

EMPLOYMENT AGREEMENT

THIS AGREEMENT, made and entered into on _____, 2007 by and between the **City of Naples, Florida**, a municipal corporation, hereinafter called "Employer" or "City Council" as party of the first part, and **A. William Moss**, hereinafter called "Employee" or "City Manager", as party of the second part, both of whom understand as follows:

WITNESSETH

WHEREAS, Employer desires to employ the services of said A. William Moss as City Manager of the City of Naples, Florida, as provided for in the Charter of the City of Naples; and

WHEREAS, it is the desire of the Naples City Council to provide certain benefits, to establish certain conditions of employment, and to set working conditions of said Employee; and

WHEREAS, it is the desire of the City Council to (1) secure and retain the services of Employee, and to provide inducement for him to remain in such employment; (2) to make possible full work productivity and independence by assuring Employee's morale and peace of mind with respect to future security; and (3) to provide a just means for terminating Employee's services at such time as Employer may desire to terminate his employ; and

WHEREAS, A. William Moss desires to accept employment as City Manager.

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 agrees to employ said A. William Moss as City Manager to perform the functions and duties as provided by State law and City Charter, and to perform other legally permissible and proper duties and functions as City Council shall from time to time assign, subject to this Agreement.

Section 2. Commencement of Employment.

Employment under the terms of this Agreement shall commence on _____. Employee shall be present and available to perform the duties and functions of City Manager on a full time basis no later than _____.

Section 3. Term.

- A. The City Manager serves at the pleasure of the City Council and nothing herein shall be taken to imply or suggest a guaranteed tenure.
- B. 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 Employer provided; however, Employee shall provide the City Council with at least forty-five (45) calendar days prior written notice of resignation, unless waived by the City Council.
- C. The City Manager agrees to remain in the exclusive employ of the City Council, while employed by the City Council. The term "employed," however, shall not be construed to include occasional teaching, writing, speaking, or consulting performed on his time off, even if outside compensation is provided for such services. Said activities are expressly allowed, provided that in no case is any activity allowed which would present a conflict of interest with the City Manager's employment by the City Council. In the event overnight travel is required for such non-Employer related business, the City Council shall be notified in advance.

Section 4. Termination and Severance Pay.

In the event that the employment of the City Manager is terminated by the City Council, then in that event the City Council agrees to pay Employee a lump sum cash payment equal to six (6) months aggregate compensation, less federal and state withholding. Employee shall also be compensated for all earned personal leave calculated at the rate of pay in effect upon termination.

In the event the City Council at any time reduces the salary, compensation or other benefits of the City Manager in a greater amount than an applicable across-the-board reduction for all employees of the City, or in the event the City Council refuses to comply with any other provision benefiting the City Manager herein, or the City Manager resigns following a suggestion either formal or informal, by the City Council that he resign, then in that event Employee may, at his option, be deemed to be terminated, as provided herein.

In the event the City Manager is terminated because of his conviction of either a felony, or conviction of a misdemeanor involving personal gain or moral turpitude, then in that event, Employer shall have no obligation to pay the aggregate severance sum designated herein.

Should the City Manager be permanently disabled or otherwise unable to perform his duties because of sickness, accident, injury, mental incapacity or health for a period of twelve successive weeks beyond any accrued leave, the City Council shall have the right to terminate this Agreement subject to the severance provisions of this Section.

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 Employee, or a new Agreement has been negotiated and entered into by the City Council and the City Manager.

Section 5. Salary and Benefits Allowance.

Employer agrees to pay Employee for his services rendered pursuant hereto as City Manager an annual base salary of \$177,000 payable in installments at the same time as other employees of the City are paid.

Employer agrees to pay Employee an additional thirty-eight percent (38%) of the annual base salary set forth above as a benefit allowance in lieu of, and as an alternative to, any and all benefits relating to deferred compensation, health and dental insurance, life insurance, disability insurance, and retirement contributions. Said payment shall also be in installments at the same time as payments of the annual base salary and may be used by Employee to purchase benefits available to city department directors at a cost equal to the cost paid by city department directors. Such additional payment is not intended to be in lieu of workers compensation, social security, or unemployment compensation requirements of the City. Employer agrees to establish an additional 401(a) Retirement Plan sponsored by the ICMA-RC for use by the Employee in addition to other deferred compensation and retirement plans of the Employer. Employer agrees to make available to Employee other benefits as provided to department directors such as paid holidays, bereavement leave, etc.

Section 6. Automobile and Cellular Phone.

Employer shall provide a car allowance of \$500 per month to the City Manager, payable on or about the first day of each month. Said car allowance shall be intended to reimburse him for local travel only, defined as travel within Collier County. All travel outside of Collier County shall be reimbursed at a cents-per-mile rate equal to the IRS allowable rate then in effect. The Employer shall also provide a cellular telephone allowance in the amount of \$100 per month. Employer agrees to reimburse Employee for costs associated with excessive phone usage that may result during periods of public emergencies, such as hurricane preparedness and response.

Section 7. Personal Leave.

Employee will be entitled to thirty-four (34) personal leave days (defined as eight hour days) per year. The Employee shall be allowed to accumulate up to a maximum of 520 hours. For personal leave hours accumulated employee may, at any time, elect to be paid the cash value of such personal leave days (less applicable withholdings) based upon Employee's salary and benefit allowance when such payment is made. Said personal leave days may be utilized by Employee for any purpose, including vacation and sick leave. Employee shall not use more than two consecutive weeks of such personal leave without prior approval of the City Council. Upon termination of employment, Employer shall pay Employee for

any unused hours up to the maximum of 520 hours and payment for personal leave hours shall be based upon Employee's salary and benefit allowance as of the date of employment termination. Employee shall receive thirty (30) personal leave days effective upon the date of employment.

Section 8. Hours of Work.

It is recognized that the City Manager must devote a great deal of time outside normal office hours to the business of Employer and, in recognition of that fact, the City Manager's hours will be flexible within reasonable bounds.

Section 9. Professional Development.

Employer agrees, subject to the annual budget approved by the City Council, to pay the professional dues, subscriptions, travel and subsistence expenses of the City Manager for professional participation and travel, meetings and occasions adequate to continue his professional development. Said participation on City time to include, but not be limited to the International City/County Management Association, and such other national, regional, state and local governmental groups and committees thereof which Employee serves as a member, or which said participation is beneficial to Employer, as well as associated short courses, institutes, and seminars.

Section 10. General Expenses.

Employer recognizes that certain expenses of a non-personal and generally job-affiliated nature are incurred by the City Manager, including participation in civic and other local organizations, and hereby agrees to reimburse or pay said general expenses.

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

Section 11. Performance Evaluation.

The City Council shall review and evaluate the performance of the City Manager no later than January 2nd of each year. Employer agrees to consider increasing the base salary and/or other benefits of the City Manager at the time of his review, in such amounts and to such extent as the City Council may determine that it is desirable to do so, in light of performance by the Employee and the financial condition of the City.

Section 12. Indemnification.

Employer shall defend, save harmless, and indemnify Employee against any tort, professional liability claim, or demand or other legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring within the scope and performance of duties as City Manager. Said indemnification shall extend beyond termination of employment, and the otherwise expiration of this Agreement, to

provide full and complete protection to A. William Moss, by the City of Naples, as described herein, for any acts undertaken or committed in his capacity as City Manager, regardless of whether the notice of filing of a lawsuit for such tort, claim, demand, or other legal action occurs during or following employment with Employer.

Section 13. General Provisions.

- A. The text herein shall constitute the entire Agreement between the parties.
- B. This Agreement shall be binding upon and inure to the benefit of the heirs at law and executors of the Employee.
- C. This Agreement shall become effective upon adoption and approval by the Naples City Council and execution by Employee.
- D. If any provisions, or any portion thereof, contained in this Agreement is held unconstitutional, invalid, or unenforceable, the remainder of this Agreement, or portion thereof, shall not be affected and shall remain in full force and effect.

IN WITNESS THEREOF, the City of Naples has caused this Agreement to be signed and executed in its behalf by its Mayor and duly attested by its City Clerk, and Employee has signed and executed this Agreement, both in duplicate, the day and year first written above.

CITY OF NAPLES

Bill Barnett, Mayor

ATTEST:

Approved as to form and legality:

Tara A. Norman, City Clerk

Robert D. Pritt, City Attorney

WITNESSES:

EMPLOYEE:

Print Name: _____

A. William Moss

Print Name: _____