

RESOLUTION NO. 23-36

A RESOLUTION OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING AND AUTHORIZING THE EXECUTION OF THE EMPLOYMENT AGREEMENT BETWEEN THE TOWN AND ANDREW HYATT AS TOWN MANAGER, ATTACHED AS EXHIBIT "A;" AUTHORIZING AND DIRECTING THE APPROPRIATE TOWN OFFICIALS TO TAKE ALL ACTIONS NECESSARY TO EFFECTUATE THE INTENT OF THIS RESOLUTION; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS. On Monday, April 3, 2023, the Town hosted a public meet and greet for four prospective candidates for Town Manager: Andrew Hyatt, Seth Lawless, Jeff Shoobridge and Jeff Wilkins. Thereafter, Town Councilmembers' conducted one-on-one interviews, and public interviews after which the Town Council ranked Andrew Hyatt as the top ranked Town Manager candidate and directed Town staff to negotiate an Employment Agreement with Andrew Hyatt; and

WHEREAS, the Town Council finds that approving and authorizing the execution of the attached Employment Agreement is in the best interest of the businesses, residents, and visitors of the Town.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA THAT:

Section 1. The foregoing whereas clauses are ratified and confirmed as being true and correct, are the legislative and administrative findings of the Town Council and made a specific part of this Resolution.

Section 2. The Employment Agreement between the Town and Andrew Hyatt, attached as Exhibit "A" is approved, and all appropriate Town officials are hereby authorized and directed to take all actions necessary to effectuate the intent of this Resolution.

Section 3. All resolutions or parts of resolutions in conflict herewith are hereby repealed to the extent of such conflict.

Section 4. This Resolution shall become effective immediately upon adoption.

THE FOREGOING RESOLUTION was adopted by the Town Council upon motion by Council Member Veach and seconded by Council Member Woodson, and upon being put to a vote, the result was as follows:

Dan Allers, Mayor	aye
Jim Atterholt, Vice Mayor	aye
John R. King, Council Member	aye
Bill Veach, Council Member	aye
Karen Woodson, Council Member	aye

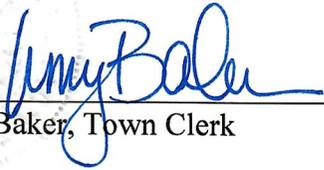
ADOPTED this 17th day of April 2023, by the Town Council of the Town of Fort Myers Beach, Florida.

TOWN OF FORT MYERS BEACH



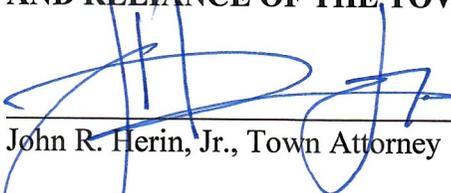
Dan Allers, Mayor

ATTEST:



Amy Baker, Town Clerk

**APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE USE
AND RELIANCE OF THE TOWN OF FORT MYERS BEACH ONLY:**



John R. Herin, Jr., Town Attorney

This Resolution was filed in the Office of the Town Clerk on this 17 day of April 2023.

EMPLOYMENT AGREEMENT

BETWEEN

ANDREW HYATT

AND

THE TOWN OF FORT MYERS BEACH

THIS EMPLOYMENT AGREEMENT made and entered into on this 17th day of April 2023, by the TOWN OF FORT MYERS BEACH, a Florida municipal corporation, hereinafter referred to as the "Town" and ANDREW HYATT, herein after referred to as "Employee".

WHEREAS, on April 17, 2023, the Town Council voted to employ the services of Andrew Hyatt, as the Town Manager of the Town of Fort Myers Beach, Florida, as provided for in Section 6.01 of the Town Charter; and

WHEREAS, it is the desire of the Town Council:

- (1) To retain the services of Employee as Town Manager and to provide inducement for him to remain in such employment; and
- (2) To make possible full work productivity by assuring Employee's morale and peace of mind with respect to future work security; and
- (3) To provide a means for terminating Employee's services at such time that it is deemed expedient to do so by decision of either or both parties; and
- (4) To establish standards of performance for Employee to act as a guide to ensure accountability; and

WHEREAS, Employee desires to accept employment as the Town Manager of the Town of Fort Myers Beach, Florida under the terms and conditions set forth herein.

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

Section 1. Duties.

1.1 The Town hereby agrees to employ Employee as the Town Manager of the Town to perform the functions and duties specified in the Town Charter and Code of Ordinances of the Town, and to perform other such legally permissible and proper duties and functions, consistent with the office of the Town Manager, as the Town Council shall from time-to-time assign. Employee shall not engage in any outside employment during the term of this Agreement without the specific approval of the Town Council.

1.2. Annually, the Town Council and Employee shall define such goals and performance objectives that they determine necessary for the proper operation of the Town. Goals and objectives shall be established annually and prioritized by the Town Council.

Section 2. Effective Date & Term.

2.1 The term of this Agreement shall be from the Effective Date of the Agreement until April 30, 2025, or as of the date this Agreement is terminated by either party in accordance with the provisions set forth herein.

2.2 Nothing in this Agreement shall prevent, limit, interfere with, or otherwise restrict the rights of the Town and the Town Council to terminate the services of the Employee at any time, with or without cause or notice, subject only to the provisions set forth in Sections 4.1 and 4.2 of this Agreement.

2.3 Nothing in this Agreement shall prevent, limit, or otherwise interfere with the right of the Employee to resign at any time from his position with the Town, subject only to the

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provisions set forth in Section 4.3 of this Agreement.

2.4 Employee shall notify the Town Council, at least one hundred twenty (120) days prior to the expiration of this Agreement of Employee's desire to continue to serve as Town Manager. By means of a formal vote at least ninety (90) days prior to the expiration date of this Agreement, the Town Council may extend this Agreement for two (2) one (1) year periods on the same terms and conditions as set forth herein. If this Agreement is not extended or terminated as provided herein, it shall terminate on the date specified in Section 2.1 with no further action required by the Town or Employee.

2.5 At least one hundred and twenty days (120) days prior to the expiration of any of the extension periods provided for herein, the Employee can also give notice of intent to renegotiate any of the employment terms herein. The parties may contract for renewal of Employee's position after the extension periods provided herein.

Section 3. Salary.

3.1 Town agrees to pay Employee for services rendered during the term of this Agreement commencing upon the Effective Date of this Agreement in the amount of \$197,000.00 per year, payable in equal installments in accordance with the Town's existing pay periods, plus longevity increases as provided for other General Executive/Management employees.

3.2 The Town Council shall meet to review and evaluate the performance of the Employee annually in April, beginning one year after the Effective Date of this Agreement. The performance review standards shall be prepared by the Town's Human Resources Director with the input of the Town Council and Employee. In any given year in which the Employee receives a favorable annual review, the Employee may be eligible to receive an annual merit increase.

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3.3 Employee shall also be eligible to receive any pay plan adjustments (cost of living adjustments) and lump sum payments that are made available to the Town's Executive staff.

Section 4. Termination or Resignation.

4.1 Except as provided in Section 4.2, if Employee is terminated during such time that Employee is ready, willing, and able to perform the duties of Town Manager under this Agreement, the Town agrees to pay Employee twenty (20) weeks of "Salary" as set forth in Section 3 ("Salary"). Severance Pay shall not include those items enumerated in Section 5 "Benefits," Section 6 "Hours of Work," Section 7 "Professional Development," or Section 10 "Other Terms and Conditions." Such Severance Pay may not exceed an amount greater than as set out in and defined in Section 215.425(d), Florida Statutes. In consideration of receiving the Severance Pay, Employee shall execute a general release in favor of the Town and in a form acceptable to the Town Attorney. Employee will also receive payment for any annual or sick leave accrued prior to the effective date of the termination by the Town Council to be paid to Employee within forty-five (45) days of termination as provided herein. After the payments described in the immediately preceding sentence, the Town shall have no further financial obligation to Employee pursuant to this Agreement except for the payment of pension benefits, benefits earned under this Agreement, and benefits otherwise required by law. This Section shall not prevent Employee from collecting any money earned by participating in the Town's deferred compensation plans (e.g., 401(a) and 457) as they may be amended from time to time.

4.2 In the event Employee is terminated either (i) for misconduct as defined in Section 443.036(29), Florida Statutes, as determined by a majority of the Town Council or (ii) "with cause" as determined by a majority of the Town Council (both subject to the "reconsideration" request as

provided for in Section 6.02 of the Town Charter), the Town shall have no obligation to pay the Severance Pay enumerated in Section 4.1 above. For purposes of this Agreement, “with cause” is defined as and limited to any of the following:

- (a) a violation of state or local ethics laws and codes, including, but not limited to the Florida Code of Ethics for Public Officers and Employees, the Town’s Code of Ethics¹, the Public Records Law, Sunshine Law, or the Lee County Code of Ethics;
or
- (b) failure to follow Town policy; or
- (c) a breach of this Agreement; or
- (d) violence or threatened violence, threats, or threatening behavior to a Town appointed or elected official, employee, customer, or resident; or
- (e) theft of Town money or property; or
- (f) falsifying records; or
- (g) gross insubordination²; or
- (h) illegal harassment or retaliation; or
- (i) failing an alcohol or drug test; or
- (j) commission of an unlawful act in the performance of official duties; or
- (k) improper performance of any lawful act; or
- (l) failure or omission to perform an act when there is an obligation to perform that

¹ Part III of Chapter 112, *Fla. Stat.*, “Code of Ethics For Public Officers and Employees”.

² The deliberate refusal to obey a lawful instruction of the Town Council, expressly defying a lawful instruction of the Town Council, or challenging the authority of the Town Council.

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act; or

- (m) neglect of duty; or
- (n) habitual drunkenness; or
- (o) incompetence in performing official duties; or
- (p) inability to perform official duties due to absence, disability, or other reason; or
- (q) arrest for a felony or for a misdemeanor related to the performance of official duties, or indicted or informed against for the commission of a federal felony or misdemeanor or state felony or misdemeanor; or
- (r) violation of any substantive Town policy, rule, or regulation, which would subject any other Town employee to termination; or
- (s) the commission of any fraudulent act against the interest of the Town; or
- (t) the commission of any act which involves moral turpitude; or

In the event Employee is terminated pursuant to this Section 4.2, the Town shall have no further financial obligation to Employee pursuant to this Agreement except for the payment of pension benefits, benefits earned under this Agreement, and benefits otherwise required by law. This Section shall not prevent Employee from collecting any money earned from participating in the Town's deferred compensation plans (e.g., 401(a) and 457) as they may be amended from time to time.

4.3 In the event that Employee voluntarily resigns the position of Town Manager during the term of this Agreement, Employee shall give the Town at least one hundred twenty (120) days written notice prior to the effective date of such resignation. The Town may elect, at its sole discretion, to accelerate the resignation date. Whether or not the Town elects to accelerate

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Employee's resignation, as of the effective date of the resignation the Town shall have no further financial obligation to Employee pursuant to this Agreement except for the payment of pension benefits, benefits earned under this Agreement, and benefits otherwise required by law. This Section shall not prevent Employee from collecting any money earned from participating in the Town's deferred compensation plans (e.g., 401(a) and 457) as they may be amended from time to time.

Section 5. Allowances and Benefits.

5.1 The Town will pay for Employee's cellular telephone. Additionally, except as otherwise provide herein, the Town will provide Employee with benefits and allowances as provided to all Town employees during the term of this Agreement consistent with the Town's current Employee Handbook, as same may be amended from time-to time. The Town agrees to pay one hundred percent (100%) of the total premium cost of the Employee's health, dental and vision insurance provided to Executive staff of the Town, and 50% of family and spouse. The Town reserves the right to amend, modify, terminate, or otherwise change or adjust any benefits as it sees fit, if it is done for all executives similarly situated as the Employee and in accordance with 9.2 below. If any additional communication and/or electronic equipment is mutually determined by the Town and Employee to be required so that Employee can provide the Town Manager services provided for herein, Town shall pay such additional costs so long as such costs have been budgeted by the Town. If Employee uses any private digital or electronic devices to conduct Town business, in accordance with applicable law Employee is responsible for retaining and providing the Town upon request all public records (as defined by applicable law) on any private digital or electronic devices. It shall be a breach of this Agreement if Employee fails to

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turn over all available public records to the Town that are within the employee's possession pursuant to Florida State Law within fifteen (15) days of any request for said public records. The provisions of this paragraph shall survive the termination of this Agreement.

5.2 Employee shall have the right to participate in the ICMA 401A Pension or the Town's pension plan. The Town will contribute 10% of the employee's salary into the selected plan. Employee shall vest twenty-five percent (25%) per year up to 100.

Section 6. Hours of Work.

6.1 Notwithstanding Town policies and procedures to the contrary, it is recognized that Employee must devote a great deal of time outside the normal office hours to business of the Town, and, to that end, the Employee will be allowed to take reasonable compensatory time off as shall be deemed appropriate during normal office hours consistent with the Town's Executive staff policies and procedures.

6.2 Employee acknowledges and agrees to live on Estero Island.

Section 7. Professional Development and Reasonable Expenses.

7.1 The Town hereby agrees to budget for and pay the reasonable and necessary travel, registration costs, and subsistence expenses of Employee only for professional and official travel, meetings and occasions adequate to continue the professional development of the Employee and to adequately pursue necessary official and other functions for the Town, including but not limited to the Annual Conference of the International City Management Association, the Florida League of Cities, one local civic organization such as Rotary, Kiwanis or other, and one (1) other national, regional, state and local governmental groups and committees thereof which the Employee serves as a member.

7.2 The Town also agrees to budget and to pay for the reasonable and necessary travel and subsistence expense of the Employee for short courses, institutes, and seminars that are necessary for Employee's professional development and for the good of the Town.

7.3 No less than thirty (30) days before any travel provided for herein, Employee shall notify the Town Council of Employee's absence from the Town.

7.4 The Town agrees to reimburse Employee for reasonable expenses incurred in the performance of his duties upon submission of receipts, invoices, or other documentation thereof, to a yearly amount not to exceed \$4,500.00 per year.

Section 8. Indemnification.

8.1 The Town shall provide a legal defense, and indemnification, under the same terms and conditions as provided to the other employees of the Town in accordance with the requirements and provisions of the Town Charter and Code of Ordinances of the Town. The Town shall have the right to compromise and settle any such claim or suit and pay the amount of any such settlement or judgment rendered thereon, in its sole discretion.

8.2 The Town shall bear the full cost of any fidelity or other bonds which may in the future be required of the Employee by law or ordinance.

8.3 Public Official's Liability Insurance - Town shall provide Public Officials Liability Insurance coverage applicable for all acts or omissions of the Town Manager acting within the scope of his employment, subject to and as provided for in the Annual Budget and as may be otherwise provided to Town Council members, Department Heads, and based solely upon the policies of insurance held by the Town from time to time.

Section 9. Other Terms and Conditions of Employment.

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9.1 The Town Council, in consultation with the Employee, shall establish such other terms and conditions of employment, as it may determine from time to time, relating to the performance of the Employee, provided such terms and conditions are not inconsistent with or in direct conflict with the provisions of this Agreement, the Town Charter, the Town Code of Ordinances, or any other applicable law.

9.2 All other provisions of the Town Charter, Town Code of Ordinances, and rules and regulations of the Town relating to benefits as outlined in the schedule of benefits for the Executive staff as they now exist or hereafter may be amended from time to time, shall also apply to the Employee as it would be to other general employees of the Town not covered by a collective bargaining agreement, in addition to said benefits numerated specifically for the benefit of the Employee herein.

9.3 The Town shall not at any time during the term of this Agreement reduce the salary, compensation, or other financial benefits of the Employee, except during an across-the-board reduction for all general employees of the Town or upon majority vote of Council due to review and renegotiation of this Employment Agreement.

9.4 Employee shall accrue and be entitled to annual leave, sick leave, and holidays in the same manner as Directors of the Town. Employee is entitled to eighty hours of annual leave upon hire, thereafter Employee accrues at a rate of nineteen (19) hours per pay period.

9.5 Employee shall be entitled to utilize accrued annual leave and sick leave without undue burden. Accrued annual leave or sick leave must be used to maintain Employee in pay status when Employee is on approved leave from work or when Employee is unable to attend work due to illness, or for other approved absences from work, and nothing in this Agreement shall

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require the Town to maintain Employee in pay status if Employee has exhausted annual leave and/or sick leave time.

9.6 Upon termination or resignation with appropriate notice, Employee shall be entitled to payout (a) of unused annual leave hours and (b) accumulated sick leave hours up to a maximum of 500 hours for each at the rate in effect at the time of termination or resignation.

Section 10. Notices.

10.1 Notices pursuant to this Agreement shall be given by deposit in the custody of the United States Postal Service, postage prepaid, return receipt requested, addressed as follows:

Town: Mayor
Town of Fort Myers Beach
2525 Estero Boulevard
Fort Myers Beach, FL 33931

With a copy to: John R. Herin, Jr, Esq.
Town Attorney
c/o Fox Rothschild, LLP
2 S Biscayne Blvd #2750
Miami, FL 33131

Employee: Andrew Hyatt
Confidential and Exempt

10.2 Alternatively, notices required pursuant to this Agreement may be personally given by hand delivery or a commercially recognized overnight carrier. Notice shall be deemed given as of the date of personal service, overnight delivery, or as of the date of deposit of such written notice with the United States Postal Service addressed to the parties as stated above and to the Employee at the address on file with the Town.

Section 11. General Provisions.

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11.1 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.

11.2 No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed by both parties.

11.3 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.

11.4 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.

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

11.6 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 Lee County, Florida.

11.7 Provisions of this Agreement, which by their terms extend beyond the termination, expiration or suspension of this Agreement will survive and remain effective in accordance with their terms and to the extent necessary to the intended preservation of such rights and obligations.

11.8 The parties acknowledge that this Agreement is the result of continual and ongoing negotiation between the parties of equal bargaining power and any ambiguities herein should not

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be construed against either party but should be given a fair and reasonable interpretation.

11.9 The headings or captions of Paragraphs in this Agreement are for reference only, do not define or limit the provisions of such Paragraphs and shall not affect the interpretation of such provisions.

11.10 This Agreement may be executed by facsimile signature or by other electronic means, such as electronic signature in one or more counterparts by the parties which, taken together, shall constitute one binding agreement.

11.11 Employee acknowledges that the legal counsel that prepared this Agreement is representing the Town rather than Employee and that Employee has been advised to seek the advice of independent counsel. Employee acknowledges that he has had the opportunity to seek the advice of independent counsel. Employee has obtained all information necessary to make an informed decision regarding this Agreement and that any claims regarding any possible conflict of interest regarding this Agreement or its preparation are freely and voluntarily waived.

11.12 While Employee is employed by the Town and thereafter, Employee shall cooperate with the Town in any internal investigation or administrative, regulatory or judicial proceeding as reasonably requested by the Town (including, without limitation, Employee being available to the Town upon reasonable notice for interviews and factual investigations, appearing at the Town's request to give testimony without requiring service of subpoena or other legal process, volunteering to the Town all pertinent information and turning over to the Town all relevant public records, whether owned by the Town or otherwise, which are or may come into Employee's possession, all at times and on schedules that are reasonably consistent with Employee's other permitted activities and commitments).

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Section 12. Waiver of Jury Trial

BOTH THE TOWN AND EMPLOYEE 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.

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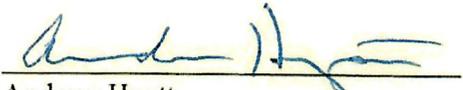
IN WITNESS WHEREOF, the Town of Fort Myers Beach, Florida, has caused this Agreement to be signed and executed on its behalf by its Mayor, and duly attested to by its Town Clerk, and approved as to form by the Town Attorney, and the Employee has signed and executed this Agreement, on the day and year first above written.

**TOWN OF FORT MYERS BEACH,
FLORIDA**

EMPLOYEE

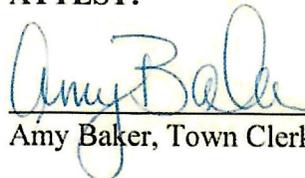


Dan Allers, Mayor



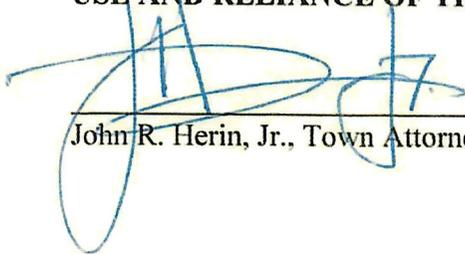
Andrew Hyatt

ATTEST:



Amy Baker, Town Clerk

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



John R. Herin, Jr., Town Attorney