

**CITY MANAGER'S  
EMPLOYMENT AGREEMENT**

**THIS AGREEMENT**, made this 9<sup>th</sup> day of September, 2020, between the **CITY OF COCOA, FLORIDA**, a Florida municipal corporation (hereinafter referred to as the "Employer") and **STOCKTON WHITTEN** (hereinafter referred to as the "Executive").

**WHEREAS**, Employer is a Florida municipal corporation organized and existing under the laws of the State of Florida; and

**WHEREAS**, Employer is desirous of establishing, in writing, the duties and responsibilities of the respective parties and memorializing the terms and conditions of employment in a written agreement to be executed by and between the parties; and

**WHEREAS**, the Executive has professional experience in the field of service required by this Agreement, is fully qualified to hold the position of City Manager and is desirous of becoming the City Manager under the terms and conditions set forth herein; and

**WHEREAS**, the Employer has determined this Agreement to be in the best interest of the Employer.

**NOW THEREFORE**, in consideration of the mutual promises herein contained, it is hereby agreed as follows:

1. Employment and Duties. Employer employs the Executive in the capacity of City Manager of Cocoa, Florida. The Executive agrees to perform such duties and functions as set forth in the Charter and Ordinances of the City of Cocoa, as said Ordinances and Charter may be amended from time to time, together with such other duties and functions as may be properly and legally assigned to him from time to time by the Cocoa City Council. The language of the City Charter relating to the position and function of the City Manager of the City of Cocoa, as may be amended from time to time, is incorporated herein by this reference into this Agreement as though it were fully set forth in the text of this Agreement verbatim. Executive also agrees to perform such duties and functions prescribed by the laws of the State of Florida and United States of America, including regulations of other appropriate administrative agencies, relating to the City of Cocoa and the position of City Manager. All such duties and function shall be performed within the frames or deadlines expressly imposed by law, applicable policy, rule, or established by the City Council. Absent a legally or City Council imposed deadline, the Executive shall perform his duties and functions within a reasonable period of time and with due regard for promptness, diligence, and professionalism.

The Executive shall request of the City Council from time to time such decisions or actions of the City Council which the Executive may determine are reasonably necessary for the successful accomplishment of his duties as City Manager. And, the Executive shall assign or devote such

resources and personnel in a manner in his judgment to best serve the interest of the City of Cocoa, Florida, consistent with the policies and direction of the City Council.

The City Manager shall remain in the exclusive employ of the City and shall devote all such time, attention, knowledge and skills necessary to faithfully perform his duties under this Agreement. The City Manager shall not render any other services of a professional or business nature to any other person or organization without the City Council's prior direction or consent as a governing body. This provision shall not include occasional teaching,

2. Performance. The Executive agrees to devote his entire time and attention to the business of the Employer, and shall not render any services of a professional or business nature to any other person or organization without the Employer's prior written consent. However, this paragraph shall not be construed to prohibit or restrict Executive from serving on non-profit boards or providing other charitable or civic services to the community, provided such service is without compensation. The Executive may also engage in off-duty teaching and making presentations to professional organizations, writing, or performing functions on behalf of the Florida City and County Manager's Association and such other state and local government groups and committees thereof. Any of the aforesaid activities are permitted provided such activities do not conflict or interfere with City Manager's duties as City Manager under this Agreement and are not a prohibitive activity under the Code of Ethics For Public Officers and Employees (section 112.311, et. seq., Florida Statutes).

3. Term. The term of this Agreement shall commence on October 9, 2020 and shall continue and terminate on midnight October 8, 2025, unless sooner terminated as provided herein.

4. Contract Renewal. Provided that neither party gives the other a termination notice, or the City Council decides otherwise as stated in this Section, there shall be an unlimited number of (3) three year automatic renewals of this Agreement. On or before the first regular City Council meeting six months prior to the expiration of any term of this Agreement, the Executive shall present the automatic renewal for the City Council's review and consideration, and Executive shall also state whether he desires to discontinue the automatic renewal provision. At this City Council meeting, the City Council shall have the discretion, by majority vote, to discontinue the automatic renewal provision set forth in this Section. If the City Council determines that the automatic renewal provision should be discontinued, this Agreement shall expire at the end of the current term, and there shall be no severance pay made except Executive shall receive, upon expiration of the current term of this Agreement, compensation for one hundred percent (100%) of his unused vacation and sick leave accrued through the expiration date not to exceed seven hundred twenty (720) hours of sick leave. If the City Council does not affirmatively vote to discontinue the automatic renewal provision at this City Council meeting, this Agreement shall automatically renew upon the expiration of the current term.

5. Compensation. For his services to the Employer, the Executive shall be compensated as follows:

(a) The Executive shall receive a starting salary of One Hundred Eighty Four Thousand and Nine Hundred Fifty Three Dollars (\$184,953.00), payable in installments at the same time as other Executives of the Employer are paid, less appropriate deductions for employment taxes, income tax and other lawful withholdings. The Executive shall be entitled to and receive all annual cost of living adjustment (COLA) and/or merit-based increases given to all employees. Nothing contained herein shall prohibit the City Council from providing other performance bonuses at the sole discretion of the City Council from time-to-time.

(b) Retirement Plan. Employee shall be entitled to the same retirement benefits as Employer's department directors. In addition, the Employer agrees to contribute on behalf of Employee, on an annual basis, and at of seven (7.5%) of Executive's annual salary into an ICMA 457 qualified retirement plan or the City's Nationwide 457 qualified retirement plan depending on which plan is chosen by the Executive. Employer shall add such amendments to its current pension plan to effectuate the foregoing ICMA or City's Nationwide Plan, if necessary.

(c) Flexible Benefit Spending Account. The Employer agrees to contribute an additional Twenty-Five and Noll 00 Dollars (\$25.00) per week above the Employer's standard non-union employee contribution for said Flexible Benefit Spending Account.

6. Conditions of Employment. The Executive, on condition of his employment by the Employer, agrees to the following:

(a) Hours of Work. The Executive agrees that, subject to Executive's inability to work due to sickness or injury, at all times during the term of this Agreement, he will arrange to be available to perform the duties of his employment not only during the regular business hours of the Employer, but also at such other times as the Employer shall from time to time reasonably request and that he shall not be entitled to any compensation in addition to that provided for herein for services rendered by him outside of the City's regular business hours, or on Saturdays, Sundays or holidays. Additionally, the Employer recognizes that as the chief executive officer of the City, the Executive shall be permitted a reasonable amount of flex time, from time to time, in order to reasonably accommodate and balance both his work and personal responsibilities. The City Manager shall not be entitled to overtime or compensatory benefits.

(b) Vacation. Sick Leave. Holidays and Other Benefits. Executive shall be entitled to vacation time, and sick leave, holidays and other benefits (except retirement) provided to the other of Employer's Management Employees. Accrued vacation and sick time may be carried forward from year-to-year up to a cap of 720 hours for sick time.

(c) Insurance. Employer shall provide such health and life insurance upon the life of the Executive and his dependents as provided to the other of Employer's Management Employees.

(d) Professional Association Dues. Employer shall pay the dues for Executive's membership and professional associations as approved by the City Council.

(e) Professional Development. Employer hereby agrees to budget for and pay for travel and subsistence expenses of Executive for professional and official travel to include FCCMA, Florida League of Cities annual conferences and any other conferences or seminars approved by the City Council. The City Council will also agree to pay for trips to Tallahassee and Washington, D.C. when such trips are deemed necessary to support the City's federal and state legislative agenda. The payment of such expenses shall be in accordance with Section 2-76 of the City Code, Reimbursement Policy For Travel Expenses, as amended from time to time, or as otherwise approved by the City Council,

(f) Computer Equipment and Cell Phone. Employer shall provide the Executive with adequate computer equipment and a cell phone or cell phone stipend in order for him to adequately perform the responsibilities of City Manager.

(g) Residency. Pursuant to Article IV, Section I(b) of the City Charter, the Executive shall be a resident of the City of Cocoa and so remain through the tenure of holding the office of the City Manager.

7. Automobile. The Employer shall provide the Executive with the use of a City owned automobile in the discharge of his employment duties pursuant to this Agreement, or at Executive's request, an automobile allowance equal to Six Hundred and no/100 Dollars (\$600.00) per month. Any official travel on City business over fifty (50) miles (one way) shall be reimbursed according to the City's Travel Policy. To the extent that the use of the automobile constitutes income or a taxable benefit to the Executive, Executive agrees to account for such income or benefit per IRS regulations. If a City owned automobile is provided pursuant to this paragraph, the Executive may use said automobile for personal use within the State of Florida.

8. Indemnification. Employer shall defend, indemnify and hold Executive harmless against any and all civil claims, demands, actions, suits, expenses and losses, including reasonable attorney's fees, arising out of the action or omission of Executive within the scope of his duties as City Manager, except for acts or omissions acted in bad faith, with malicious purpose, or in a manner exhibiting wanton and willful disregard of human rights, safety, or property. ("Covered Loss"). Further, this covenant shall apply to claims for punitive damages where such claims arose out of the good faith performance of the City Manager's duties; otherwise, this covenant shall not apply to claims for punitive damages. Criminal litigation shall not be included in this indemnity clause. The Employer may, at Employer's option, provide for legal representation of Executive through the City Attorney or outside counsel of its choice or may choose to reimburse the Executive for legal fees incurred as a result of a Covered Loss. If the Employer provides legal representation in an action which is not a Covered Loss, Executive shall reimburse Employer for the value of the services provided by outside counsel or the City Attorney. The Employer will have the authority to compromise and settle any such claim or suit within the scope of the City Manager's employment and pay the amount of any settlement or judgment rendered thereon. To

the maximum extent permitted by law, the Employer and the City Manager shall rely upon the doctrine of sovereign immunity and the provisions of section 768.28, Florida Statutes, and other applicable law.

9. Termination and Severance Pay.

(a) The Executive shall serve at the pleasure of the Employer. The City Council reserves the right at any time in its sole discretion and for any reason whatsoever, or for no reason, to terminate Executive's employment pursuant to the terms and conditions of the City Charter at a duly held public meeting. However, if the Executive is terminated at the pleasure of the City Council pursuant to this subparagraph (a), without cause, the Executive shall receive lump sum severance pay in the amount of twenty (20) weeks salary. Under no circumstances will severance pay exceed twenty weeks in accordance with the maximum severance pay limitations set forth in section 215.425, Florida Statutes. In addition, Executive shall receive a lump sum cash settlement representing payment for one hundred percent (100%) of all unused vacation and accrued sick leave through the termination date, not to exceed 720 hours for sick leave. Payment of the severance pay and unused sick and vacation shall be made within ten (10) calendar days of the Executive and the City executing and delivering the general comprehensive release described in the subsequent paragraph to each other.

Executive agrees that the City Council shall have the sole and absolute discretion to decide upon such termination under this subparagraph (a) and upon such termination and as consideration of the severance pay provided above, Executive and the City shall, execute and deliver to each other a reciprocal general comprehensive release indemnifying and holding harmless each other for all acts and omissions related to the Executive's employment with the City (whether accrued or subsequently accruing) from the beginning of time until the date of the release. The general comprehensive release shall be prepared by the City Attorney and in a form agreeable to the City and Executive, and the indemnity to the City shall include not only the City, but the City's council members, employees, and attorneys in their official and individual capacities. The Executive and the City shall not unreasonably withhold approval and execution of the general comprehensive release.

(b) If the Executive is terminated by the City Council because of: (1) a filed indictment or information beginning a criminal felony proceeding in the courts or conviction of a felony crime; (2) misfeasance or malfeasance; (3) failure to carry out the duties assigned under this Agreement; (4) conviction of a violation of the Florida Ethics Laws or any illegal act involving personal gain to himself such as embezzlement, bribery and theft; (5) abandonment of the Office of City Manager when the City Manager is no longer performing the official duties of City Manager; or (6) neglect of duty or willful conduct that is determined to be materially injurious to the City by the City Council, then the Executive shall only receive compensation for one hundred percent (100%) of his unused vacation and sick leave accrued through the termination date not to exceed seven hundred twenty (720) hours of sick leave. Executive shall not be entitled to any additional

compensation or severance pay. If City Council terminates Executive for cause pursuant to this subparagraph (b), the Executive's sole legal remedy is an action in the court of appropriate jurisdiction and venue. If said court fails to reverse the City Council's decision, Executive agrees that he will accept the payments provided in this subparagraph (b) in full satisfaction of the Employer's obligations under this Agreement and in full release of any and all claims against the Employer, and its City Council, Executives, and City Attorney, both individually and in their official capacity, under this Agreement. However, if said court determines that the City Council did not properly terminate Executive for cause under this Agreement, the parties agree that such termination from employment shall be deemed a termination without cause, and the provisions of paragraph 9(a) shall apply in their entirety, and the court may also grant such other relief deemed lawful and appropriate.

(c) The Executive may terminate this Agreement at any time upon giving Employer at least ninety (90) days written notice in advance. The Executive shall receive compensation for one hundred percent (100%) of his unused vacation and sick leave accrued through the termination date not to exceed seven hundred twenty (720) hours of sick leave. Executive shall not be entitled to any additional compensation or severance pay.

(d) In the event Employer at any time during the term of this Agreement reduces the salary or other financial benefits of Executive in a greater percentage than that applicable to an across-the-board reduction for all Executives of the Employer or, in the event Employer refuses, following written notice to comply with any other written provision benefitting Executive herein, or the Executive resigns following an unambiguous and clear consensus or explicit statement of a majority of the City Council (as required by City Charter to terminate the Executive), at a particular duly held City Council meeting, that he resign for no cause, then in that event Executive may at his option resign at that meeting and be deemed to have been "terminated" for purposes of applying paragraph 9 (a).

(e) In the event of the death of the Executive during the term of this Agreement, this Agreement shall automatically terminate and the Employer shall pay to his surviving spouse, if any, or if the Executive does not have a surviving spouse, to the estate of the Executive or beneficiary(ies) designated in writing by Executive, an amount equal to the portion of the Executive's salary to which he was entitled through the date of this death, plus any other death benefits provided to other Employer's Management Executives, if any.

10. Lifetime Health Insurance. The parties agree that Executive is eligible, as the head of the City's Executive Management Team, for one hundred percent (100%) City paid health (including dental and vision) insurance for his lifetime upon retirement pursuant to the benefits policy adopted by the City Council including Resolutions No. 2008-133 and No. 2009-150. The eligibility criteria for lifetime health insurance benefits requires the Executive to retire with at least 10 consecutive years of full-time service with the City as City Manager, and be of at least 55 years of age upon retirement from the City. Executive shall not be eligible for or receive the one hundred

percent (100%) lifetime health insurance benefit prior to meeting the eligibility requirements. Furthermore, if Executive reaches and meets the eligibility requirements due to his consecutive years of service as City Manager under this Agreement, he will forfeit this lifetime health insurance benefit if he is later terminated pursuant to paragraph 9 (b) of this Agreement. This paragraph shall not be construed to provide Executive with any benefit greater than other eligible members of the City's Executive Management Team that received or could receive the one hundred percent (100%) lifetime health insurance benefit in accordance with the terms and conditions of the aforementioned resolutions.

11. Evaluation.

(a) The City Council shall review and evaluate Executive's performance during each anniversary of the term of this Agreement. Said review and evaluation shall be in accordance with specific criteria developed jointly by Employer and Executive.

(b) Annually, the City Council and Executive shall define such goals and performance objectives that they deem necessary for the proper operation of the City and in the attainment of City Council policy objectives, and shall further establish relative priority among those various goals and objectives that shall be reduced to writing. They shall generally be within the time limitations as specified and the annual operating and capital budgets and appropriations provided.

12. General Provisions.

(a) The text herein constitutes the entire Agreement between the parties, and it may not be modified except by written Agreement signed by both parties.

(b) If any provision or portion of this Agreement is found to be unenforceable, then the remainder of this Agreement shall not be affected and shall remain in full force and effect.

(c) This Agreement shall be binding upon and inure to the benefit of the heirs at law and executors of Executive.

(d) This Agreement shall be interpreted and governed by the laws of Florida. Venue for any action hereunder shall be in Brevard County, Florida, or if a federal action is commenced, in the Federal Court in Orange County, Florida.

(e) 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.

(f) The parties acknowledge that each has shared equally in the drafting and preparation of this Agreement and, accordingly, no court construing this Agreement shall construe it more strictly

against one party than the other and every covenant, term and provision of this Agreement shall be construed simply according to its fair meaning.

(g) Each party hereto represents to the other that it has undertaken all necessary actions to execute this Agreement, and it has the legal authority to enter into this Agreement and to undertake all obligations imposed on it.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year written above.

**Approved by the City Council and executed by the Mayor on this \_\_\_\_\_ day of \_\_\_\_\_, 2020.**

**City of Cocoa**

\_\_\_\_\_  
Jake Williams Jr., Mayor

ATTEST:

\_\_\_\_\_  
Carie Shealy, MMC, City Clerk

Approved as to form and legal sufficiency for the City of Cocoa:

\_\_\_\_\_  
Anthony A. Garganese, City Attorney

**Executed by the City Manager this \_\_\_\_\_ day of \_\_\_\_\_ 2020.**

\_\_\_\_\_  
Stockton Whitten