

TOWN OF GOLDEN BEACH, FLORIDA

RESOLUTION NO. 2857.23

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF GOLDEN BEACH, FLORIDA, APPROVING AN EMPLOYMENT AGREEMENT FOR CONTRACT EMPLOYEE CEM TOPACLIOGLU TO PROVIDE HEALTH AND WELLNESS SPECIALIST SERVICES IN THE RECREATION DEPARTMENT; PROVIDING FOR IMPLEMENTATION AND FOR AN EFFECTIVE DATE.

WHEREAS, the Town Council wishes to engage Cem Topacioglu (the "Contractor") to provide health and wellness specialist services in the recreation department on a contract basis, and;

WHEREAS, the Contractor desires to provide his special expertise to the Town for the benefit of the Recreation Department, and;

WHEREAS, the Town Council finds that it is in the best interest of the Town to engage the Contractor under the terms of the Agreement for Accounting Contract Services (the "Agreement") as attached as Exhibit "A".

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF GOLDEN BEACH, FLORIDA, AS FOLLOWS:

Section 1. Recitals Adopted. That the foregoing recitals are true and correct and incorporated herein by this reference.

Section 2. Approval of Agreement. The Town Council hereby approves the Agreement attached as Exhibit "A" to this Resolution.

Section 3. Implementation. The Town Council authorizes Town Manager to execute the Agreement and the Town Manager to take all action necessary to implement the Agreement.

Section 4. Effective Date. That this Resolution shall be effective immediately upon adoption.

The Motion to adopt the foregoing resolution was offered by Councilmember Lusskin, seconded by Vice Mayor Mendal, and on roll call the following vote ensued:

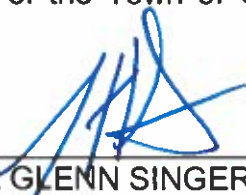
Mayor Glenn Singer	<u>Aye</u>
Vice Mayor Jaime Mendal	<u>Aye</u>
Councilmember Judy Lusskin	<u>Aye</u>
Councilmember Kenneth Bernstein	<u>Aye</u>
Councilmember Bernard Einstein	<u>Aye</u>

PASSED AND ADOPTED by the Town Council of the Town of Golden Beach, Florida, this 28th day of February, 2023.

ATTEST:




LISSETTE PEREZ
TOWN CLERK



MAYOR GLENN SINGER

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY:



STEPHEN J. HELFMAN
TOWN ATTORNEY



TOWN OF GOLDEN BEACH

One Golden Beach Drive
Golden Beach, FL 33160

MEMORANDUM

Date: February 28, 2023

To: Honorable Mayor Glenn Singer &
Town Council Members

From: Alexander Diaz, *Alex B.*
Town Manager

Subject: **Resolution No. 2857.23 – Employment Agreement with Cem Topacioglu**

Item Number:

3

Recommendation:

It is recommended that the Town Council adopt the attached Resolution No. 2857.23 as presented.

Background:

For the last five years, we have engaged Mr. Topacioglu to provide services through the Town's Wellness Program to both staff and residents. The wellness program encourages employees to adopt a health focused lifestyle. The Town's insurance premiums reflect the adoption of the wellness program. As we prepare for the construction of a wellness center for our community, this position will also transition and will serve as facility staff.

We are asking that you formalize our relationship and approve a new contract with Mr. Topacioglu for the next three fiscal years.

Fiscal Impact:

The contract calls for an hourly rate of \$60.00 per hour, health insurance coverage provided in the same manner as afforded to non-contracted employees, deferred compensation, paid time off and Holidays as stipulated.

**CONTRACT EMPLOYEE SERVICES AGREEMENT BETWEEN THE TOWN OF
GOLDEN BEACH AND CEM TOPACLIOGLU FOR
HEALTH AND WELLNESS SPECIALIST SERVICES IN THE RECREATION
DEPARTMENT**

THIS AGREEMENT is made and entered into this 28th day of February, 2023 ("Effective Date") by and between the TOWN OF GOLDEN BEACH, a municipal entity ("TOWN") and CEM TOPACLIOGLU ("CONTRACT EMPLOYEE").

WITNESSETH:

WHEREAS, TOWN has the need to utilize the services of a Contract Employee as an independent contractor to provide health and wellness specialist services in the Recreation Department; and

WHEREAS, Contract Employee asserts that she is competent, trained and qualified currently to perform the duties of a Health and Wellness Specialist; and

WHEREAS, the parties desire to enter into this Agreement to outline the duties and responsibilities of the parties,

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. **SCOPE OF SERVICES.** Contract Employee is hereby retained on a bi-weekly basis, to provide Health and Wellness Specialist Services in the Town of Golden Beach Recreation Department.

1.2. Professional Practices. All professional services to be provided by CONTRACT EMPLOYEE pursuant to this Agreement shall be provided by personnel identified in the Proposal and in a manner consistent with the standards of care, diligence and skill ordinarily exercised by professional CONTRACT EMPLOYEE in similar fields and circumstances in accordance with sound professional practices. CONTRACT EMPLOYEE also warrant that they are familiar with all laws that may affect its performance of this Agreement and shall advise TOWN of any changes in any laws that may affect CONTRACT EMPLOYEES' performance of this Agreement.

1.3. Warranty. CONTRACT EMPLOYEES warrant that they shall perform the services required by this Agreement in compliance with all applicable Federal and Florida employment laws including, but not limited to, those laws related to minimum hours and wages; occupational health and safety; fair employment and employment practices; workers' compensation insurance and safety in employment; and all other Federal, State and local laws and

ordinances applicable to the services required under this Agreement. CONTRACT EMPLOYEES shall indemnify and hold harmless TOWN from and against all claims, demands, payments, suits, actions, proceedings, and judgments of every nature and description including reasonable attorneys' fees and costs, presented, brought, or recovered against TOWN for, or on account of any liability under any of the above-mentioned laws, arising from or related to CONTRACT EMPLOYEES' performance under this Agreement.

1.4. Non-discrimination. In performing this Agreement, CONTRACT EMPLOYEE shall not engage in, nor permit their officers, employees or agents to engage in, discrimination in employment of persons because of their race, religion, color, national origin, ancestry, age, mental or physical disability, medical condition, marital status, sexual gender or sexual orientation, except as permitted pursuant to Section 12940 of the Government Code. Violation of this provision may result in the imposition of penalties referred to in Labor Code, Section 1735.

1.5. Non-Exclusive Agreement. CONTRACT EMPLOYEE acknowledge that TOWN may enter into agreements with other CONTRACT EMPLOYEE for services similar to the services that are subject to this Agreement or may have its own employees perform services similar to those services contemplated by this Agreement.

1.6. Delegation and Assignment. This is a personal service contract, and the duties set forth herein shall not be delegated or assigned to any person or entity without the prior written consent of TOWN.

1.7. Conflicts of Interest. During the term of this Agreement, CONTRACT EMPLOYEE shall at all times maintain a duty of loyalty and a fiduciary duty as to the TOWN and shall not accept payment from or employment with any person or entity which will constitute a conflict of interest with the TOWN.

2. **TERM.** The term of this Agreement shall begin on October 1, 2022 and terminate at midnight on September 30, 2025.

3. **COMPENSATION AND EXPENSES.** For the term of this Agreement, CONTRACT EMPLOYEE shall be compensated for his services at \$60.00 an hour and subject to COLA increase as provided to all employees. CONTRACT EMPLOYEE shall work a maximum of 22 hours per work on-site. CONTRACT EMPLOYEE shall not be entitled to any compensation, leave accruals, retirement or other benefits beyond the aforementioned hourly rate of pay, health insurance, deferred compensation, PTO and Holidays as stipulated.

The Town shall allow CONTRACT EMPLOYEE to join the deferred compensation (457 Plan) and the 401A Plan; as set forth by IRS rules. The Town will contribute a total of 10% of annual compensation, distributed into one or both plans as designated by the CONTRACT EMPLOYEE. The CONTRACT EMPLOYEE may elect to contribute as set forth by IRS rules.

The Town shall provide the CONTRACT EMPLOYEE with the same health insurance as its regular employees. The premium paid by the Town shall be 100% of the full single coverage premium for the employee, including any increases in said premium during the term of this Agreement. The Town will offer dependent health insurance coverage as it does for its regular full-time employees. The Town will pay 50% of the premium for dependent coverage for those employees who elect said coverage. The health insurance company shall be selected by the Town in its sole discretion, and the Town may change insurance companies at its discretion. In the event the Town changes insurance companies, the Town will attempt to provide sixty (60) days' notice prior to any change in health insurance companies. In the event the Town decides to change insurance companies, the Town will request the new company to cover all employee pre-existing conditions.

The Town will also provide a Total of 40 Hours PTO and select Holidays as approved by the Town Manager.

4. **TERMINATION.** Under the terms of this Agreement, Contract Employee serves in an "at will" capacity and may be terminated at any time, with or without cause, and Contract Employee may resign at any time. Nothing in this Agreement shall be construed as creating any vested right in the position of Accounting Assistance Contract Employee or in employment with the TOWN.

5. **ENTIRE AGREEMENT.** This Agreement contains the entire agreement between the parties. Any correspondence, letters, documents, or discussions leading up to this Agreement or in any way made between the parties or their agents are replaced and superseded by this Agreement.

6. **COMPLIANCE WITH LAWS.** The parties hereto shall comply with applicable laws of the United States of America, the State of Florida, and all other applicable laws.

7. **GOVERNING LAW.** This Agreement shall be enforced and interpreted under the laws of the State of Florida.

8. **ATTORNEY'S FEES.** In any litigation relating to this Agreement, the prevailing party shall be entitled to reasonable attorney fees. The cost, salary, and expenses of the Town Attorney and members of his/her office in enforcing this contract on behalf of the TOWN shall be considered "attorney's fees" for the purposes of this paragraph.

9. **SEVERABILITY.** If any portion of this Agreement is held to be invalid by a court of law, such provision shall be considered severable, and the remainder of this Agreement or any provision hereof shall not be affected.

10. **WAIVER.** Failure of either party to enforce any provision of this Agreement shall not constitute a waiver of the right to compel enforcement of the remaining provisions of this Agreement.

11. **AMENDMENT.** This Agreement may only be amended by a written instrument executed by the parties hereto, and may not be amended by oral agreement.

12. **ASSIGNMENT.** This Agreement shall not be assigned by Contract Employee, without prior written consent of the Town.

13. **INDEMNIFICATION AND HOLD HARMLESS.** CONTRACT EMPLOYEE shall protect, defend, indemnify and hold harmless TOWN and its elected and appointed official, boards, commissions, and officers, attorneys, agents and employees from any and all claims, losses, demands suits, administrative actions, penalties, liabilities and expenses, including reasonable attorney fees, damage to property or injuries to or death of any person or persons or damages of any nature including, but not limited to, all civil claims or workers' compensation claims arising from or in any way related to CONTRACT EMPLOYEES performance under this Agreement, except when caused solely by the Town's negligence.

14. **INDEPENDENT CONTRACTOR STATUS.** CONTRACT EMPLOYEE is a Contract Employee and not a regular employee of the Town of Golden Beach. The Contractor Employee has no rights, benefits, or privileges on any other labor organization. The CONTRACT EMPLOYEE shall be a "HEALTH AND WELLNESS SPECIALIST" for the Town of Golden Beach Recreation Department for the Town of Golden Beach. The Recreation Department, however; shall determine the CONTRACT EMPLOYEE's methods and types of production. The CONTRACT EMPLOYEE's compensation is based upon performing and completing work and upon time spent in completing any particular assignment. As a convenience to the CONTRACT EMPLOYEE, the TOWN shall be responsible for the payment of income taxes, social security-

payments, Medicare obligations, as well as all other financial obligations incumbent upon the CONTRACT EMPLOYEE because of compensation under this AGREEMENT.

15. **CONFLICT OF INTEREST; DUTY TO DISCLOSE:** The CONTRACT EMPLOYEE must, prior to the execution or extension of this AGREEMENT and throughout its term, make written disclosure to the TOWN of any potential conflict of interest involving the CONTRACT EMPLOYEE or any relative of CONTRACT EMPLOYEE, or any person, firm or entity doing business with or soliciting business from the TOWN. A “conflict of interest” means any business relationship or other situation where a reasonable person might perceive that the CONTRACT EMPLOYEE or any of their relative could lead to disregard the interest of TOWN

The CONTRACT EMPLOYEE must not disclose procurement information or proprietary CONTRACT EMPLOYEE information to any person, firm or entity not employed by the TOWN during any TOWN procurement process.

16. **RESPONSIBILITY FOR ERRORS.** CONSULTANTS shall be responsible for their work and results under this Agreement. CONTRACT EMPLOYEES, when requested, shall furnish clarification and/or explanation as may be required by the TOWN's representative, regarding any services rendered under this Agreement at no additional cost to TOWN. In the event that an error or omission attributable to CONTRACT EMPLOYEES occurs, then CONTRACT EMPLOYEES shall, at no cost to TOWN, provide all other CONTRACT EMPLOYEES professional services necessary to rectify and correct the matter to the sole satisfaction of TOWN and to participate in any meeting required with regard to the correction.

17. **PROHIBITED EMPLOYMENT.** CONTRACT EMPLOYEE shall not employ any current employee of TOWN to perform the work under this Agreement while this Agreement is in effect.

18. **COSTS.** Each party shall bear its own costs and fees incurred in the preparation and negotiation of this Agreement and in the performance of its obligations hereunder except as expressly provided herein.

19. **NO THIRD PARTY BENEFICIARY RIGHTS.** This Agreement is entered into for the sole benefit of TOWN and CONTRACT EMPLOYEE and no other parties are intended to be direct or incidental beneficiaries of this Agreement and no third party shall have any right in, under or to this Agreement.

**CONTRACT EMPLOYEE SERVICES AGREEMENT BETWEEN THE TOWN OF
BEACH AND CEM TOPACLIOGLU FOR
HEALTH AND WELLNESS SPECIALIST SERVICES IN THE RECREATION
DEPARTMENT**

IN WITNESS THEREOF, the parties hereto have executed this Agreement on the day and date first above written.

Date: February 28, 2022

By: 
Name
Cem Topaclioglu


Date: February 28, 2022

TOWN OF GOLDEN BEACH
By: 
Name
Town Manager

ATTEST:


LISSETTE PEREZ, Town Clerk

APPROVED AS TO FORM:


STEVE HELFMAN, Town Attorney