility to pay into any other retirement program provided by the Town. If the Manager elects to opt out of FRS participation, the Manager shall be responsible to make a proper election of withdrawal from FRS in accordance with Section 121.055, F.S. or as otherwise applicable. Upon separation from employment, any funds in the Manager's deferred compensation account will be transferrable to the extent allowed by such deferred compensation plan and applicable law.

(d) **Expenses.** The Town will pay the Manager a stipend of \$200 per month for the use of the Manager's personal vehicle (excluding normal commuting) for Town Business travel within the Brevard County. Use of a personal vehicle for business travel outside of Brevard County (excluding normal commuting) will be reimbursed at the rate specified in Town policies. The Town Manager will maintain commercial insurance on the Manager's personal vehicle and the Town will reimburse the Manager for the additional cost of this insurance over and above the Manager's normal personal vehicle insurance. Other travel expenses will be reimbursed per Town policy. The Town will supply the manager with a cellular phone and a computer at the Town's expense, which will be subject to Town policies and procedures. The phone provided by the Town will be subject to Florida's public records laws pursuant to Chapter 119, Florida Statutes.

(e) **Professional Organizations/Seminars.** The Town will pay or reimburse the Manager's professional dues and subscriptions and expenses for attending meetings at professional organizations and seminars as are approved in the Town's annual budget on a line item basis or as separately authorized by the Commission.

(f) **Life Insurance.** The Town shall provide the Manager a term life insurance policy equivalent to two (2) times the Town Manager's base salary and shall pay the total premiums for the coverage, not to exceed \$2,000.00 annually. The beneficiary of the term of life insurance policy shall be determined by the Town Manager and the policy shall remain in effect during the term of the Agreement.

(g) **Withholdings and Deductions.** The above compensation and benefits will be subject to any required withholdings and deductions for state and federal taxes, social security, and other normal payroll deductions or for amounts due the Town by the Manager.

5. **Indemnification.** The Town will indemnify and defend the Manager in connection with any civil action arising out of and in the scope of the Manager's employment with the Town in accordance with and to the extent permitted by Sections 111.07 and 111.071, Florida Statutes and other applicable law.

6. **Term and Termination.**

(a) **Term.** The term of this Agreement will begin on October 1, 2022 and will continue for three (3) years unless terminated earlier as provided in subsections (b), (c), or (d) as provided below. The Manager will provide the Town Commission the Manager's Notice of Intent to Renew or Extend this Agreement at least sixty (60) days prior to the end of the term of this Agreement (**by or on August 1, 2025**). Upon receipt of a Notice of Intent to Renew or Extend this Agreement from the Manager, the Town Commission shall begin negotiations to Renew or Extend this Agreement. Such negotiations shall involve the entire Town Commission unless a delegate is formally appointed by the Town Commission. If the term of this Agreement is not extended or renewed, neither party will have any obligation to the other upon expiration of the term.

(b) **Termination By Town Without Cause.** The Town Commission may terminate this Agreement without cause by majority vote of the Town Commission.

(c) **Severance Pay.** The Manager, if terminated without cause as provided in Section 6 (b), will be paid severance, in the Amount of **four (4) months' base salary** in exchange for the Manager executing a general release of claims in favor of the Town, in a form acceptable to the Town Attorney. The execution of this release of claims shall be made and received by the Town prior to any payment by the Town.

(d) **Termination For Cause.** The Manager may be immediately terminated upon a majority vote of the Commission for cause. For purposes of this Agreement, "cause" means:

(i) A failure to perform the Manager's duties as required by this Agreement (other than a failure enumerated in (ii) through (iv) below), provided the Manager is provided written notice of such failure and fails to correct the deficiency within 30 days. Notwithstanding the foregoing, in the event the Commission determines that the deficiency is not correctable or another failure occurs again within a 12 month period after a 30-day written warning is given, the Town may immediately terminate this Agreement upon a majority vote of the Commission.

(ii) Dishonest or unethical conduct;

(iii) "Misconduct" as defined in Section 443.036 (29), Florida Statutes;

(iv) Commission of an act that would constitute a felony of any kind or a misdemeanor involving moral turpitude.

If the Manager is terminated for cause, the Town will be obligated to pay the Manager's compensation and benefits through the date of termination only.

7. **Resignation By Manager.** This Agreement may be terminated by the Manager upon sixty (60) days' prior written notice to the Town. If the Manager fails to provide the required written notice, the Manager will be liable to the Town for liquidated damages in an amount equal to the Manager's salary during the sixty (60) days preceding the last day of the Manager's active employment with the Town. If the Manager provides the required written notice, the Town may elect to accelerate the Manager's last day of active employment and pay the Manager the Manager's normal pay and benefits in lieu of the Manager working some or all of such notice period. The Town may condition the payment of pay-in-lieu-of-notice on the Manager executing a general release of claims in favor of the Town, in a form acceptable to the Town Attorney. The execution of this release of claims shall be made and received by the Town prior to any payment by the Town. The Town Manager will not take leave, paid or unpaid, during the Notice period without permission of the majority of the Town Commission.

8. **Return of Town Property.** Upon separation of employment for any reason, the Manager will immediately return all Town property to the Town, including but not limited to keys, cell phone, laptop computer, credit cards, documents, and any and all other property of the Town in the Manager's possession or control. Upon separation of employment, the Manager will immediately cease accessing the Town's computer systems, except to the extent permitted by the general public.

9. **General Provisions.**

(a) **Headings.** The section and paragraph headings contained in this Agreement are for reference purposes only and will not affect in any way the meaning or interpretation of this Agreement.

(b) **Counterparts.** If multiple counterparts of this Agreement are executed, each will be deemed an original, but all counterparts together will constitute one and the same instrument.

(c) **Amendments.** This Agreement constitutes the entire agreement between the parties and supersedes all other understandings and agreements between the parties. Any amendment or change to this Agreement must be in a writing signed by both parties to this Agreement and approved by a majority vote of the Commission.

(d) **Waiver.** The waiver by any party of a violation of any provision of this Agreement will not operate as, or be construed to be, a waiver of any subsequent breach of the same or any other provision of this Agreement.

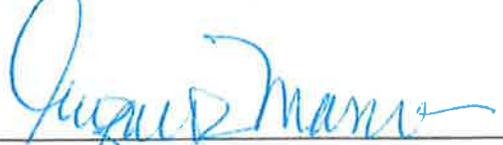
(e) **Governing law/venue/jury waiver/attorney's fees.** This Agreement will be governed by the laws of the State of Florida and venue for any action related to the terms of this Agreement shall be in Brevard County, FL. The parties hereby waive any right to a trial by jury in respect to any litigation based on or arising out of this Agreement. In any legal proceeding arising out of the terms of this Agreement filed by either party against the other, the parties shall bear their own attorney's fees and costs related to such action.

(f) **Plain meaning.** This Agreement will be interpreted in accordance with the plain meaning of its terms and not for or against the drafter of this Agreement.

(g) **Opportunity to Consult with Counsel.** The Parties hereby represent and acknowledge that they have been provided with the opportunity to discuss and review the terms of this Agreement with their respective attorneys before signing it and that they are freely and voluntarily signing this document in exchange for the benefits provided herein. The Parties further represent and acknowledge that they have been provided a reasonable period of time within which to review the terms of this Agreement.

IN WITNESS WHEREOF, the parties have hercunto set their hands and seals on the date first written below.

ELIZABETH MASCARO



TOWN MANAGER

Date: Approved by Town Commission
September 21, 2022

THE TOWN OF MELBOURNE BEACH,
FLORIDA

By: 

WYATT HOOVER, Mayor

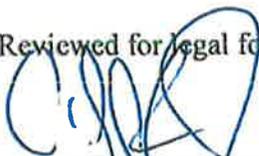
Date: Approved by Town Commission
September 21, 2022

ATTEST:



Town Clerk, Amber Brown

Reviewed for legal form and content:



Clifford R. Repperger, Jr., Town Attorney



Re: Today's Special Meeting Re Town Manager Candidate

From Sherri Quarrie <squarrie@melbournebeachfl.org>

Date Fri 1/23/2026 2:35 PM

To mmcbride@cfl.rr.com <mmcbride@cfl.rr.com>

Thank you for the information. Please see the budget amounts each city has in comparison to ours which is \$5,600,000. That is a very large difference in taxpayer funds.

Fernandina Beach \$5,000 ([2024](#)) Budget \$240,000,000.

Boca Raton \$6,000 ([2025](#)) Budget \$168,000,000.

Redington Shores \$8,000 ([2023](#)) Budget \$117,000,000.

Islamorada Village \$13, 500 ([2022](#)) Budget \$65,000,000.

Marco Island \$15,000 ([2019](#)) Budget \$36,000,000.



**Sherri Quarrie Commissioner
Town of Melbourne Beach
507 Ocean Avenue
Melbourne Beach, FL 32951**

From: mmcbride@cfl.rr.com <mmcbride@cfl.rr.com>

Sent: Friday, January 23, 2026 11:01 AM

To: Alison Dennington <adennington@melbournebeachfl.org>; Tim Reed <treed@melbournebeachfl.org>; Anna Butler <abutler@melbournebeachfl.org>; Terry Cronin <tcronin@melbournebeachfl.org>; Sherri Quarrie <squarrie@melbournebeachfl.org>

Cc: 'Annemarie McBride' <annemarie_mcbride@hotmail.com>

Subject: Today's Special Meeting Re Town Manager Candidate

Dear Mayor, Vice Mayor, and Commissioners,

After notification of a meeting to be held today, this Friday afternoon, regarding the Town Manager candidate, A. Marie Smith, I'm writing to provide you with recent Florida examples of the requests Ms. Smith has made regarding relocation reimbursements and severance pay. Note that each example is linked to a published document.

Here are examples of reimbursements for relocation given by other Florida municipalities:

Fernandina Beach \$5,000 ([2024](#))

Boca Raton \$6,000 ([2025](#))

Redington Shores \$8,000 ([2023](#))

Islamorada Village \$13, 500 ([2022](#))

Marco Island \$15,000 ([2019](#))

Here are examples of the standard Florida 20-week severance packages given by other municipalities:

Matt Benoit (Jupiter): Resigned in 2021 with a, [\\$95,084 payout for 20 weeks](#) plus benefits.

Mike Mortell (Stuart): Fired in 2025, receiving, [20 weeks of pay \(\\$102,200\)](#) as part of his contract.

Douglas Hewett (Hollywood): Resigned in 2012, receiving a, [20-week \(\\$66,000\) severance package](#).

Danielle Kelly (Avon Park): Contract approved in 2025 to include, [20 weeks of severance pay](#) if terminated under certain conditions.

Punta Gorda City Manager: The city was required to honor a, [20-week severance package for a former manager in 2024](#).

As you can see, what Ms. Smith is asking for is nothing unusual.

I was present for the four candidates' interviews. Most were impressive, but none as much as Ms. Smith. There were a few of her answers that stood out to me. First, that she was meticulous when it came to large budgets. Second, that she was not only knowledgeable with storm water issues but was also well acquainted with boots-on-the-ground involvement. And third, regarding town employees she said she always treated people with compassion, and she said it in a way that rang true to me.

My hope is you will grant her requests and welcome her. As you voted, I believe she is the best candidate to help move our town toward a more secure and hopeful future.

Thank you,

Mark McBride
310 2nd Avenue

Melbourne Beach Deputy Clerk

From: Tim Reed
Sent: Friday, January 23, 2026 1:44 PM
To: Melbourne Beach Town Clerk
Cc: Melbourne Beach Deputy Clerk
Subject: Fw: Today's Special Meeting Re Town Manager Candidate

Ms. Brown -

If possible, could you please print-out the message below from Mr. McBride and provide copies for the commission & public at tonight's STCM?

Thank you,

Tim Reed | Commissioner
Town of Melbourne Beach, FL
Brevard County's Oldest Beach Community - Established 1883

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Sent: Friday, January 23, 2026 11:01 AM
To: Alison Dennington <adennington@melbournebeachfl.org>; Tim Reed <treed@melbournebeachfl.org>; Anna Butler <abutler@melbournebeachfl.org>; Terry Cronin <tcronin@melbournebeachfl.org>; Sherri Quarrie <squarrie@melbournebeachfl.org>
Cc: 'Annemarie McBride' <annemarie_mcbride@hotmail.com>
Subject: Today's Special Meeting Re Town Manager Candidate

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My hope is you will grant her requests and welcome her. As you voted, I believe she is the best candidate to help move our town toward a more secure and hopeful future.

Thank you,

Mark McBride
310 2nd Avenue

TOWN MANAGER EMPLOYMENT AGREEMENT

THIS TOWN MANAGER EMPLOYMENT AGREEMENT (the “Agreement”) is made and entered into this ___ day of January, 2026, by and between the TOWN OF MELBOURNE BEACH, FLORIDA, a Florida municipal corporation (the “Town”) and A. MARIE SMITH (“Manager”), both of whom agree as follows:

Purpose of Agreement

The purpose of this Agreement is to set forth the terms and conditions of Manager’s employment by the Town.

Understandings

In consideration of the mutual promises set forth herein, the Town and Manager agree as follows:

Section 1. Appointment.

Pursuant to Article III, Section 3.01 of the Town of Melbourne Beach Charter, Manager is appointed by the Town Commission to serve as the Town Manager of the Town of Melbourne Beach. This Agreement shall be effective on February 9, 2026. It is preferable, though not mandatory, that the Manager reside within Brevard County, Florida, for the term of this Agreement.

Section 2. Duties.

Manager will be the chief administrative officer of the Town and report to, and be directly responsible to, the Town Commission for all Town affairs. Manager will perform all functions and duties established by the Town Charter, Town ordinances, Commission resolutions, any job description approved by the Town Commission, applicable state and federal law, and as may be directed by the Town Commission. Manager shall attend all Town Commission meetings, unless excused by the Town Commission, and shall have the right to take part in discussions, but not vote. As reasonably possible, Manager will also attend meetings of the Town’s advisory and appointment boards, including the Planning and Zoning Board, Board of Adjustment, and Code Enforcement hearings.

Section 3. Performance.

Manager agrees to devote Manager’s full time and attention to the business of the Town and to perform all such duties and functions diligently, competently and professionally and within the time frames and deadlines imposed by state and federal law, Town policy, the Town Commission or, if no required deadline, within a reasonable amount of time. The Town Commission shall be the sole judge of whether Manager has performed such duties and functions in a competent, professional, efficient, and effective manner. Except as approved by the Town Commission, Manager will not undertake any outside employment or business activities. However,

this paragraph shall not be construed to prohibit or restrict Manager from serving on non-profit boards or providing any other charitable or civic services.

Section 4. Compensation and Benefits.

A. **Salary.** The Town agrees to pay Manager an initial salary of One-Hundred-Twenty Thousand Dollars (\$120,000.00). Any periods of inactive employment will be compensated in accordance with the Town's policies and procedures concerning paid leave. The Town Commission shall conduct an annual review of the Manager's performance and, in consultation with Manager, set goals and performance objectives. The Town agrees to pay Manager in equal installments, on the same schedule as other Town employees, during the term of this Agreement, making all required and applicable payroll deductions. The Town may, but is not obligated to, provide merit raises to Manager. Additionally, the Town agrees to increase the salary of Manager in such amounts and to such extent as the Town increases the pay of other Town employees, as a result of an across-the-board or cost of living increase which affects all full-time Town employees. The Town may elect to increase the salary of Manager above the cost of living at its discretion at any time deemed appropriate by the Town.

B. **Benefits.** Manager shall be eligible to participate in such medical, paid leave (annual leave, sick leave, etc.), and other standard fringe benefits as may be provided from time to time generally to other full-time employees of the Town. Except as otherwise specified in this Agreement, Manager's participation in such benefits shall be governed by the normal requirements, terms, and conditions of any applicable plans, policies, or procedures, and as may from time to time be amended, changed, or terminated by the Town in its discretion. Manager shall receive 120 hours of annual leave for her first year of employment and 160 hours of annual leave per year thereafter. Manager shall not be eligible for compensatory time. Manager shall be entitled to accrue sick leave per Town policies. Upon termination of this Agreement, any unused sick leave shall be paid to Manager in accordance with Town policies and procedures.

C. **Retirement.** In lieu of participating in the Town's FRS retirement plan, the Town shall contribute an amount equal to an amount paid by the Town for that year as a contribution for Regular Class Town Employees to the Town's retirement plan into a deferred compensation plan, such as the International City Manager's Association (ICMA) Deferred Compensation Plan, that satisfies federal Internal Revenue Service deferred compensation plan requirements. Payment into a deferred compensation plan by the Town shall negate the Town's responsibility to pay into any other retirement program provided by the Town. Upon separation from employment, any funds in Manager's deferred compensation account will be transferrable to the extent allowed by such deferred compensation plan and applicable law.

D. **Automobile Allowance and Expenses.** To compensate Manager for automobile expenses related to the duties of Town Manager, the Town agrees to provide a monthly automobile allowance in the amount of Two-Hundred Dollars (\$200.00) to compensate Manager for expenses related to automobile use, purchase, lease, operation, insurance, maintenance, and all other expenses related to the duties of Manager pursuant to this Agreement. Manager shall be entitled to mileage reimbursement for all travel outside the boundaries of Brevard County or in excess of 25 miles from Town Hall for official business pursuant to any applicable Town policy. Under no

circumstances shall Manager be entitled to mileage reimbursement for commuting to and from her residence.

The Town shall supply Manager with a cellular phone and a computer at the Town's expense, which will be subject to the Town's policies and procedures. The cellular phone provided by the Town shall be subject to Florida's public records laws pursuant to Chapter 119, Florida Statutes.

E. **Professional Organizations/Seminars.** The Town shall pay or reimburse Manager's professional dues, subscriptions, and expenses for attending meetings at professional organizations and seminars as are approved in the Town's annual budget on a line item basis or as separately authorized by the Town Commission.

F. **Life Insurance.** The Town shall provide Manager a term life insurance policy equivalent to two (2) times Manager's base salary and shall pay the total premiums for the coverage, not to exceed \$2,000.00 annually. The beneficiary of the term life insurance policy shall be determined by Manager and the policy shall remain in effect during the term of this Agreement.

G. **Withholdings and Deductions.** The above compensation and benefits shall be subject to any required withholdings and deductions for state and federal taxes, social security, and other normal payroll deductions or for amounts due the Town by Manager.

Section 5. Indemnification.

The Town shall indemnify and defend Manager in connection with any civil action arising out of and in the scope of Manager's employment with the Town in accordance with and to the extent permitted by Sections 111.07 and 111.071, Florida Statutes, as may be amended, and other applicable law.

Section 6. Term and Termination.

A. **Term.** The term of this Agreement shall begin on February 9, 2026, and will continue for three (3) years unless terminated earlier as provided in subsections B., C., or D., as provided below. Manager shall provide the Town Commission Manager's Notice of Intent to Renew or Extend this Agreement at least sixty (60) days prior to the end of the term of this Agreement. Upon receipt of a Notice of Intent to Review or Extend this Agreement from Manager, the Town Commission shall begin negotiations to Renew or Extend this Agreement. Such negotiations shall involve the entire Town Commission unless a delegate is formally appointed by the Town Commission. If the term of this Agreement is not extended or renewed, neither party shall have any obligation to the other upon expiration of the term.

B. **Termination by Town Without Cause.** The Town Commission may terminate this Agreement without cause by a majority vote of the Town Commission.

C. **Severance Pay.** In accordance with Florida Statutes, Section 215.425, severance compensation shall be paid to Manager when employment is terminated without cause as provided

in Section 6(B.). In such event, the Town shall pay severance compensation equal to twenty (20) weeks of salary, at Manager's then-current rate of pay, excluding the automobile allowance, without the accrual of any leave time and without any other payments otherwise provided under this Agreement, except that during the twenty week severance period, the Town shall pay its share to continue the medical insurance benefits of Manager at the same rate or percentage prior to termination. Such severance pay shall be made in exchange for Manager executing a general release of claims in favor of the Town, in a form acceptable to the Town Attorney. The execution of this release of claims shall be made and received by the Town prior to any payment by the Town under this section.

D. **Termination for Cause.** Manager may be immediately terminated upon a majority vote of the Town Commission for cause. In the event Manager is terminated for cause for one or more of the following reasons, the Town shall not be obligated to pay severance to Manager:

- (i) Malfeasance, misfeasance, and/or nonfeasance in performance of duties and responsibilities;
- (ii) Neglect of duty, including the inability or unwillingness to properly discharge the responsibilities of office;
- (iii) Violation of any substantive Town policy, rule, or regulation, which would subject another Town employee to termination;
- (iv) Any act which involves moral turpitude or which causes the Town to be held in disrepute;
- (v) The commission by Manager of any embezzlement, fraud, theft, falsification of records or other deliberate and premeditated act of dishonesty towards the Town;
- (vi) The conviction of, or the pleading of *nolo contendere* by Manager to a misdemeanor or felony, regardless of whether adjudication is withheld;
- (vii) Willfully damaging the Town's real or tangible property;
- (viii) The abuse of alcohol, narcotics, or other controlled substances on the job to the extent that an independent, third-party investigator finds that it has materially affected Manager's ability to efficiently perform her responsibilities under this Agreement;
- (ix) Willingly causing physical, sexual, or verbal harassment and injury to any other employee of the Town; or
- (x) Any other act of similar nature of the same or greater seriousness to those matters listed above.

Section 7. Resignation by Manager.

This Agreement may be terminated by Manager upon sixty (60) days' prior written notice to the Town. If Manager fails to provide the required written notice, Manager shall be liable to the Town for liquidated damages in an amount equal to Manager's salary during the sixty (60) days preceding the last day of Manager's active employment with the Town. If Manager provides the required written notice, the Town may elect to accelerate Manager's last day of active employment and pay Manager the normal pay and benefits in lieu of Manager working some or all of such notice period. The Town may condition the payment of pay-in-lieu notice on Manager executing a

general release of claims in favor of the Town, in a form acceptable to the Town Attorney. The execution of this release of claims shall be made and received by the Town prior to any payment by the Town. Manager shall not take leave, paid or unpaid, during the Notice period without permission of the majority of the Town Commission.

Section 8. Return of Town Property.

Upon separation of employment for any reason, Manager shall immediately return all Town property to the Town, including but not limited to keys, cellular phone, laptop computer, credit cards, documents, and any and all other property of the Town in Manager's possession or control. Upon separation of employment, Manager shall immediately cease accessing the Town's computer systems, except to the extent permitted by the general public.

Section 9. General Provisions.

A. **Headings.** The section and paragraph headings contained in this Agreement are for reference purposes only and will not affect in any way the meaning or interpretation of this Agreement.

B. **Counterparts.** If multiple counterparts of this Agreement are executed, each will be deemed an original, but all counterparts together shall constitute one and the same instrument.

C. **Amendments.** This Agreement constitutes the entire agreement between the parties and supersedes all other understandings and agreements between the parties. Any amendment or change to this Agreement shall be in writing signed by both parties to this Agreement and approved by a majority vote of the Town Commission.

D. **Waiver.** The waiver of any party of a violation of any provision of this Agreement shall not operate as, or be construed to be, a waiver of any subsequent breach of the same or any other provision of this Agreement.

E. **Governing Law/Venue/Jury Waiver/Attorneys' Fees.** This Agreement shall be governed by the laws of the State of Florida and venue for any action related to the terms of this Agreement shall be in Brevard County, Florida. The parties hereby waive any right to a trial by jury in respect to any litigation based on or arising out of this Agreement. In any legal proceeding arising out of the terms of this Agreement filed by either party against the other, the parties shall bear their own attorneys' fees and costs related to such action.

F. **Plain Meaning.** This Agreement shall be interpreted in accordance with the plain meaning of its terms and not for or against the drafter of this Agreement.

G. **Severability.** The invalidity or partial invalidity of any portion of this Agreement shall not affect the validity of any other provision. In the event that any provision of this Agreement is held to be invalid, the remaining provisions shall be in full force and effect as if they have been executed by both parties subsequent to the expungement or judicial modification of the invalid provision. If necessary, to preserve the intent of the parties, the parties shall negotiate in good faith

to amend this Agreement, adopting a substitute provision for the one deemed invalid or unenforceable that is legally binding and enforceable.

H. **Opportunity to Consult with Counsel.** The parties hereby represent and acknowledge that they have been provided with the opportunity to discuss and review the terms of this Agreement with their respective attorneys before signing it and that they are freely and voluntarily signing this Agreement in exchange for the benefits provided herein. The parties further represent and acknowledge that they have been provided a reasonable period of time within with to review the terms of this Agreement.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals on the date listed below.

A. MARIE SMITH

TOWN OF MELBOURNE BEACH

TOWN MANAGER

By: _____
ALISON DENINGTON, Mayor

Date: _____

Date: _____

ATTEST:

Amber Brown, Town Clerk

Approved as to form and legal sufficiency:

Ryan G. Knight, Town Attorney