



PERSSON, COHEN, MOONEY, FERNANDEZ & JACKSON, P.A.
ATTORNEYS AND COUNSELORS AT LAW

M E M O R A N D U M

TO: Mayor Schneier and the Town Commission
CC: Thomas Harmer, Town Manager
FROM: Maggie Mooney, Town Attorney
REPORT DATE: September 28, 2022
MEETING DATE: October 3, 2022
SUBJECT: **Town Manager Employment Agreement Amendment**

At the September 12, 2022, Town Commission Regular Meeting the Town Commission authorized the Town Attorney to prepare an Employment Agreement Amendment with Town Manager Thomas (“Tom”) Harmer that extends the terms of his employment from December 10, 2022, until February 6, 2023. The authorization followed the Town Commission’s approval of a Town Manager Employment Agreement with Howard Tipton, as Mr. Tipton will fill the position of Town Manager following Mr. Harmer’s retirement. Mr. Tipton has indicated he is not available to commence serving in the Town Manager position until January 30, 2023. Mr. Harmer has agreed to temporarily postpone his retirement and continue as the Town Manager until Mr. Tipton is available to serve as Town Manager. Mr. Harmer indicated that he would be willing to extend his employment with the Town through February 6, 2023 to ensure that there would not be a gap in Town Manager services and to provide for a 7 day transition period working alongside Mr. Tipton.

Mr. Harmer requested certain terms be included in an amendment to his existing Employment Agreement as the Town Manager. Specifically, Mr. Harmer requested: a 3% salary increase from October 1 through his extended employment term, a housing allowance for the extended period of Town employment, and authorization to engage in outside employment with his son’s business when he is not working for the Town during the extended period of Town employment. At the September 12, 2022 meeting, the Town Commission indicated their general agreement to Mr. Harmer’s requests and requested

that an Employment Agreement Amendment be brought to the Town Commission's October 3, 2022 Regular Meeting for consideration.

The Employment Agreement Amendment before the Commission contains the following changes to Mr. Harmer's existing Employment Agreement (dated July 17, 2017):

- The term of Mr. Harmer's employment as the Town Manager shall be extended until February 6, 2023;
- Effective October 1, 2022 (FY 22-23), Mr. Harmer's existing base salary (\$203,216) shall be increased by 3% to reflect a merit increase. Mr. Harmer's increased salary shall continue to be paid in the same manner as all other Town employees.
- Effective December 11, 2022, through the extended term, Mr. Harmer will be provided a weekly lodging allowance of \$500/week (with a not to exceed allowance of \$4000) to offset his additional lodging needs during his extended (8 week) employment term. The allowance is contingent on Mr. Harmer securing temporary lodging within the Town's municipal boundaries or within 10 vehicle miles of the Town's municipal boundaries during the weekdays.
- Effective December 11, 2022, Mr. Harmer shall be permitted to engage in employment with Springlake Partners, LLC (his son's business) through the extended employment term during Mr .Harmer's time off from the Town.

During the September 12, 2022 Town Commission meeting, the Town Commission also discussed a potential alternative to Mr. Harmer receiving a housing allowance. Specifically, the Town Commission discussed the potential for Mr. Harmer to receive "housing assistance" from the Town in the form of free lodging at potential Town residences, condominiums or hotels during his extended term as the Town Manager. After further consideration of the lodging assistance option, this option could create potential legal exposure to Mr. Harmer under Florida's Ethics Code (Chapter 112, Part III, Florida Statutes) and potentially compromise Mr. Harmer's ethical obligations and credentialing with the International City/County Manager's Association (ICMA). Under Florida law, a donation of free lodging could create prohibited conflicts of interests and/or constitute prohibited gift(s), both of which could subject Mr. Harmer to having to defend against ethic complaints before the Florida Commission on Ethics. The allowance approach included in the amendment will place the burden on Mr. Harmer to secure lodging during his extended

term and not complicate the Town's involvement in trying to secure temporary space. Based upon these concerns, the Employment Agreement Amendment was prepared only providing for a financial lodging allowance, and not providing for "housing assistance".

My office prepared the Employment Agreement Amendment for consideration by the Town Commission at the October 3, 2022 Regular Town Commission meeting. The Amendment is written to only modify the noted changes listed above, and all other terms and conditions of Mr. Harmer's initial Employment Agreement shall continue to be in effect. Accordingly, Mr. Harmer's initial Employment Agreement dated July 17, 2017, is also included for the Town Commission's information and consideration. I am recommending that the Employment Agreement Amendment be approved by Town Commission and that the Mayor and Town Attorney be provided authorization to execute the Employment Agreement Amendment on the Town's behalf.

Please do not hesitate to contact me if there are any questions or concerns about this Memorandum or Mr. Harmer's Employment Agreement Amendment.

Recommended Motion: Approve the Employment Agreement Amendment with Thomas A. Harmer and authorize the Mayor and Town Attorney to execute the Employment Agreement Amendment on the Town's behalf.

Exhibit 1: (1) Employment Agreement with Thomas A. Harmer dated July 17, 2017. This exhibit is available and on file with the Town Clerk's Office.

End of Agenda Item