

**CITY MANAGER EMPLOYMENT AGREEMENT
BETWEEN DANA SOUZA AND THE CITY OF SANIBEL, FLORIDA**

This Employment Agreement ("Agreement") is made and entered into on this 5th day of October 2021, by and between the City of Sanibel, Florida, a municipal corporation ("City") and Dana A. Souza ("Souza" or "City Manager"), both of whom understand and agree as follows:

WITNESSETH:

WHEREAS, Section 4.01 of the City Charter requires that there shall be a City Manager who is the chief administrative officer of the City; and

WHEREAS, Section 4.02 of the City Charter requires the City Council to appoint a City Manager for an indefinite term by a majority vote of all the City Council members; and

WHEREAS, on September 30, 2021, the City Council voted unanimously in favor of appointing Souza as City Manager, subject to the successful negotiation and approval of an employment agreement between the City and Souza; and

WHEREAS, the City desires to provide certain compensation and benefits and establish certain conditions of employment for Souza through this Agreement; and

WHEREAS, Souza is willing to accept the appointment to the position of City Manager, subject to the terms and conditions of this Agreement; and

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

Section 1. Powers and Duties of the City Manager

The City Council hereby appoints and employs Souza as City Manager to perform the functions and duties as specified in the City Charter and City Code, and to perform other legally permissible and proper duties and functions as City Council shall from time to time assign or direct. The City Manager reports to the City Council and has sole responsibility for the employment and management of all City employees with the exception of the City Attorney's Office.

Section 2. Full-Time Employment.

- A. The City Manager will serve the City on a full-time basis, beginning on November 15, 2021 ("Effective Date") and shall devote all such time and attention as necessary to faithfully perform his duties under this Agreement. The City Manager may begin requesting documents, as well as interviewing and meeting with City staff prior to the Effective Date, but he will not be compensated for any activities during that period.
- B. The City Manager is an exempt employee, who is expected to engage in those hours of work that are necessary to fulfill the obligations of his position. The City Manager does not have set hours, as he is expected to be available at all times; and, in

recognition of that fact, the City Manager's hours of work will be flexible within reasonable bounds.

- C. The City Manager shall not engage in outside employment, without prior approval of the City Council.

Section 3. Term.

- A. The term of this Agreement shall commence on the Effective Date and shall continue until terminated by either the City or the City Manager as provided herein.
- B. The City Manager serves at the pleasure of the City Council and nothing herein shall be taken to imply or suggest a guaranteed tenure. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the City Council to terminate the services of the City Manager at any time, subject only to the provisions set forth in this Agreement.
- C. Nothing in this Agreement shall prevent, limit, or otherwise interfere with the right of the City Manager to resign at any time from his position with the City, provided however, he shall provide the City Council with at least sixty (60) days' prior written notice of resignation, unless waived by the City Council.
- D. If the City Manager travels outside of the Twentieth Judicial Circuit (Charlotte, Collier, Glades, Hendry, and Lee counties), the City Council shall be notified in advance.

Section 4. Salary.

- A. The City agrees to pay City Manager as compensation for his services under this Agreement an initial annual base salary of Two Hundred Three Thousand and No/100 Dollars (\$203,000.00) payable in bi-weekly installments. This salary is subject to all legally required deductions.
- B. The City Council may, by Resolution, direct the payment of a bonus or bonuses or other compensation to the City Manager, in amounts and terms determine by the City Council at its sole discretion.
- C. The City Council may review the annual base salary and/or other benefits to the City Manager and increase same in such amounts and to such an extent as the City Council may determine desirable on the basis of the performance of the City Manager. Nothing herein shall require the City Council to increase the compensation and/or benefits or other benefits of the City Manager.
- D. In accordance with Section 4.02(d) of the City Charter, the initial annual base salary shall be fixed by the City Council and shall not be reduced during the tenure of the City Manager.

Section 5. Residency; Housing/Commute Allowance.

- A. The City Manager, in accordance with Section 4.02(c) of the City Charter, may only reside outside the City with the approval of City Council.
- B. The City Council, by approval of this Employment Agreement, waives the residency requirement for the City Manager for a period of nine (9)-months from the Effective Date, with any further extension of the waiver being subject to the approval of the City Council. During this period (including any approved extensions), the City agrees to pay the City Manager a commute allowance of \$800 per month, to offset commute expenses from his present home in Collier County, payable in equal portions in the City Manager's bi-weekly pay and beginning upon commencement of employment.
- C. Upon becoming a legal resident of the City, the commute allowance described in Section 5(B) of this Agreement shall cease, and the City shall pay the City Manager a residency housing allowance of \$3,000.00 per month, to offset housing costs within the City, payable in equal portions in the City Manager's bi-weekly pay.

Section 6. Termination and Severance Pay.

- A. It is agreed by the City and the City Manager that this Agreement is an "at will" employment agreement and that the City Manager serves at the will of the City Council, subject to the provisions of this Agreement. The City Manager hereby affirmatively and voluntarily waives the right to a showing of "good cause" and any and all rights to a public hearing with respect to termination or removal by the City Council pursuant to Section 4.02 of the Charter and its related provisions. Further, City Manager waives and all rights to a hearing to change the City Manager's employment with a property interest" to "employment at will." The City Manager acknowledges that the City Council may submit to the electorate a proposal to amend the City Charter to delete the right of the City Manager to a "for cause" finding requirement and hearing and to clarify that the employment of the City Manager is "at will" and the City Manager hereby expressly agrees to an amendment to the City Charter for that purpose.
- B. If the employment of the City Manager is terminated because of his conviction of a felony, conviction of a misdemeanor involving personal gain or moral turpitude, or any other misconduct as defined in Section 443.036(29), Florida Statutes (as may be amended), then the City Manager shall not be entitled to any severance pay, and such pay is expressly prohibited by Section 215.425(4)(a)2., Florida Statutes.
- C. If the employment of the City Manager is terminated by the City Council for reasons other than those described in Section 6(B) above, the City shall provide the City Manager with severance pay in the form of a lump-sum cash payment equal to twenty (20) weeks total compensation, less federal and state withholding. Total compensation for the purpose of this severance provision means the aggregate amount of salary,

housing allowance, vehicle allowance, and insurance benefits paid by the City. Total compensation does not include any cell phone allowance or any other allowance provided to the City Manager. The City Manager shall also be compensated for all earned and unused vacation and medical leave calculated at the rate of pay in effect upon termination, subject to a maximum of 45 days of vacation leave and 15 days of medical leave.

- D. If the City Manager resigns following a suggestion by the City Council that he resign, then he shall be deemed terminated as provided in Section 4(C) above and shall be entitled to receive the severance compensation as detailed in Section 4(C); however, if such resignation is voluntary and without suggestion by the City Council, no such severance shall be due or owing.
- E. In consideration for the severance pay described in Section 4(C), and as a condition precedent to the receipt of such severance pay, the City Manager shall execute a general release in favor of the City, releasing the City, its officials, officers, employees, attorneys and agents from any and all obligations, claims, or liabilities arising out of the City Manager's employment with the City, including but not limited to claims for wrongful termination, discrimination, and defamation.

Section 7. Retirement/Deferred Compensation.

- A. City Manager shall be eligible to participate in any retirement or deferred compensation plan under the same conditions as those available to other City employees.
- B. For the duration of the City Manager's employment with the City, the City shall be obligated to contribute a total of 10% of the City Manager's annual base salary to the City Manager's retirement plan(s) of choice, subject to any limitations of such plan(s). The City Manager shall provide written direction to the City's Finance Director of his directives regarding elections no more frequently than annually.

Section 8. Vehicle and Cellular Phone.

- A. The City shall provide to the City Manager an automobile allowance of \$550.00 per month. In consideration of the automobile allowance, no mileage shall be paid for travel within fifty (50) miles of the City.
- B. The City shall provide to the City Manager a cellular telephone allowance in the amount of \$100.00 per month, to cover the purchase of equipment and monthly charges.

Section 9. Vacation, Medical, Personal and Administrative Leave.

- A. The City Manager shall be credited with the following leave hours upon the effective date of employment:
 - 1. Ten (10) vacation days (80 hours).
 - 2. Five (5) medical days (40 hours).

3. Three (3) personal days (24 hours).
 4. Three (3) administrative leave days (24 hours).
- B. Upon commencement of employment on the Effective Date, the City Manager shall begin to accrue:
1. Twenty (20) vacation leave days (defined as eight-hour days) per year. Vacation leave balance will not accumulate beyond 360 hours.
 2. Fifteen (15) medical leave days (defined as eight-hour days). Medical leave balance will not accumulate beyond 120 hours.
 3. Three (3) personal leave days (defined as eight-hour days).
 4. Three (3) administrative days (defined as eight-hour days).
 5. The City Manager shall not use more than two consecutive weeks of any leave without prior approval of the City Council.
 6. Upon termination of employment, the City shall pay the City Manager for any unused hours up to the maximum of 480 hours (360 maximum vacation hours and 120 maximum medical leave hours), based upon the City Manager's salary as of the date of employment termination.

Section 10. Insurance and Other Benefits.

- A. The City agrees to provide to the City Manager the same coverage and benefit package and plan (including any applicable cost-sharing) as is enjoyed by other non-union City management employees, including but not limited to those benefits for medical, dental, and vision coverage and long-term disability coverage.
- B. The City agrees to provide or otherwise pay for a term life insurance policy for the City Manager with a coverage amount of \$500,000.00.
- C. Except as specifically provided herein, the City agrees to provide City Manager at least the benefits generally provided to other non-union general employees.
- D. If the City Manager is unable to begin medical insurance coverage for himself and for his dependents as of December 1, 2021, the City shall reimburse the City Manager the cost of his COBRA insurance for his current policy through the City of Naples from December 1, 2021 until such coverage is available through the City.

Section 11. Moving Expenses.

The City agrees to reimburse City Manager, for the actual and reasonable expense of moving into the City, up to a maximum of \$5,000.00.

Section 12. Professional Development.

- A. The City agrees to budget and pay the professional dues, subscriptions, travel, and subsistence expenses of City Manager for professional participation and travel, meetings, and occasions adequate to continue his professional development. Said participation on City time may include, but not be limited to, the International

City/County Management Association, the Florida League of Cities, the Florida City/County Manager's Association, and such other national, regional, state, and local governmental groups and committees which the City Manager serves as a member.

- B. The City also agrees to pay for travel and subsistence expenses of the City Manager for short courses, institutes, and seminars for his professional development and for the good of the City.

Section 13. Computer.

The City agrees to purchase for the City Manager a laptop computer, iPad or similar tablet, and associated hardware, software and connections for use by the City Manager. The City also agrees to pay for a desktop computer with adequate screens for use by the City Manager in his City Hall office.

Section 14. Civic Club Memberships.

The City recognizes the desirability of representation in and before local civic and environmental organizations, and the City Manager is authorized and encouraged to become a member of such civic clubs or organizations for which the City shall pay customary membership expenses.

Section 15. Bonding.

The City shall bear the full cost of any fidelity or other bonds required of the City Manager under any law or ordinance.

Section 16. Suspension.

The City Council may suspend the City Manager with full pay and benefits at any time during his employment by an affirmative vote of a majority of the entire City Council.

Section 17. Performance Evaluation.

- A. The City Council shall review and evaluate the performance of City Manager each year, within thirty (30) days of the anniversary date of the Effective Date. The City agrees to consider increasing the base salary and other benefits of the City Manager at the time of the review, in such amounts and to such extent as the City Council may determine appropriate, considering performance by the City Manager and the financial condition of the City; however, at no point shall the salary paid to City Manager be less than the salary set forth in Section 4 of this Agreement. Failure of the City Council to conduct such review and evaluation in any give year or years shall not be considered a breach of this Agreement.
- B. Annually, the City Council and the Manager shall jointly define such goals and performance objectives that they may determine necessary for the proper operation of the City and for the attainment of the City Council's policy objectives and shall further establish a relative priority among those various goals and objectives, and said

objectives and goals shall be reduced to writing. Objectives and goals hereunder shall generally be attainable within the time limitations specified and shall take in to account the City's annual operating budget and capital budget and appropriations provided thereunder.

Section 18. Indemnification.

To the extent allowed by law, but subject to the limitations set forth in Section 768.28, Florida Statutes, and as otherwise may be limited or prohibited by law, and without waiving the sovereign immunity of the City Council or the City, in addition to that required under state and local law, in the event that a claim or lawsuit is filed by a third party, the City shall defend, hold harmless and indemnify the City Manager against any tort, professional liability claim or demand or other legal action, including costs and attorney's fees related thereto, whether groundless or otherwise arising out of an alleged act or omission occurring in the performance of City Manager's duties as City Manager, provided that he timely reports the same to the City Council and cooperates fully and honestly in the City's defense thereof. This indemnification shall not be applicable if it is determined by a court of competent jurisdiction that such claim was the result of willful malfeasance or criminal misconduct by City Manager or which pertains to acts or omissions outside the course and scope of his employment under this Agreement.

Section 19. General Provisions.

- A. The text herein shall constitute the entire Agreement between the parties, except as may be amended exclusively by writing, signed by the parties hereto.
- B. The City's personnel rules apply equally to the City Manager as any other non-union employee, except to the extent of any conflict with this Agreement, in which case the conflict shall be resolved in favor of this Agreement. In addition to such personnel rules.
- C. All provisions of this Agreement are subject to and conditioned upon compliance with general laws, special laws of the State of Florida, City Charter, and City Code, all of which shall take precedence over any provision of this Agreement.
- D. This Agreement shall be construed pursuant to the laws of the State of Florida. For any litigation pertaining to this Agreement, the parties agree to venue in the Circuit Court of the Twentieth Judicial Circuit, in and for Lee County, Florida.
- E. Either party may request the renegotiation of any provisions of this Agreement at any time. If the parties are unable to reach agreement, those terms will remain unchanged.
- F. This Agreement will be construed and interpreted according to its language and not strictly against either the City Manager or the City, regardless of authorship.
- G. This Agreement is not assignable and shall be binding upon and inure only to the benefit of the parties, including the heirs at law and executors of City Manager.

- H. If any provision, or any portion thereof, contained in this Agreement is held unconstitutional, invalid, or unenforceable, the remainder of this Agreement, or portion thereof, shall be deemed severable, and shall not be affected, and shall remain in full force and effect.
- I. The terms of this Agreement shall remain in full force and effect and hold over until employment is terminated under the terms herein, resignation by City Manager, or a new Agreement or Amendment to this Agreement has been negotiated and entered into by the City Council and City Manager.

Section 20. Effective Date.

This Agreement shall be effective on November 15, 2021, conditioned strictly upon approval by City Council and execution by both parties on or before such date.

IN WITNESS WHEREOF, the City of Sanibel has caused this Agreement to be signed and executed in its behalf by its Mayor and duly attested by its City Clerk, and the City Manager has signed and executed this agreement, both in duplicate.

CITY OF SANIBEL

Holly D. Smith, Mayor

ATTEST:

Scotty Lynn Kelly, City Clerk

Approved as to form and legality:

John D. Agnew, City Attorney

WITNESSES:

Print Name:

Print Name:

CITY MANAGER:

Dana A. Souza

Date