



AGENDA

Lake Park Town Commission
Town of Lake Park, Florida
Emergency Commission Meeting
Monday, January 30, 2012, 6:30 p.m.,
Lake Park Town Hall
535 Park Avenue

James DuBois	—	Mayor
Kendall Rumsey	—	Vice-Mayor
Steven Hockman	—	Commissioner
Jeanine Longtin	—	Commissioner
Tim Stevens	—	Commissioner
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Maria V. Davis	—	Town Manager
Thomas J. Baird, Esq.	—	Town Attorney
Vivian M. Lemley, CMC	—	Town Clerk

PLEASE TAKE NOTICE AND BE ADVISED, that if any interested person desires to appeal any decision of the Town Commission, with respect to any matter considered at this meeting, such interested person will need a record of the proceedings, and for such purpose, may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based. *Persons with disabilities requiring accommodations in order to participate in the meeting should contact the Town Clerk's office by calling 881-3311 at least 48 hours in advance to request accommodations.*

- A. **CALL TO ORDER**
- B. **PLEDGE OF ALLEGIANCE**
- C. **ROLL CALL**
- D. **DISCUSSION AND POSSIBLE ACTION:**
Consideration of Separation Agreement with Town Manager Maria V. Davis *
- E. **ADJOURNMENT:**

* This item is for Commission discussion and deliberation only, and not a public hearing item.

Vivian Lemley

From: Baird, Thomas J. [TBaird@jones-foster.com]
Sent: Friday, January 27, 2012 2:24 PM
To: James DuBois; Kendall Rumsey; Steve Hockman; Jeanine Longtin; Tim Stevens; Maria Davis
Cc: Vivian Lemley
Subject: severance agreement
Attachments: 1CC4334-separation agreement release.DOC.doc

Attached hereto is a proposed Severance Agreement for the Commission's consideration at Monday's meeting of the Commission. The Severance Agreement provides for the payment of a portion of her salary and benefits (the number of months of which is at the discretion of a majority of the Commission), in exchange for her voluntary resignation and a Release. Please note that approval of the Severance Agreement only requires a vote of the members of the Commission present and voting. Assuming all 5 members of the Commission are present, the approval (or not) of the Severance Agreement would be determined by 3 members.

In the event, a Commission majority does not affirmatively vote for the Severance Agreement, or the Town Manager rejects the majority's offer, the Commission may elect to consider two options under the Town Manager's current Employment Agreement:

- (1) **Termination Without Cause:** The Town Manager's employment may be terminated "**without cause**" by a 4/5 affirmative vote of the Commission to do so. Under the terms of the Town Manager's Employment Agreement, she would be entitled to *6 months* severance pay, payable within 30 days; any accrued and unpaid salary and benefits earned prior to the effective date of termination; and the Town would pay her medical, dental, vision, long term disability, short term disability and life insurance coverage for 6 months. * Pursuant to the Employment Agreement, the Town Manager was entitled to 9 months severance if terminated without cause. However, in 2011, the Florida Legislature adopted Florida Statute 215.425 substantially provides that after July 1, 2011, a local government that enters into a contract or employment agreement, **or renewal, or an existing employment agreement** which contains a provision for severance pay cannot exceed 6 months..
- (2) **Termination for Cause:** The Town Manager's employment may be terminated "**with cause**" by a 4/5 affirmative vote of the Commission to do so. Under the terms of the Town Manager's Employment Agreement, the Town is under no legal obligation to pay the Town Manager any severance pay. However, the Town is required to pay the Town Manager any accrued and unpaid salary and benefits (including annual leave) earned prior to the effective date of termination.

Vivian Lemley

From: Baird, Thomas J. [TBaird@jones-foster.com]
Sent: Friday, January 27, 2012 2:56 PM
To: James DuBois; Kendall Rumsey; Steve Hockman; Jeanine Longtin; Tim Stevens; Maria Davis
Cc: Vivian Lemley
Subject: amended severance agreement proposal
Attachments: 1CC4334-separation agreement release DOC.doc

Importance: High

My apologies, I left the number of months of severance compensation and benefits blank in the proposal from the TM, which I transmitted to you all just minutes ago. The proposal has filled in that blank with **3 months** severance proposed for *salary and benefits*.

SEVERANCE AGREEMENT

This Severance Agreement ("Agreement") is entered into by and between the Town of Lake Park, Florida a Florida municipal corporation ("Employer") and Maria V. Davis ("Employee").

WHEREAS, Employee is employed by Employer pursuant to an Employment Agreement as its town manager; and

WHEREAS, Employee proposes to voluntarily resign from her employment with the Employer in lieu of the termination of her employment with, or without cause; and

WHEREAS, by execution of this Agreement, the Employer agrees to provide Employee with the severance set forth herein in exchange for Employee's resignation and a Release of the Employer; and

WHEREAS, by execution of this Agreement, the Employee accepts the severance offered by Employer and agrees to release the Employer.

NOW THEREFORE, in consideration of the mutual covenants contained herein, the Employer and Employee agree as follows:

Section 1. Recitals Incorporated. The whereas clauses hereinabove are incorporated herein and specifically made a part of this Agreement.

Section 2. Employment Termination; Resignation. The employment relationship between the parties is concluded effective January 31, 2012. ("Effective Date"). Employee shall provide a letter of resignation dated January 31, 2012. Employee's personnel file shall reflect that Employee voluntarily resigned on January 31, 2012.

Section 3. Mail. Employer shall forward Employee's personal e-mails and other personal correspondence addressed to her for a period of 30 days following Termination Date to give her an opportunity to advise personal contacts of a change of her e-mail and regular mail address.

Section 4. Severance Benefits.

(a) Salary: Employee shall be paid a lump sum severance equal to 3 months of her annual salary within 10 days of execution of this Agreement. The check will be made payable to Employee, less applicable payroll taxes, and Employee shall be issued a W-2 to include this payment.

(b) Health Care Insurance: Employer agrees to continue to furnish, or if not possible, to pay for 3 months of Employee's current health care benefits in accordance with the current plan maintained by the Employer for its employees.

Section 5. Annual Leave Payout. Employee shall be entitled to receive a lump sum payment for any and all days of Annual Leave accrued in accordance with Section 10 of Employee's Employment Agreement, as amended.

Section 6. Return of Property. Upon the Effective Date, Employee shall return to the Employer all of the Employer's property, including but not limited to, a laptop computer, any computer equipment, office equipment, cell phone, keys, pass cards or badges, credit cards, files, tapes, software, computer files, and any other record, document or piece of equipment belonging to the Employer or related to the work which Employee has done for the Employer. Employee has not and will not destroy, delete, or alter any Employer's property without the Employer's consent.

Section 7. Automobile Allowance. Employee shall be entitled the payment of Employee's monthly automobile allowance only for the month of January 2012.

Section 8. Default. In the event of default by Employee of covenants regarding Return of Property, Employee agrees that:

- (a) Any violation of these clauses will cause significant and irreparable harm to Employer for which it has no adequate remedy at law, regardless of the outcome of any litigation;
- (b) Employer, upon application to a court of competent jurisdiction, shall be entitled to obtain injunctive relief, including, but not limited to, a temporary, preliminary, or permanent injunction to enforce the provisions of this Agreement.

Section 9. Release of Claims. Other than covenants contained in this Agreement, Employee willingly and voluntarily waives and releases any and all known and unknown rights and claims Employee has or may have against Employer as of the date Employee signs this Agreement, including but not limited to any claim(s) under:

- The National Labor Relations Act;
- Title VII of the Civil Rights Act of 1964;
- Sections 1981 through 1988 of Title 42 of the U.S. Code;
- The Employee Retirement Income Security Act of 1974;
- The Immigration Reform and Control Act of 1986;
- The Americans with Disabilities Act of 1990;
- The Fair Labor Standards Act;
- The Older Workers Benefit Protection Act;
- Age Discrimination in Employment Act, 29 USC Chap. 14;

- The Equal Pay Act of 1963;
- The Occupational Safety and Health Act;
- The Family and Medical Leave Act of 1993;

This Release and Waiver also bars any claim or demand for costs, fees or other expenses including attorneys' fees incurred in connection with any of the above referenced claims. The listing of claims waived in this Section is intended to be illustrative rather than exhaustive.

Section 10. Unemployment Compensation. Employer will not contest Employee's application for unemployment compensation, should an application for same be made by Employee.

Section 11. Non-Admission. Employee agrees that neither this Agreement nor the furnishing of the consideration for this Agreement shall be deemed or construed at any time for any purpose as an admission by Employer of any kind.

Section 12. Governing Law and Interpretation. This Agreement shall be governed and construed in accordance with the laws of the State of Florida, with exclusive venue in Palm Beach County, Florida. Its language shall be construed as a whole, according to its fair meaning, and not strictly for or against either party.

Section 13. Severability. Should any provision of this Agreement be declared illegal or unenforceable by any court of competent jurisdiction and cannot be modified to be enforceable, such provision shall immediately become null and void, leaving the remainder of this in full force and effect.

Section 14. Entire Agreement; Amendment. This Agreement sets forth the entire agreement between Employee and Employer and shall supersede any and all prior agreements or understandings between the parties and has not been induced by any fraudulent misrepresentations. It may not be amended except by a written agreement signed by the parties. Employee has not relied upon any statements or representations not contained herein.

Section 15. Headings. Section headings are used herein for convenience of reference only and shall not affect the meaning of any provision of this Agreement.

Section 16. Attorney. Employee acknowledges that Employee has consulted an attorney or had a full and complete opportunity to do so before signing this Agreement.

IN WITNESS WHEREOF, the parties have executed this Separation Agreement and General Release as of the date set forth below.

EMPLOYEE

EMPLOYER

Maria V. Davis

Town of Lake Park, Florida

By: _____

Dated: _____, 2012

Dated: _____, 2012

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