

LEE COUNTY MANAGER EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT ("Agreement") is made and entered into and is effective this 1st day of July, 2013 ("Effective Date"), by and between Lee County, a charter county and political subdivision of the State of Florida by and through its Board of County Commissioners ("County") and Roger Desjarlais residing at 1325 Lynwood Avenue, Fort Myers, Florida 33901 ("County Manager").

WITNESSETH:

WHEREAS, the County desires to retain the County Manager as its county manager; and

WHEREAS, the County Manager desires to serve as the county manager; and

WHEREAS, the parties wish to memorialize herein the terms and conditions of such employment.

NOW, THEREFORE, for and in consideration of the mutual promises and benefits conferred herein, the payments contemplated hereunder, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and confessed, the parties hereto, intending to be legally bound, covenant and agree as follows:

1. **RECITALS.** The recitals contained in this Agreement are true and correct and are incorporated herein in their entirety.
2. **EMPLOYMENT.** The County hereby employs the County Manager as its county manager, and the County Manager hereby accepts such employment upon the terms and conditions set forth in this Agreement.
3. **DUTIES.** The County Manager shall perform those duties and responsibilities which are normally and customarily performed by the County Manager as well as all duties and responsibilities imposed upon him by the Lee County Charter, applicable laws, ordinances, regulations, and policies of the Board of County Commissioners, as well as all other proper and legally permissible duties as he may be directed to perform by the Board of County Commissioners or by any County Commissioner. At all times, the County Manager agrees to perform the functions of his office in a loyal, efficient, competent and professional manner.
4. **TERM.**
 - 4.1. **Initial Term.** The initial term of this Agreement shall commence on the Effective Date and shall be for a period of three (3) years unless earlier

terminated under the provisions of paragraph 7 of this Agreement (“Initial Term”).

- 4.2. Renewal. Upon expiration of the Initial Term, this Agreement shall automatically renew for successive one (1) year periods unless earlier terminated under the provisions of paragraph 7 of this Agreement.

5. **COMPENSATION.**

- 5.1. Base Salary. The County Manager shall receive an annual salary of One Hundred Eighty-Two Thousand and No/100 Dollars (\$182,000.00) (“Base Salary”) which shall be paid in bi-weekly installments according to the County’s regular payroll schedule. If the County Manager does not remain employed for any given full pay period, such compensation shall be prorated accordingly.
- 5.2. Adjustments. During the Initial Term of this Agreement, no bonuses, raises or escalator provisions or other adjustments will be applied to the Base Salary other than those that may be provided across-the-board to all other County employees. In connection with each renewal term, the County may, but shall not be required to, adjust the County Manager’s annual salary in its sole discretion.
- 5.3. Deferred Compensation. The County will contribute on a monthly basis the sum of One Thousand Two Hundred Fifty and No/100 Dollars (\$1,250.00) to the County Manager’s deferred compensation account for so long as the County Manager is employed by the County.
- 5.4. Vehicle Allowance. The County will provide the County Manager with a vehicle allowance of Five Hundred and No/100 Dollars (\$500.00) per month for the use of his privately owned vehicle on County business. This amount will be reviewed by the parties at the end of the Initial Term of this Agreement to determine if any adjustment to the vehicle allowance is warranted in light of changes to financial conditions related to the operation of a motor vehicle.
- 5.5. Deductions. The compensation payable to the County Manager under this Agreement shall be subject to federal and state income tax withholding, Social Security, Medicare or such other employee deductions as are required by federal, state and/or local law.

6. **BENEFITS.**

- 6.1. **Vacation.** The County Manager shall be deemed to have accrued one hundred sixty (160) hours of vacation time as of the Effective Date. Thereafter, the County Manager shall accrue five and 54/100ths (5.54) hours of vacation time for every bi-weekly pay period he is employed. All vacation time not taken may be accumulated in accordance with current County policy. All payments associated with the County Manager's accrued vacation time shall be based on the County Manager's then Base Salary as of the termination of this Agreement. Notwithstanding anything contained herein to the contrary, no more than twenty (20) consecutive business days may be taken by the County Manager as vacation time in any given month during any calendar year.
- 6.2. **Sick Time.** The County Manager shall be deemed to have accrued as of the Effective Date one hundred forty-four and 4/10ths (144.4) hours of sick time. In addition, the County Manager will accrue four (4) hours of sick time for each bi-weekly pay period. All sick time not taken during any year shall be forfeited. In no event shall sick time accrue and the County Manager shall not be paid for any unused sick time.
- 6.3. **Medical Insurance.** During the term of this Agreement, the County shall provide to the County Manager, at the County's cost, medical insurance in such form and such amounts as are offered to the County's other employees.
- 6.4. **Other Benefits.** Except as otherwise provided herein, the County Manager will receive immediately upon the Effective Date the same benefits as all other County employees, including but not limited to, worker's compensation, Florida state retirement, and life insurance.

7. **TERMINATION AND SUSPENSION.**

- 7.1. **Termination for Convenience by County.** The County may terminate the employment of the County Manager without cause at any time. The effective date of such a termination shall be set forth in the written notice of termination to be provided by the County.

- 7.2. Termination for Convenience by County Manager. In the absence of cause, the County Manager may terminate his employment by giving the County notice of his intent to terminate not less than ninety (90) days in advance of the effective date of termination. The County shall, in its sole and absolute discretion, have the right to accelerate the effective date of the County Manager's termination once it receives notice of the County Manager's intent to terminate his employment without cause.
- 7.3. Termination for Cause. During the employment term, the County Manager's employment may be terminated by the County, without advance notice, upon the happening of any of the following events:
- 7.3.1. The County Manager shall fail or refuse to comply with the policies, standards and regulations of the County from time to time established;
 - 7.3.2. The County Manager shall disregard the standards of conduct contemplated by this Agreement, or the standards of conduct that the County has a right to expect from the County Manager;
 - 7.3.3. A material breach by the County Manager of any of his obligations hereunder;
 - 7.3.4. The County Manager conducts himself in an unethical, illegal, immoral or fraudulent manner or should the County Manager's conduct otherwise adversely impact public confidence in County government;
 - 7.3.5. The County Manager is insubordinate or neglects his duties;
 - 7.3.6. The County Manager shall fail or refuse to faithfully or diligently perform the provisions of this Agreement or the usual and customary duties of his employment; or
 - 7.3.7. The County Manager is convicted or indicted of any crime punishable as a misdemeanor or a felony, or a plea by the County Manager of no contest to such a crime, or the entering by the County Manager into a plea bargain with respect to such a crime.

Upon termination for cause, the County Manager shall be deemed to have released the County from all obligations arising under the terms of this Agreement.

7.4. No. Severance. In the event of a termination of this Agreement with or without cause, the County Manager shall not be entitled to any severance pay or other remuneration of any kind after the effective date of his termination and any such claims shall be deemed expressly released.

7.5. Suspension. When deemed necessary or appropriate by the County, the County Manager may be suspended from his duties with pay until such matters at issue warranting the suspension are resolved to the satisfaction of the County for a return to regular duties or the County Manager is terminated.

8. **PROFESSIONAL ASSOCIATIONS AND DEVELOPMENT.**

8.1. The County shall budget and pay for all professional dues necessary for the County Manager's participation in national, regional, state and local associations and organizations desirable for his continued professional growth, development and advancement.

8.2. The County shall budget and pay for all travel expenses of the County Manager while on authorized County business or while attending functions as the representative of or on behalf of the County. All such travel expenses shall be incurred and reimbursed in accordance with all applicable County policies.

8.3. The County shall budget and pay for all travel and living expenses of the County Manager for such continuing education programs which benefit the County and promote the County Manager's professional development.

8.4. The County shall budget and pay the full cost of the County Manager's membership in the Florida County Managers' Association and the International County Managers' Association.

9. **BONDING.** The County shall bear the full cost of any fidelity or other bonds required of the County Manager under law or ordinance.

10. **INDEMNIFICATION.** The County shall indemnify, hold harmless and defend the County Manager from and against any and all damages, liabilities, losses, costs, lawsuits, claims and expenses incurred by the County Manager and arising out of or resulting from any alleged or real acts or omissions by the County Manager which fall within the scope of the County Manager's employment or the performance by the County Manager of his duties hereunder. If any lawsuit, enforcement or other actions is filed against the County Manager for which the County Manager is or may reasonably be entitled to indemnification pursuant to this Agreement, the County may elect to take control of the defense and investigation of such lawsuit or action using attorneys, investigators and others reasonably satisfactory to the County Manager. If the County exercises this option, the County shall be deemed to have satisfied its duty to defend the County Manager. The County Manager and the County shall cooperate in all reasonable respects with respect to the investigation, trial, defense, appeal and/or settlement of any lawsuit or action for which the County Manager may reasonably be entitled to indemnification pursuant to this Agreement.
11. **OUTSIDE EMPLOYMENT.** The County Manager recognizes and understands that the position of the County Manager for Lee County requires his full time and attention, and accordingly, agrees to devote all time necessary to fully discharge his duties. The County Manager shall refrain from accepting any other employment engagement which would interfere in any way with the loyal and faithful performance of his duties. Notwithstanding the foregoing, nothing contained in this Agreement will be construed so as to prevent the County Manager from accepting honoraria or consulting fees from educational institutions, units of local government or state agencies for lectures, articles, instructional material, or consultation in the area of local government which will not be in conflict with or impede in any fashion whatsoever the County Manager's responsibilities to the County.
12. **CONFLICT OF INTEREST.**
 - 12.1. The County acknowledges that the brother of the County Manager is employed by Lee County as the Director of IT, and finds that this employment creates neither an actual nor the appearance of a conflict of interest for the County.
 - 12.2. The County Manager, with the County's express consent being given under this Agreement, hereby recuses himself from any and all

supervisory duties or obligations as the County Manager with respect to the supervision of his brother during his employment with the County.

13. **PERFORMANCE EVALUATION**

13.1. **Initial Performance Evaluation.** The County, acting through the Board of County Commissioners, shall review and evaluate the performance of the County Manager initially at six (6) months after the Effective Date and shall provide to the County Manager an appraisal of the County Manager's performance with comments for any expected improvement(s).

13.2. **Annual Performance Evaluation.** The County, acting through the Board of County Commissioners, shall review the County Manager's performance annually in the same manner and with the same timing as is performed with respect to other County contract employees.

13.3. **County Administration Performance.** The County and the County Manager shall annually define the goals and performance objectives necessary for the proper operation of the County administration following the budget process which shall be obtainable within the time frame and within the operating and capital budget and appropriations provided for the upcoming fiscal year.

13.4. **Implementation.** In effecting the provisions of this section, the County and County Manager mutually agree to abide by all provisions of applicable law.

14. **DISABILITY.** If the County Manager is permanently disabled or is otherwise unable to perform his duties because of sickness, accident, injury or mental incapacity for a period of four (4) successive weeks beyond all accrued sick leave, the County may terminate this Agreement. Such a termination shall be deemed a termination by the County without cause.

15. **WAIVER OF JURY TRIAL.** **THE PARTIES HEREBY WAIVE ANY STATUTORY OR CONSTITUTIONAL RIGHT EITHER MAY HAVE TO A TRIAL BY JURY IN ANY CIVIL PROCEEDING ARISING OUT OR RELATING IN ANY FASHION WHATSOEVER TO THIS AGREEMENT.**

16. **MISCELLANEOUS.**

- 16.1. No modification, waiver, amendment, discharge, or change of this Agreement shall be valid unless the same is in writing and signed by the parties against whom the enforcement of such modification, waiver, amendment, discharge, or change is sought.
- 16.2. This Agreement shall be construed in accordance with the laws of the State of Florida.
- 16.3. Any and all litigation arising in connection with this Agreement shall be heard in a State Court of appropriate jurisdiction in Lee County, Florida.
- 16.4. This Agreement shall be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute a single instrument.
- 16.5. All notices under this Agreement shall be in writing and shall be deemed to have been given when mailed in any United States Post Office, enclosed in a registered, postage-paid envelope, return receipt requested, addressed to the address of the respective parties stated below:

If to the County: Chairman,
Lee County Board of County Commissioners
2115 2nd Street
Fort Myers, FL 33901

with copies to: County Attorney, Lee County
P.O. Box 398
Fort Myers, FL 33902

If to the County Manager: Roger Desjarlais
1325 Lynwood Avenue
Fort Myers, FL 33901

or to such other address or to such other persons as any party may designate in writing to the other for such purpose.

- 16.6. All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine, neuter, singular or plural as the identity of the persons or entity may require.
- 16.7. In the event of any dispute as to the precise meaning of any term contained herein, the principals of construction and interpretation that written documents be construed against the party preparing the same shall not be applicable.
- 16.8. If any provision or any portion of any provision of this Agreement, or the application of any such provision or portion thereof to any person or circumstance, shall be held invalid or unenforceable, the remaining portion of such provision and the remaining provisions of this Agreement or the application of such provision held invalid or unenforceable to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby.
- 16.9. In connection with any litigation arising out of this Agreement, the prevailing party shall be entitled to recover all costs incurred, including a reasonable attorneys' fee.
- 16.10. The parties hereto shall, at any time and from time to time following the execution hereof, execute and deliver all such further instruments and take all such further action as may be reasonably necessary or appropriate in order to carry out more effectively the purposes of this Agreement.
- 16.11. Every covenant, term, and provision of this Agreement shall be construed simply according to its fair meaning and shall not be strictly construed for or against any party.
- 16.12. All titles or captions contained in this Agreement and in any exhibit annexed hereto are for convenience only and shall not be deemed a part of this Agreement and shall not affect the meaning or interpretation of this Agreement.

IN WITNESS WHEREOF, the County and County Manager have made and executed this Agreement on the respective dates under each signature. Lee County,

through its Board of County Commissioners, authorized the County Chair to execute this Agreement on this ____ day of _____, 2013.

ATTEST:
LINDA DOGGETT, CLERK

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

By: _____
Deputy Clerk

By: _____
Chair
Date: _____

ATTEST:

COUNTY MANAGER

By: _____

By: _____
Roger Desjarlais
Date: _____

APPROVED AS TO FORM:

By: _____
Office of County Attorney