

RESOLUTION 2013-2147

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, APPOINTING MICHAEL P. CROTTY AS TOWN MANAGER; APPROVING THE EMPLOYMENT AGREEMENT BETWEEN MICHAEL P. CROTTY AND THE TOWN OF SURFSIDE ATTACHED HERETO AS EXHIBIT "A"; AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT ON BEHALF OF THE TOWN; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Charter of the Town of Surfside (the "Town") provides for a Town Manager to act as the chief executive officer and the head of the administrative branch of the Town government;

WHEREAS, current Town Manager Roger Carlton has notified the Town that he is retiring from Town employment effective April 26, 2013; and

WHEREAS, the Town Commission desires to appoint and employ Michael P. Crotty as Town Manager Designee effective March 27, 2013 in accordance with the Employment Agreement attached hereto as Exhibit "A;" and

WHEREAS, upon the effective date of Roger Carlton's retirement as Town Manager, Michael P. Crotty will assume the position of Town Manager; and

WHEREAS, during his term as Town Manager Designee (i.e., March 20, 2013 through April 26, 2013), the terms and conditions of employment of Michael P. Crotty will be in accordance with 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 recitals are true and correct and are incorporated herein by this reference.

Section 2. Town Manager Appointment. The Town Commission hereby appoints Michael P. Crotty as the Town Manager Designee effective March 27, 2013, and as Town Manager effective April 26, 2013.

Section 3. Approval of Employment Agreement. The Employment Agreement between Michael P. Crotty and the Town attached hereto as Exhibit "A" is hereby approved and shall be effective on March 27, 2013.

Section 4. Authorization. The Mayor is hereby authorized to execute the terms of the Employment Agreement on behalf of the Town.

Section 5. Effective Date. This Resolution shall take effect immediately upon adoption.

PASSED and ADOPTED this 18 day of March, 2013.

Motion by ^{Vice Mayor} Commissioner Karukin, second by Commissioner Graubart

FINAL VOTE ON ADOPTION

Commissioner Joseph Graubart
Commissioner Michelle Kligman
Commissioner Marta Olchyk
Vice Mayor Michael Karukin
Mayor Daniel Dietch

yes
yes
yes
yes
yes



Daniel Dietch, Mayor

Attest:



Sandra Novoa, Town Clerk

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



Linda Miller, Interim Town Attorney

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EMPLOYMENT AGREEMENT
TOWN MANAGER

This Employment Agreement ("Agreement") is made and entered into 18th day of March, 2013, between the Town of Surfside, a Florida municipal corporation, (the "Town") and Michael P. Crotty ("Town Manager").

RECITALS

WHEREAS, Section 34 of the Town Charter (the "Charter") requires that there shall be a Town Manager 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 Crotty as Town Manager and Crotty 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 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 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. The report shall be included in the monthly Commission Agenda Package.

2.4 The Town Manager shall attend all Commission meetings unless excused by the Commission. He shall also attend Charter committee, standing and ad hoc committee, and other meetings, unless he has schedule conflicts that preclude his attendance.

2.5 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 \$155,000 payable in equal installments in accordance with the Town's existing pay periods.

3.2 For purposes of this Agreement, the Town Manager's anniversary date shall be March 27 of each year.

Section 4. Performance Evaluations.

4.1 The Town agrees to conduct formal performance evaluations of the Town Manager in a format acceptable to a majority of the Town Commission after six (6), twelve (12) and twenty-four (24) months of service. The Town Commission shall thereafter evaluate the performance of the Town Manager at least once annually on or before the anniversary date of each year. 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.

4.2 The evaluation specified in Sections 4.1 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 5. Holidays.

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

Section 6. Annual (Vacation) Leave.

6.1 Upon employment, the Town Manager shall be credited with ten business days of annual leave. In addition, the Town Manager shall annually receive a total of 20 business days of annual leave accrued on a calendar-year basis equally per pay period. The Town Manager shall submit leave slips for annual leave usage in accordance with Town policy for all other Town employees. The carryover and payout of accrued vacation leave will be governed by Town policy for non-union civilian employees unless such policy directly conflicts with this Agreement, in which case the conflicting provision of this Agreement shall control.

6.2 The Town Manager shall not use more than five (5) consecutive business days of vacation leave without prior verbal or written approval of the Mayor. Prior to such leave, the Town Manager shall notify the Commission 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.

Section 7. Sick Leave.

Upon employment, the Town Manager shall be credited with 10 business days of sick leave. The Town Manager shall also receive 12 business days of sick leave annually. The Town Manager shall submit leave slips for sick leave usage in accordance with Town policy for all other Town employees. The carryover and payout of accrued sick leave will be governed by Town policy for non-union civilian employees unless such policy directly conflicts with this Agreement, in which case the conflicting provision of this Agreement shall control.

Section 8. Retirement Plan.

The Town shall contribute 15% of the Town Manager's base salary to the ICMA retirement plan on a pay-period basis.

Section 9. Health Insurance.

The Town shall provide the Town Manager and his eligible dependents with health insurance coverage at the Town's cost in the Town's health insurance plan as provided to all other Town

employees. The Town Manager shall be eligible to participate in the Town's dental and vision insurance plans in the same manner as the Town's non-union civilian employees.

Section 10. Life Insurance.

The Town shall provide the Town Manager with term life insurance equal to his annual salary.

Section 11. Professional Dues and Expenses.

11.1 The Town shall pay for all customary professional dues and subscriptions necessary for the Town Manager's participation in the ICMA and FCCMA. In addition, the Town Manager's participation in other municipal and professional organizations shall be as approved in the Town's annual budget.

11.2 The Town shall pay for the 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, as approved in the Town's annual budget.

11.3 The Town, through its Controller, shall pay reasonable non-personal job-related expenses incurred by the Town Manager as part of his duties. Such payments shall be made on a reimbursement basis, based upon the Town Manager's actual receipts and expense vouchers. A budget for such anticipated expenditures shall be approved in the Town's annual budget.

11.4 On a bi-weekly basis, the Town shall pay the Town Manager \$450 per month for automobile expenses.

Section 12. Cellular.

The Town shall provide the Town Manager with a cellular telephone allowance of \$75 per month.

Section 13. Travel.

The Town Manager is hereby approved to attend the annual ICMA and FCCMA Conferences at the Town's expense, provided that his attendance at those Conferences does not interfere with the performance of his duties as Town Manager. In addition, the Town shall pay for the reasonable and customary travel expenses of the Town Manager for meetings and seminars as directed or annually budgeted by the Town Commission.

Section 14. Relocation Assistance.

In lieu of other relocation expenses (e.g., packing/unpacking, moving, storage, meals, lodging, and transportation for the Town Manager and his family), the Town shall pay the Town Manager three months of temporary housing assistance at \$1,500 per month. Should the Town Manager voluntarily resign his position prior to completing 24 months as Town Manager, he shall reimburse the Town \$4,500 for the temporary housing assistance.

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. Indemnification.

The Town shall indemnify the Town Manager against any tort, professional liability claim, or other legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring during the performance of the Town Manager's duties. This provision shall not apply to 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.

Section 18. Term.

The commencement date of this Agreement shall be the date the Town Commission adopts Resolution No. 13-2047 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 during a regular or special Town Commission meeting, subject to the provisions set forth in this Agreement.

Section 19. Termination.

19.1 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 during a regular or Special Town Commission meeting.

19.2 In the event the Town Commission wishes to terminate the Town Manager without cause, the Town Manager shall receive a lump sum severance pay equal to 20 weeks of his regular base salary at the time of termination. The Town shall also continue to pay the premium for the Town Manager's health insurance for 20 weeks after the effective date of his termination. The Town shall not provide the Town Manager with his automobile allowance, cellular telephone allowance, or any other benefit or reimbursement (except that specifically set forth in this paragraph) beyond the date of his termination. All severance payments (excluding the continuation of his health insurance benefits) shall be paid to the Town Manager in a lump sum upon his termination or within thirty (30) days thereafter at the Town Commission's option.

19.3 Notwithstanding the provisions of Section 19.2, in the event Town Manager is terminated for misconduct as defined in Section 443.036(30), Florida Statutes, the Town shall have no obligation to pay the Town Manager any severance pay. Misconduct includes, but is not limited to: (i) breach of any material term or condition of this Agreement; (ii) conviction of a felony; (iii) gross insubordination; (iv) willful neglect of duty; or (v) 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.

19.4 Upon payment of the severance payment specified in Section 19.2, upon resignation or retirement as provided for in Section 19.5, or resignation as provided for in Section 19.6, 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.**

19.5 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 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 19.2, but the Town shall pay the Town Manager for his accrued unused vacation and sick leave (if applicable) calculated at the Town Manager's rate of pay in effect upon the date of resignation in accordance with Town policy for non-union civilian employees.

19.6 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.

19.7 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 60 non-consecutive days during any one-year period for any reason other than an approved Family Medical Leave Act ("FMLA") absence, the Town Commission may terminate this Agreement. If the Town Manager takes FMLA-approved leave and exhausts his statutorily-protected, FMLA-approved leave in any one-year period, the Town Commission may terminate this Agreement. In the event of the Town Manager's death, this Agreement shall be terminated. If this Agreement is terminated under this Section, the Town Manager shall not be entitled to severance pay pursuant to Section 19.2 of this Agreement.

19.8 Unless otherwise specified in this Agreement, or required by law, upon termination 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 pursuant to Section 19.3 of this Agreement, sick and vacation leave shall not be paid.

Section 20. Miscellaneous Provisions.

20.1 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.

20.2 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.

20.3 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.

20.4 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.

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

20.6 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.

20.7 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: Linda Miller, Esquire
Interim Town Attorney
Town of Surfside
9293 Harding Avenue
Surfside, Florida 33154
(305) 993-1065 (Telephone)
(305) 993-5097 (Fax)

For the Town Manager: Michael P. Crotty
225 Cherry Circle
Satellite Beach, FL 32937

Section 21. 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 Commission in accordance with Resolution No. 13-2047 passed on March 18, 2013, has executed this Agreement the day and year first above written.

TOWN OF SURFSIDE

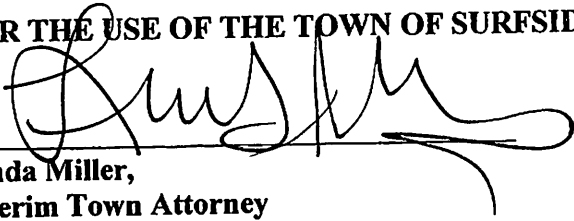
By: 
Daniel Dietch, Mayor

ATTEST:


Sandra Novoa,
Town Clerk

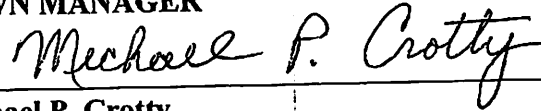
APPROVED AS TO FORM AND LEGAL SUFFICIENCY

FOR THE USE OF THE TOWN OF SURFSIDE ONLY:



**Linda Miller,
Interim Town Attorney**

TOWN MANAGER



Michael P. Crotty

Date 3/18/13