



# TOWN OF LAUDERDALE-BY-THE-SEA

## AGENDA ITEM REQUEST FORM

### Administration

### Interim Town Manager

**Connie Hoffmann**

Department Submitting Request

Dept Head's Signature

<u>Commission Meeting Dates</u>	<u>Last date to turn in to Town Clerk's Office</u>	<u>Commission Meeting Dates</u>	<u>Last date to turn in to Town Clerk's Office</u>	<u>Commission Meeting Dates</u>	<u>Last date to turn in to Town Clerk's Office</u>
<input checked="" type="checkbox"/> May 25, 2010	May 14 (5:00 p.m.)	<input type="checkbox"/> July 27, 2010	July 16 (5:00 p.m.)	<input type="checkbox"/> Oct 26, 2010	Oct 15 (5:00 p.m.)
<input type="checkbox"/> June 8, 2010	May 28 (5:00 p.m.)	<input type="checkbox"/> Aug 24 2010*	Aug 13 (5:00 p.m.)	<input type="checkbox"/> Nov 9, 2010	Oct 29 (5:00p.m.)
<input type="checkbox"/> June 22, 2010	June 11 (5:00 p.m.)	<input type="checkbox"/> Sept 14, 2010	Sept 3 (5:00 p.m.)	<input type="checkbox"/> Nov 23, 2010	Nov 12 (5:00p.m.)
<input type="checkbox"/> July 13, 2010	June 2 (5:00 p.m.)	<input type="checkbox"/> Sep 27, 2010	Sept 17 (5:00 p.m.)	<input type="checkbox"/> Dec 14, 2010	Dec 3 (5:00p.m.)
		<input type="checkbox"/> Oct 12, 2010	Oct 1 (5:00p.m.)		

\* Subject to change

#### NATURE OF AGENDA ITEM

- |   |   |  |
|---|---|--|
| <input type="checkbox"/> Presentation         | <input type="checkbox"/> Resolution     | <input checked="" type="checkbox"/> Manager's Report |
| <input type="checkbox"/> Public Safety Report | <input type="checkbox"/> Quasi Judicial | <input type="checkbox"/> Attorney's Report           |
| <input type="checkbox"/> Consent Agenda       | <input type="checkbox"/> Old Business   | <input type="checkbox"/> Other                       |
| <input type="checkbox"/> Ordinance            | <input type="checkbox"/> New Business   |  |

**SUBJECT TITLE:** a. Report on payout to the former Town Manager  
b. Pending assignments / projects list

**EXPLANATION:**

**STAFF RECOMMENDATION:**

**BOARD/COMMITTEE RECOMMENDATION:**

**FISCAL IMPACT AND APPROPRIATION OF FUNDS:**

- |   |  |
|---|--|
| <input type="checkbox"/> Amount \$ _____            | <input type="checkbox"/> Acct # _____  |
| <input type="checkbox"/> Transfer of funds required | <input type="checkbox"/> From Acct # _____   |
| <input type="checkbox"/> Bid                        | <input type="checkbox"/> Grant <input type="checkbox"/> Amount represents matching funds |

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Town Attorney review required  
 Yes  No

Town Manager's Initials: \_\_\_\_\_

**16 A**

**Report on Payout**

May 20, 2009

To: Mayor Roseann Minnet  
Vice Mayor Stuart Dodd  
Commissioner Birute Ann Clottey  
Commissioner Scot Sasser  
Commissioner Chris Vincent

From: Connie Hoffmann, Interim Town Manager 

Subject: Inquiry Into Esther Colon's Final Payout

For the past four weeks I have been conducting the inquiry into the payouts made to former Town Manager Esther Colon. And that inquiry is now essentially complete. Because the issues of the payout were complex, and other Town business limited the time I was able to devote to a rigorous examination of the files, I engaged the services of an experienced municipal finance professional to analyze leave accruals, review personnel files of many employees with regard to prior actions and precedents, examine and extract data from payroll records, etc.

While he was doing that, I looked into issues regarding the development of Colon's Town Manager employment contract, reviewed Commission meeting minutes that were relevant to the matter, and did other research. Once we had done a good deal of research and analysis, we met with the HR/Risk Manager to get her explanation of why things were handled in the manner they were, both in terms of benefits and salary administration, as well as with regard to Colon's payout decisions.

Throughout the inquiry I consulted with the Town Attorney and the labor attorney in her firm that assists the Town on personnel matters. They were of great assistance and very responsive to my questions. The inquiry revealed that Colon received \$69,308.62 more in compensation in her final payouts than we determined she was entitled to receive. The Town Attorney reviewed the attached detailed report (Exhibit 1) and concurs with the conclusions reached.

#### SUMMARY OF FINDINGS

##### **1. Colon's Final Payout Amounts**

The Town's payroll is handled by direct deposit into employees' bank accounts. Ms. Colon received five separate deposits in the payroll that was processed for the pay period ending April 23, 2010. One deposit was for her normal biweekly wages. Excluding her wages for that pay period (Deposit #1), Colon's final payout in terms of gross compensation was \$296,188.33 and was made in four separate deposits as follows:

A. **Deposit No. 2** in the gross amount of \$169,276.84 was comprised of three calculations:

- a. \$160,541.94 for one year's salary in severance pay.

**Analysis:** Since Ms. Colon's contract provided for one year's severance pay **the payment of \$160,541.94 was according to contract.**

- b. \$7,499.96 for one year's worth of deferred compensation.

**Analysis:** Since Ms. Colon's contract provided for one year's severance pay **the payment of deferred compensation, which is a benefit, was not warranted. The Town Attorney concurs with this finding.** The HR/Risk Manager indicates that she thought deferred compensation was part of salary and should, therefore, have been included in the calculation of severance.

- c. Ms. Colon's wages for Monday, April 26 and Tuesday, April 27, 2010 (\$77.18375 per hour x 16 hours).

**Analysis:** According to her personnel file, Colon's annual salary at the time of her termination was \$160,542.03 which equates to \$77.1837 per hour so **those payments were appropriate.**

B. **Deposit No. 3** in the gross amount of \$41,479.25 was noted by the Town's Human Resources & Risk Manager as being compensation for 537.41 hours of accumulated vacation leave at the correct hourly rate.

**Analysis:** **The net impact of our findings on vacation leave indicates that an overpayment of \$18,593.56 was made to Ms. Colon for accumulated vacation leave.** Ms. Colon accrued 20 annual leave days per year since being appointed Town Manager, when she was only authorized by the Personnel Policy Manual to accrue ten days per year. As a result, Colon was compensated for more than 200 hours of vacation leave in her final payout than she was entitled to accrue. This error appears to have occurred because the HR/Risk Manager failed to reset the accrual rate for the Town Manager position in the ADP payroll system when Colon was appointed to the position, so she accrued her vacation time at the higher rate that had been authorized for the previous Town Manager. A detailed reconciliation of Colon's vacation accruals also indicated a slight over accrual (3.74 hours).

C. **Deposit No. 4** in the gross amount of \$56,293.88 was noted by the Town's HR/ Risk Manager to be for 729.35 hours of accumulated sick leave at her full hourly rate. In other words, Colon was compensated for 100% of her accumulated sick leave.

**Analysis: We have determined Ms. Colon was overcompensated for accrued sick leave by \$43,215.10.** The issue of the sick leave payout is complicated in that there were several

issues that needed to be analyzed. The first issue is that Colon was allowed to accumulate more sick leave than the Town's personnel policy allowed before becoming Town Manager because of the HR/Risk Manager's incorrect interpretation that the sick leave cap was not to be applied to sick leave accruals, but only to the payout of accrued sick leave upon separation from Town service. When Colon became Town Manager, her contract provided that the 480 hour cap imposed on other employees would not apply to her. Therefore, the HR/Risk Manager paid her for all accumulated sick leave.

The Town Attorney and I agree that Ms. Colon's sick leave accrual *was* subject to the cap immediately prior to her appointment as Town Manager. Application of that finding means that Colon's sick leave accruals were overstated at the time of her appointment and, as a result, at the time of her dismissal

Another issue is that Colon was incorrectly compensated for 100% of her accrued sick leave in her final payout, rather than the 25% payout rate dictated by the Personnel Policy Manual.

- D. **Deposit No. 5** in the gross amount of \$29,138.36 was for 377.53 hours of compensation time at the rate of \$77.1836 per hour. Colon's contract provided that she would be paid for "an amount for accrued compensatory time accrued prior to appointment as Town Manager."

**Analysis: The payout for her accumulated comp time was provided for in her contract and was calculated at Ms. Colon's ending hourly rate.**

2. **Colon's Salary at Time of Termination** – Colon's salary was increased twice since it was set at the time of her appointment as Town Manager by cost of living adjustments granted to all employees in the budget.

**Analysis: These raises were consistent with cost of living adjustments given other employees at the same time.** The Town Commission did not specifically vote to give those raises to Ms. Colon, but it appears that, historically, approval of the budget which contained funds for cost of living adjustments was considered to be authorization by the staff to process a salary increases for the Town Manager.

3. **Pre-payment of Benefits** –Colon directed that deductions be made from her severance payout to prepay two years of premiums for health insurance, vision care, dental insurance, life insurance, and disability insurance.

**Analysis: This issue is still under review by the Town Attorney and is discussed in more detail in the full report (Exhibit 1).**

Table 1: Overpayments

Deferred Compensation	\$7,499.96
Vacation Leave	\$18,593.56
Sick Leave	\$43,215.10
<b>Total</b>	<b>\$69,308.62</b>

If the Commission concurs with the findings outlined above, it is recommended the Town Manager and Town Attorney be authorized to request the return of the overpayments documented above from Ms. Colon .

Attachments: Exhibit I – Detailed Report on Issues Relating to Esther Colon’s Payout  
Exhibit II – Esther Colon Town Manager Employment Agreement

# EXHIBIT 1: DETAILED REPORT ON ISSUES RELATING TO ESTHER COLON'S PAYOUT

MAY 2010

## 1. COLON'S CONTRACT TERMS REGARDING COMPENSATION DUE UPON TERMINATION

Colon's contract dated May 22, 2007 included the following terms regarding benefits & payout upon separation:

- a. No fixed term of the contract; she served at the pleasure of the Commission.
- b. Upon termination by the Commission, Colon is entitled to:
  - i. 365 days of severance pay, less customary withholding
  - ii. Reimbursement for as-yet unreimbursed expenses pursuant to the contract.
  - iii. "an amount for all accrued and unused vacation leave"
  - iv. "an amount for accrued and unused sick leave"
  - v. "an amount for accrued compensatory time accrued prior to appointment as Town Manager."

## 2. COLON'S FINAL PAYOUT AMOUNTS

The Town's payroll is handled by direct deposit into employees' bank accounts. Ms. Colon received five separate deposits in the payroll that was processed for the pay period ending April 23, 2010. One deposit was for her normal biweekly wages. Excluding her wages for that pay period, Colon's final payout in terms of gross compensation was \$296,188.33 and was made in four separate deposits as follows:

- A. **SEVERANCE:** Deposit #1 in the gross amount of \$169,276.84 was comprised of three calculations: 1) \$160,541.94 for one year's salary in **severance pay**, 2) \$7,499.96 for one year's worth of **deferred compensation**, and 3) Ms. Colon's **wages for Monday, April 26 and Tuesday, April 27, 2010** (\$77.18375 per hour x 16 hours).

The common understanding of "severance pay" as used in this contract is that it means "salary" and not salary and benefits. When benefits are to be included, we would expect that to be explicitly stated.

According to her personnel file, Colon's annual salary at the time of her termination was \$160,542.03 which equates to \$77.1837 per hour. Since Colon's contract provided for severance pay equal to one year's salary, the payment of \$160,541.94 was warranted.

Paragraph 10.4 of her contract says that "In addition to base pay, TOWN agrees to pay \$7,500 annually into the ICMA-RC or National Employees Trust on the employee's behalf in equal proportional amounts each pay period..." Nowhere in Ms. Colon's contract does it state that deferred compensation is to be included in, or added to, her severance pay. In a letter dated April 20, 2010 (the date of her termination) from Colon to Human Resources &

Risk Manager Kathy O'Brien, Colon asks that O'Brien "deduct the total amount allowed by law for my deferred compensation plan Nationwide (NACO) aka Pebsco from my final paycheck. I assume I will receive the Town's prorated portion for the payroll week ending April 30<sup>th</sup>..."

Ms. Colon's request that O'Brien deduct "the total amount allowed by law" appears to refer to the contribution she personally makes to her deferred compensation account and O'Brien entered a voluntary deduction (which is deducted from Colon's severance pay) of \$14,919.52. However, O'Brien also included in Colon's severance check \$7,499.96, which is the value of a year's worth of the Town's contribution to her deferred compensation account. In a meeting with Kathy O'Brien on Tuesday, May 18, 2010 she stated that she included the \$7,499.96 in the severance check because "I thought that deferred comp was part of her annual salary".

It is the opinion of the Town Attorney that the \$7,499.96 should neither have been paid to Colon, nor to a deferred compensation account on her behalf and, based on that opinion, I advised the company that holds this deferred compensation account in Ms. Colon's name in writing on May 11, 2010 that this amount may have been paid in error and asked them to essentially place a hold on the funds until our final determination on the appropriateness of that payment is made.

In looking back into the payroll records for Ms. Colon, we determined that she received direct compensation for what was supposed to be the Town's contribution to her deferred compensation in the amount of \$288.46 bi-weekly, beginning with the pay period ending 5/4/2007 and continued through April 2010. Colon did make voluntary contributions to deferred compensation that more than offset that amount, but the way this was handled was neither consistent with the terms of her contract, nor with the way a municipality's contributions to a deferred compensation account are normally handled. The impact of paying the deferred compensation directly to Colon is that it inflated her income for the calculation of her retirement benefits under the Florida Retirement System, and increased the Town's contributions to the Florida Retirement System.

- B. **ACCRUED VACATION LEAVE:** Deposit #2 in the gross amount of \$41,479.25 was noted by the Town's Human Resources & Risk Manager as being compensation for 537.41 hours of accumulated vacation leave at the correct hourly rate. Colon's contract provided for payout of "all accumulated vacation leave" if she was terminated. In our effort to determine whether Ms. Colon accumulated vacation time in accordance with her contract, we looked at several matters and questions that have been asked by members of the Commission.

I. *Why did Colon's accumulated vacation hours exceed the cap of 240 hours established by the Personnel Policy Manual?*

Colon was not subject to the cap established in the personnel rules on accumulated vacation leave of 240 hours on Dec 31 of any calendar year because paragraph 10.1 of her contract states that "Except as herein provided, TOWN MANAGER shall receive the same...benefits as are granted to other managerial non-union employees of the TOWN, without cap." (emphasis added)

II. *Is the vacation accrual rate for management employees different than for regular employees and, if so, what is it?*

The vacation accrual rates for management employee are the same as for general employees. However, Colon's contract provided that she would receive "15 days vacation days added to her current bank of vacation days upon commencement of employment. Thereafter, she shall accumulate vacation leave as provided under the rules and regulations for other managerial employees of the Town, including payout for unused vacation leave upon termination." (Presumably the date of employment referred to is the effective date of her contract as Town Manager - April 24, 2007. She was granted the additional 15 days per her contract during the pay period ending June 15, 2007.) We found nothing in the Personnel Policy Manual or the Town's Pay Plan that provided for management employees to accrue vacation leave in a different manner than other employees. The Deputy Town Clerk was unable to find any record in the Town Commission minutes that authorized a differential vacation accrual rate for management personnel than for other personnel. Kathy O'Brien confirmed that she knew of no provision for managerial employees to receive additional vacation time.

III. *Given that there was no differential rate of vacation accrual for managerial employees, was Ms. Colon's vacation leave accrued in a manner consistent with the Personnel Policy Manual?*

The Town's Personnel Policy Manual provides that an employee with up to 10 years of service with the Town will earn 10 days annual leave (vacation) per year. Since Colon's initial date of employment with the Town was 6/12/2000, and her contract stated she would accrue vacation in accordance with the rules and regulations for other managerial employees, she should have been accruing 10 days of vacation per year. In auditing the ADP payroll leave records it was determined that Ms. Colon accrued vacation leave at the rate of 3.08 hours bi-weekly, or, 10 days per year (3.08 hours/pay x 26 pays = 80 hours = 10 days) in 2006, but began to accrue 20 vacation days per year during the time she was Town Manager. Since we found no record that the Town Commission

authorized Ms. Colon to receive 20 annual leave days per year, it can be concluded that Colon received 237.16 hours (77 pay periods x 3.08 hours) more than she was entitled to accrue. She was paid \$18,304.89 for those 237.16 hours in her final payout.

It appears that Ms. Colon was receiving the 20 days vacation because the ADP system was not reset by the Town's HR & Risk Manager to reflect the proper accrual rate when she slotted Colon into the Town Manager job classification. Former Town Manager Robert Baldwin was expressly authorized by the Town Commission to receive 20 days vacation, so the system was set up to accrue at that rate. It is difficult to understand how neither O'Brien nor Colon realized over a three year period that the accrual rate was double what it should have been.

- IV. *Given that the 240 hour cap on vacation leave provided in the Personnel Policy Manual applied to Ms. Colon prior to her appointment as Town Manager, was Colon's accumulated vacation leave no more than 240 hours on December 31, 2006?*

For the pay period ending 12/15/2006 Colon had 141.10 hours of accrued vacation, well below the cap.

- V. *Does the documentation of Ms. Colon's vacation accrual from the effective date of her appointment as Town Manager indicate it was maintained properly?*

A detailed evaluation was made of the Town's records from the ADP payroll system. In addition, leave slips and time sheets were also compared to the ADP records. In some cases, there were discrepancies in which time off recorded on the timesheet and/or leave slips was not always properly entered in ADP. As a result, the annual leave time taken and earned from Colon's appointment as Town Manager to her dismissal was reconstructed by the consultant, which raised some questions about accrual totals. He subsequently met with Kathy O'Brien who explained those issues to his satisfaction. After that meeting, the consultant determined that there was no significant discrepancy (overpaid by 3.74 hours - \$288.67) on vacation accruals, other than the over accrual of the 237.16 hours previously identified.

The net impact of our findings on vacation leave indicates that an overpayment of \$18,593.56 was made to Ms. Colon for accumulated vacation leave.

- C. **ACCUMULATED SICK LEAVE:** Deposit #3 in the gross amount of \$56,293.88 was noted by the Town's HR/ Risk Manager to be for 729.35 hours of accumulated sick leave at her full hourly rate. In other words, Colon was compensated for 100% of her accumulated sick leave.

Before getting into the issue of the 100% payout, it is necessary to address whether the number of accumulated sick leave hours used to make the calculation was correct, and so we investigated the following issues.

- I. *Is the sick leave accrual rate for management employees different than for regular employees and, if so, what is it? At what rate did Colon accrue sick leave?*

We found no evidence that management employees accrue sick leave at a different rate than general employees. The Personnel Policies Manual provides that employees accrue sick leave at the rate of 1 day per month (3.7 hours per biweekly pay period). Our review of Colon's records revealed that she accrued sick leave at the normal accrual rate.

- II. *Was Colon's sick leave capped at 480 hours prior to her appointment to the position of Town Manager in accordance with the Personnel Policy Manual (which applied to her at that point in time)?*

It should be noted that, once she became Town Manager, Colon was not subject to the 480 hour cap on accumulated sick leave established in the Personnel Policy Manual because paragraph 10.1 of her Town Manager contract exempted her from the cap.

In the last payroll (5/20/2007) before the effective date of her appointment as Town Manager (5/24/2007), Colon had 527.85 hours of accumulated sick leave, which put her over the cap she was subject to at that time by 47.85 hours. It is my opinion, and the Town Attorney concurs, that Colon's sick leave accrual should have been reset to 480 hours (the cap) concurrent with her appointment as Town Manager, at which point she could continue accruing beyond the cap. Therefore, 47.85 hours should be removed from her sick leave accrual totals.

- III. *Was her sick leave accrued properly from the date of her appointment as Town Manager?*

Section 10.3 of Colon's contract provides that she would be credited with "10 sick leave days added to her current bank of sick leave upon commencement of employment. Thereafter she shall accumulate sick leave as provided under the rules and regulations for other managerial employees of the Town, including payout for unused sick leave upon termination." She was granted the additional 10 days per her contract during the pay period ending June 15, 2007

Sick leave accruals were not being accurately tracked for Colon in the ADP system for the period June, 2007 thru April, 2009. When Colon questioned the accuracy of her accruals in 2009, reconciliation was done by the HR & Risk Manager and a retroactive adjustment of +272.15 sick leave hours was made in May, 2009. The consultant

assisting me with the inquiry reviewed the detail on that reconciliation and it appears to be in order, except that the starting figure was wrong because it was over the cap as noted earlier.

*IV. Were the debits to her sick leave accumulation were consistent with her sick leave slips from the date of her appointment as Town Manager.*

Following the same process as the vacation leave, a detailed evaluation was made of the Town's payroll records from the ADP system. Leave slips and time sheets were compared to the ADP records. In some cases, there were discrepancies where time off recorded on the timesheets/leave slips was not always properly updated in ADP. As a result, the sick time taken/earned from Colon's appointment as Town Manager to dismissal was reconstructed. The evaluation revealed that Colon was not credited with 3.7 hours of sick leave that she should have received.

As a result of these findings, it is concluded that Colon's accumulated sick leave total at the time of her termination should have been 677.80 hours (729.35 -47.85 +3.7), not 729.35 hours .

*V. Should Colon have been compensated for 100% of her accumulated sick leave?*

Section 10.3 of Colon's contract provided that "she shall accumulate sick leave as provided under the rules and regulations for other managerial employees of the Town, **including payout for unused sick leave upon termination**" (emphasis added). The Termination section of Colon's contract states that, upon termination, she shall receive compensation for "an amount for accrued and unused sick leave". Note that it does not state that she shall be compensated for all accrued and unused sick leave, as it does in the case of vacation leave. That is consistent with the Town's Personnel Policy Manual that provides for full payment of vacation leave upon separation from employment, but provides employees shall be compensated for 25% of their accumulated and unused sick leave upon separation from the Town in good standing. (The issue of "good standing" is not pertinent in Colon's case in that she was terminated without cause and her contract provided for compensation for an amount for accrued and unused sick leave if she was terminated.)

When we asked the HR/Risk Manager why she compensated Colon for 100% of her sick time, she indicated that she understood from the Town Commission's and the Town Attorney's statements at the meeting in which Colon was fired, that she was to follow Section 5 of Colon's contract in making the payments. She felt the Town Attorney and Commission were so specific about applying the terms in Section 5 of Colon's contract that she did not consider other sections of the agreement that referred to the applicability of the Town's Personnel Policy Manual to the calculation of payouts for sick leave. She did indicate that she interpreted the language in Section 5 to mean Colon was to be compensated for

“all” accrued and unused sick leave, although she acknowledged in our interview that she did not notice that the word “all” was missing from the payout reference to sick leave in that section of Colon’s contract.

The Town Attorney and I agree that the sick leave payout made to Colon for 100% of her accumulated sick leave is not consistent with the terms of her contract and that she should have only been compensated for 25% of her accumulated sick leave. We have already established that her accumulated sick leave hours should have been 677.80, so this means that Colon should have been paid \$13,078.78 for sick leave in her final payout ( $677.80 \times .25 = 169.45 \times 77.1837$ ). She actually received \$56,293.88, so she was overpaid by \$43,215.10 for sick leave.

- D. **COMP TIME:** Deposit #4 in the gross amount of \$29,138.36 was for 377.53 hours of compensation time at the rate of \$77.1836 per hour. Colon’s contract provided that she would be paid for “an amount for accrued compensatory time accrued prior to appointment as Town Manager.”

We checked the Town’s files and determined that Colon received written approval from the previous Town Manager Robert Baldwin to book 377.52 hours of compensatory time on April 20, 2007, days before the effective date of her appointment as Town Manager. The request for 377.52 hours of comp time was made in a memo from Colon to Baldwin. She stated that she had accrued this comp time between October 2001 and April 20, 2007. She attached a detailed accounting of the comp time by pay period for six years, which shows she routinely took and added to her comp time “bank” during those six years. However, none of that comp time was documented in the ADP payroll system as the ADP Accrual Report for Active Employees for the pay period ending March 23, 2007 indicates a zero balance in comp time for Ms. Colon.

Section 4 of the Personnel Policy Manual gives the Town Manager the authority to grant compensatory time off to “administrative and professional employees who work more hours than the standard work week established for their position”. Clearly the Personnel Policies indicate that the Town Manager is authorizing time off, not payment for those hours, but a former Town Commission committed in her contract to pay Colon for those hours if she was terminated, so the Town was obligated to do so.

The reference in the Personnel Policy Manual to comp time for professional employees needs to be revised as it is contrary to the whole concept of being an exempt employee.

We also looked at several other issues regarding Ms. Colon’s payout and contract.

## 1. COLON'S BASE SALARY

We reviewed Colon's personnel file to establish Colon's salary history from time she was appointed Town Manager to her termination and to determine the authority for any increases in her pay in order to make sure that the hourly rate applied to calculate her final payouts was accurate.

- A. Paragraph 2.0 of her contract executed on May 22, 2007 and effective April 24, 2007 provided for an annual salary of \$146,743.00. Her subsequent increases in salary were:
- I. On 10/6/2007 Colon received a 3.7% increase in pay from \$146,742.96 to \$152,172.45. There is no indication of authority for this increase on the PSCN (Personnel Status Change Notice), the form used to make any changes in pay or status for a Town employee. In the Town's 2007/2008 Budget Book there is a statement that says "The Town Commission's budgetary policy is to give cost-of-living adjustments (COLA) to all management and nonunion employees, effective the first full pay period, tied to the annual Broward inflation index projections available by October 1 of the fiscal year (typically around 3.5%). We have calculated the increases at 5% at the time the budget is being prepared. It is important that employee base salaries keep up with the rate of inflation. Commission COLA's are set at 5% by policy". The Deputy Town Clerk could find no discussion in the Commission minutes during various budget discussions that year of the COLA.
  - II. A PSCN in Colon's personnel file dated 10/4/2007 indicates Colon received a 5.5% increase in pay from \$152,172.45 to \$160,542.03, yet the date the PSCN was signed was 10/20/2008. It appears that the 10/4/2007 date is an error and should be 2008. In auditing the payroll registers from October, 2007 thru December, 2008 there is no indication of any retroactive adjustment, so it appears the 2007 date was a scrivener's error. The annualized salary was \$152,172.54 for the pay period ending 10/19/2007. It did not change until the pay period ending 10/17/2008 when it increased to \$160,541.94. Once again, there is no notation of the authorization on the PSCN for this raise. The budget document for FY 2008/2009 states the following: "We have calculated the COLA increase at 5.5% at the time the budget was being prepared. It is important that employee base salaries keep up with the rate of inflation. Commission salary increase is set at 5% by policy, which was not funded in FY 2008-2009. The Town Commission declined the increase as a result of property reform and the current economic condition". Based on that statement it appears that the Town Commission also normally receives the COLA each year. In the minutes of the Commission meeting dated 9/25/2008 the Town Manager asked the Commission whether there would be an adjustment in salaries and insurance, but received no response other than that the Town Commission voted 5-0 to forgo the Commission's "annual 5% salary increase".

- III. Colon received no COLA in October of 2009. The 2009/2010 budget book indicates "This year we have calculated no COLA increase of non-union or management staff because of the current state of our economy. Commission salary increase was set at 5% by policy, but the Commission deferred the annual raise until the economy improves. In addition, Management staff also deferred a salary increase. The only increase awarded was 2.5% to line staff." Colon states in the minutes of the July 28, 2009 budget hearing several times that "Management and Department Directors were not going to take COLA raises".

It appears that, historically, approval of the budget which contained funds for COLAs was considered to be authorization by the staff to process a salary increases for the Town Manager. For the sake of clarity it is recommended that, in the future, the Town Commission actually vote on whether to grant the COLA, in what amount, the effective date, and whether it applies to the Town Manager.

## **2. PREPAYMENT OF BENEFITS**

This issue is rather complicated. The ADP payroll sheets show a voluntary deduction from Colon's severance deposit in the amounts of \$10,626 to cover 24 months of health insurance at the single coverage rate of \$442.75/month, \$208.08 for dental coverage which is only sufficient for 18 months (at \$11.17/month for Dental coverage), \$110.16 for 24 months of vision coverage at the current rate of \$4.59 a month, and \$825.60 for two years of life insurance at the current rate of \$34.40 per month. Colon requested in a letter dated April 20, 2010 (the day she was terminated) to the HR/Risk Manager that two years of health, life, dental and vision insurance premiums be withheld from her final check for health, life, dental and vision coverage. She states in that letter that she was providing her Florida Retirement System documents to Ms. O'Brien under separate cover and, "Therefore, I am requesting the same coverages afforded all other FRS retired employees." She notes that "Upon notice of any change in premiums from the Town I will remit any funds due to the Town before the premiums are due." In another document she submitted on the day she was terminated, Colon states that "my effective retirement date is June 25, 2010 at 5:01 pm. The HR/Risk Manager confirms that Colon gave her application for retirement, but those files cannot be found. We have advised Ms. Colon in writing that her retirement application papers cannot be found and advised her to resubmit them.

Retired employees are allowed "the option of continuing the Florida Municipal Health Trust Fund Insurance Plan at their own expense" according to Town Resolution No. #1222 adopted in January, 1994. There is no policy, however, that provides for continuation of life insurance benefits or disability benefits for any employees after they leave the Town's employ.

In the meeting with HR/Risk Manager Kathy O'Brien, she indicated there was precedent for allowing an employee to prepay various insurances upon separation from the Town. O'Brien also clarified that she determines an employee is a retiree "When they fill out retirement papers."

There are several issues here – whether Colon should be considered a retiree, whether the Town has been incorrectly applying the 1995 resolution by allowing individuals to continue benefits beyond the specific health insurance referenced in that resolution, how we have handled other employees in similar situations. The Town Attorney needs additional time to consider these issues and we may do more research of Town files to determine past actions. Rather than hold up the report for further research, we felt it best to issue it now and come back to you on this matter when the Town Attorney has had sufficient time to fully consider the matter.

**3. SALARY RATE ON WHICH PAYOUTS WERE BASED**

It is the Town Attorney's opinion that the payouts for comp time, accrued vacation, and sick leave should have been calculated on the basis of her rate of pay on the date of her termination since there were no specific provisions in her contract dictating otherwise. The Town has historically made such payments on the rate of pay at the time of the employee's separation from Town service.

**SUMMARY**

The inquiry revealed that Colon received \$69,308.62 more in compensation in her final payouts than she was entitled to receive.

Table 1: Overpayments

Deferred Compensation	\$7,499.96
Vacation Leave	\$18,593.56
Sick Leave	\$43,215.10
<b>Total</b>	<b>\$69,308.62</b>

**EMPLOYMENT AGREEMENT**

**THIS AGREEMENT**, is made and entered into this 22<sup>nd</sup> day of May, 2007 between the Town of Lauderdale By the Sea, Florida, a municipal corporation, hereinafter called "TOWN" and ESTHER COLON, pursuant to these terms and conditions:

WITNESSETH:

**WHEREAS**, the TOWN desires to employ the services of ESTHER COLON as Town Manager of the TOWN of Lauderdale By The Sea, Florida, as provided by Section 5.3 of the TOWN Charter of Lauderdale By The Sea, Florida; and

**WHEREAS**, it is the desire of the TOWN Commissioner to provide certain benefits, and requirements regarding the employment of the said TOWN Manager by the TOWN; and

**WHEREAS**, ESTHER COLON wishes to accept employment as TOWN Manager of said TOWN under the terms and conditions recited herein.

**NOW, THEREFORE**, TOWN and TOWN Manager agree as follows:

1.0 Duties

1.1 TOWN agrees to employ ESTHER COLON as the TOWN MANAGER, to perform the functions and duties specified in Section 5.5 of the TOWN Charter and in the TOWN Code of Ordinances, and to perform other legally permissible and proper duties and functions as are required by law or that the Commission shall from time to time assign. The TOWN Manger shall perform her duties in accordance with the Florida Code of Ethics for public officers and the ICMA Code of Ethics.

2.0 Salary

2.1 TOWN agrees to pay TOWN Manager for her services rendered an annual salary of One Hundred Forty Six Thousand Seven Hundred and Forty Three (\$146,743.00) dollars payable in equal periodic installments at the same time that other managerial employees of the TOWN are paid.

3.0 Terms of Employment

3.1 In accordance with Section 5.3 of the TOWN Charter, the TOWN Manager serves at the pleasure of the TOWN Commission and the TOWN Manager's term of employment is therefore not for a fixed term.

3.2 Nothing in this Agreement shall prevent, limit, or otherwise interfere with the right of the TOWN Commission to terminate the services of TOWN Manager at any time.

3.3 Nothing in this Agreement shall prevent, limit, or otherwise interfere with the right of the TOWN Manager to resign at any time from her position with the TOWN.

3.4 The term of appointment of the TOWN Manager shall be deemed to have commenced April 24, 2007.

4.0 Termination Conditions and Pay

4.1 This Agreement shall terminate:

4.0.1. at any time by mutual agreement of TOWN MANAGER and the TOWN;

4.1.2. upon TOWN MANAGER's sustained inability for 90 calendar days in a 120 day period to perform all or substantially all of her duties and obligations pursuant to this Contract as a result of physical or mental illness or condition.

4.1.3 at any time by either the TOWN COMMISSION's unilateral termination of TOWN MANAGER's.

4.1.4 the death of TOWN MANAGER.

4.1.5 the resignation of TOWN MANAGER

5.0. Rights and Obligations Upon Unilateral Termination by TOWN.

5.1 Unilateral termination shall be in writing following a vote by the TOWN Commission and need not reflect performance related reasons. If this Contract is terminated by unilateral action by the TOWN, TOWN MANAGER shall be entitled to:

5.1.1. three hundred and sixty-five (365) days of severance pay, less customary withholding.

5.1.2. reimbursement for as-yet unreimbursed expenses pursuant to this Contract;

5.1.3. an amount for all accrued and unused vacation leave.

5.1.4. an amount for accrued and unused sick leave.

5.1.5. an amount for accrued compensatory time accrued prior to appointment as Town Manager.

6.0 Rights and Obligations Upon Termination by Mutual Agreement.

6.1. If this Contract terminates upon mutual agreement of the parties, TOWN MANAGER shall be entitled to:

6.1.1 severance benefits as mutually agreed to in writing by TOWN and TOWN MANAGER.

7.0 Rights and Obligations Upon Termination Due to Disability or Death.

7.1. If this Contract terminates due to TOWN MANAGER's disability or death, TOWN MANAGER or her guardian or personal representative shall be entitled to the following compensation and benefits:

7.1.1. base salary to date of death or last day of work if disability;

7.1.2. reimbursement for as-yet unreimbursed expenses pursuant to this Contract;

7.1.3. accrued and unused sick and vacation leave.

7.1.4. life and/or disability benefits, if applicable.

7.1.5. an amount for accrued compensatory time accrued prior to appointment as Town Manager.

8.0 Rights and Obligations Upon Termination Due to Resignation.

8.1. If this Contract terminates due to TOWN MANAGER's resignation, TOWN MANAGER shall be entitled only to the following compensation and benefits:

8.1.1. base salary through the date of resignation or such other date as mutually agreed to between TOWN MANAGER and the TOWN;

8.1.2. reimbursement for as-yet unreimbursed expenses pursuant to this Contract;

8.1.3. accrued and unused sick and vacation leave

8.1.4. an amount for accrued compensatory time accrued prior to appointment as Town Manager.

8.2. A resignation shall be submitted in writing to the Commission through the TOWN Clerk and shall provide for an actual resignation date no later than thirty (30) days following the date of notice of resignation, or later with the consent of the TOWN Commission.

8.3 In the event of a resignation, the TOWN Commission may establish an earlier resignation date than the date established by the TOWN MANAGER.

9.0 Automobile

9.1. TOWN MANAGER shall be provided with a late model unmarked vehicle for business and unrestricted personal use.

9.2. TOWN shall maintain the vehicle and shall provide property damage, personal liability and comprehensive insurance in accordance with current insurance coverage policies of the TOWN.

10.0 Vacation, Holiday, Sick Leave, Disability, Dental, Health, Life Insurance, Retirement, Memberships and Professional/Education Development.

10.1. Except as provided herein, TOWN MANAGER shall receive the same vacation, holiday, sick leave, dental, health, disability, hospitalization and life insurance benefits as are granted to other managerial non-union employees of the TOWN, without cap.

10.2. TOWN MANAGER shall receive an fifteen (15) vacation days added to her current bank of vacation days upon commencement of employment. Thereafter she shall accumulate vacation leave as provided under the rules and regulations for other managerial employees of the TOWN, including pay-out for unused vacation leave on termination.

10.3. TOWN MANAGER shall be credited with ten (10) sick leave days added to her bank of sick leave upon commencement of employment. Thereafter he shall accumulate sick leave as provided under the rules and regulations for other managerial employees of the TOWN, including pay-out for unused sick leave on termination.

10.4. TOWN and TOWN MANAGER agree to execute all necessary agreements provided by the International City Management Association-Retirement Corporation (ICMA-RC) or National Public Employees Trust for TOWN Manager's participation in said ICMA-RC retirement plan, and in

addition to the base salary paid by the TOWN to TOWN Manager, TOWN agrees to pay \$7,500, annually into the ICMA-RC or National Public Employees Trust on TOWN Manager's behalf, in equal proportionate amounts each pay period, and to transfer ownership to succeeding TOWN or the TOWN MANAGER upon TOWN MANAGER's resignation or discharge.

10.5. Subject to qualification by the State of Florida, the TOWN MANAGER will be a participant in the Florida Retirement System as other general employees of the TOWN, under the senior management class.

10.6. The TOWN agrees to budget and to pay for the registration, travel and subsistence expenses of the TOWN MANAGER for professional and official travel and meetings to continue the professional development of the TOWN MANAGER and to pursue necessary official and other functions for the TOWN including but not limited to her attendance at the Annual Conference of the International TOWN/County Management Association, and conferences and meetings sponsored by the National League of Cities, Florida TOWN/County Management Association, and such other national, regional, state, and local organizations and committees which the TOWN MANAGER of the TOWN is a member and as the TOWN may designate.

10.7. TOWN also agrees to budget and pay for the registration, travel and subsistence expenses of the TOWN MANAGER for short courses, institutes, and seminars that are necessary for professional development of the TOWN MANAGER and the good of the TOWN.

10.8. The TOWN agrees to budget and to pay for the professional dues and subscriptions of TOWN MANAGER necessary for her continuation and full participation in national, regional, state and local associations and organizations necessary and desirable for her continued professional participation, growth and advancement, and for the good of the TOWN, including but not limited to ICMA, FCCMA, PBCCMA, Innovation Groups (OG), National League of Cities (NLC), National Civic League (NCL), Association for Quality and Participation (AQP) and local or regional civic clubs.

## 12.0 Business Expenses

12.1. TOWN agrees to reimburse TOWN MANAGER for all business-related expenses upon presentation of duly executed expense vouchers, receipts, statement or personal affidavits.

## 13.0 Indemnification

13.1. TOWN shall defend, save harmless and indemnify TOWN MANAGER against any tort, professional liability claim or demand or other legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of TOWN MANAGER's duties as TOWN MANAGER. TOWN shall either compromise and settle any claim or suit or pay the amount of any settlement or judgment rendered thereon, if not compromised and settled.

13.2 TOWN reserves the right to select, appoint, retain, and discharge legal counsel necessary to provide the foregoing defense.

14.0 Bonding

14.1. TOWN shall bear the full cost of any fidelity or other bonds required of the TOWN MANAGER under any law or ordinance.

15.0 Performance Evaluations

15.1. The Commission shall review and evaluate the performance of the Employee at least annually in advance of the adoption of the annual operating budget. Said review and evaluation shall be in accordance with specific criteria developed jointly by Employer and Employee. Said criteria may be added to or deleted from as the Commission may from time to time determine, in consultation with the Employee. Further, the Commission shall provide an adequate opportunity for the Employee to discuss her/his evaluation with the Commission.

15.2 Annually, the Commission and Employee shall define such goals and performance objectives that they determine necessary for the proper operation of the Town and in the attainment of the Commission policy objectives and shall further establish a relative priority among those various goals and objectives, said goals and objectives to be reduced to writing. They shall generally be attainable within the time limitations as specified and the annual operating and capital budgets and appropriations provided.

16.0 Hours of Work

16.1 The parties agree that there are no established hours of work for the TOWN MANAGER. The TOWN MANAGER shall dedicate herself to the tasks necessary to effectively and efficiently manage the affairs of the TOWN.

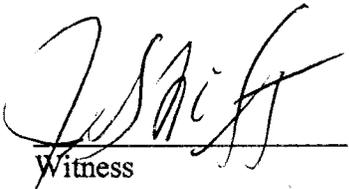
16.2 TOWN MANAGER may adjust her regular work schedule to balance the demands of extended business days and night meetings, upon reasonable notice to the TOWN Commission.

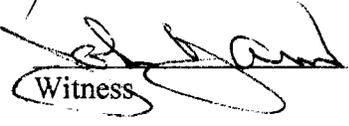
17.0 Binding Effect

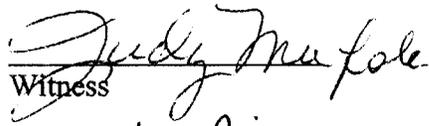
17.1 This Agreement shall be binding on the TOWN and TOWN MANAGER and the successors, assigns, and heirs of each respectively. The effective date of this Agreement shall be the date it is last signed by either the TOWN or the TOWN MANAGER.

17.2 In the event of litigation regarding this Agreement, venue shall be in Broward County, Florida.

IN WITNESS WHEREOF, the TOWN of Lauderdale By The Sea, Florida has caused this Agreement to be signed and executed in its behalf by its Mayor and duly attested to by its TOWN Clerk, and Esther Colon has signed and executed this Agreement.

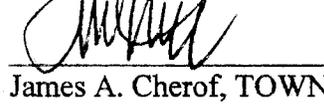
  
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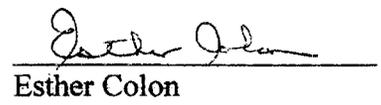
Approved as to Form:

  
James A. Cherof, TOWN Attorney

TOWN OF LAUDERDALE BY THE SEA,  
FLORIDA

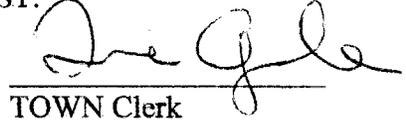
  
Mayor

Dated: 5/22/07

  
Esther Colon

Dated: 5/18/07

ATTEST:

  
TOWN Clerk

**16 B**

**Pending Assignments**

May 21, 2010

To: Mayor Roseann Minnet  
Vice Mayor Stuart Dodd  
Commissioner Birute Ann Clottey  
Commissioner Scot Sasser  
Commissioner Chris Vincent

From: Connie Hoffmann, Interim Town Manager



Subject: Town Manager's Report

### List of Assignments

Attached you will find my first attempt to create a list of pending assignments. (Abbreviations in the spreadsheet are TC for Town Commission and TA for Town Attorney.) There are many issues which I did not capture in this spreadsheet because of time constraints. I anticipate the report I submit in June will be more comprehensive.

This memo is shorter than in the past, because I used the spreadsheet to update the Commission on the status of a number of projects.

### Chamber of Commerce Building

The Chamber has reported a termite infestation and Municipal Services Director Don Prince is soliciting bids to deal with it.

### Commission Chambers

The overhead microphone for the round table meetings was installed today.

### BSO Contract Issues

Our contract with BSO does not expire until September 30, 2011, but several other cities' contracts expire this September and the Broward City County Manager's Association has been discussing the concept of a fairly uniform contract, with differential budget and staffing numbers, of course, for each City. I attended a meeting this week to get a better understanding of what they were doing. Much of the discussion centered on the idea of there being an accounting at the end of the fiscal year where BSO would determine their actual costs of serving the municipality for that fiscal year and financial adjustments would be made (referred to as a "true up"). A few days after that meeting, the Sheriff's Office sent out an email saying they would not be able to consider a true up model until and unless all cities were under that system. (Email is attached.)

As I mentioned in the cover memo to the budget schedule item, we received some very preliminary figures from BSO for 2010/2011 that reflect a significant hike in the Town's cost for police services that

appear to exceed the increase allowed for in our contract. I need to make sure that there are no addendums to the Town's contract with BSO that provide for more than a 5% adjustment in our costs from year to year before definitively reporting to you on that issue.

## TOWN MANAGER'S REPORT ON SIGNIFICANT ASSIGNMENTS

	STATUS	TO COMMISSION
<b>ORDINANCES</b>		
Sign Ord -Non Profit Exemptions		
Corner Lot Ordinance	goes to P&Z Board at June meeting	July
Abandoned Property Ordinance	goes to P&Z Board at June meeting	July
24 Hours Openings	sent to P&Z Board for disc at June meeting; staff provided the Board with research done on other cities' practices & with Police Chief's input	TC review in July
Comp Plan Updates Greenhouse Gas Schools	Consultant Walter Keller has submitted these updates & they will be reviewed by the P&Z Bd at their June mtg	TC review in July
Ord 2010-3 City Organization Ord 2010-4	Bud & Connie to review and suggest modifications	6/ 22 regular mtg
<b>ADMINISTRATIVE ISSUES</b>		
Deadline to revise Commission districts		
Town Technology Issues Granicus Info Outdated Technology	report provided to TC on 5/25 agenda The Town is using outdated software & the multiple server configuration creates security but some operational issues. We will be making an assesment of IT issues and identifying what needs to be done.	TC discussion on 5/25
Personnel Policies	policies are outdated and need a substantial overhaul; issues revealed in Colon payout inquiry need to be addressed such as continuation of benefits policy; authority for certain practices	

<b>BUDGET</b>	<b>STATUS</b>	<b>TO COMMISSION</b>
Current Year Budget vs Actual Analysis	Format & analysis of general fund only prepared. If TC likes the format, analyses of other major funds will be prepared if	5/25 Regular meeting
Analysis of Contingenices & Reserves	will be done by June 4th	

<b>CAPITAL PROJECTS</b>	<b>STATUS</b>	<b>TO COMMISSION</b>
A1A Landscape/Stretscape LAP Project Pine Island to Terra Mar	At 4/13 mtg Commission directed that Town input be given to PBS&J before they design it. We just rc'vd the conceptual plan which is due to FDOT 6/1. PBS&J will meet with MPSC soon. Bud working on clarification re: amount Town must put up for match.	8/16 public meeting
El Mar Dr Streetscape Project	MPSC discussed at their May mtg	
Stormwater Projects	Chen & Associates to prioritize the projects list & group stormwater & CIP projects together	
Public bathroom facilities near beach		

<b>DEVELOPMENT ISSUES</b>	
Perez & Associates site plan issues	Jeff Bowman awaiting architect's decision on options

EVENTS	STATUS	TO COMMISSION
July 4th Fireworks Decision	Staff directed at 4/13/2010 meeting to 1) provide costs for fireworks for past 3 yrs & indicate where they were launched from 2) provide an estimate of cost to shoot them from a barge or the pier Bud has provided most info to Commission. Pier has quoted reduced price of \$12K to shoot fireworks from Pier	Fireworks bid award 6/8, unless under \$15K in which case it can be approved by TM; 6/8 approval of agreement w Pier

Revisions to of Special Events Policy

FINANCIAL MATTERS		
Colon Payout Inquiry	Completed	TC discussion 5/25
Internal controls	Need direction from Commission whether an audit/ analysis of bank account transactions is desired;	
Banking Services Agreement	need to review existing agreement and practices (i.e. multiple bank accounts) for efficiency & effectiveness	
RFP for Audit Services	Revised draft prepared & suggestions on makeup of Audit Committee made to TC.	TC to discuss 5/25; TC to appoint audit committee 6/8
Cash Reports	have gotten format that another city uses & will be preparing a similar report for LBTS	first report to TC in July

	STATUS	TO COMMISSION
<b>OTHER ACTION ITEMS</b>		
Choice Environmental Negotiations	Bud has met with Comm. Sasser and w the Town Attorney to clarify issues. All 3 to meet next week to finalize issues to be discussed w Choice. Bud, TA & I met 5/20 to determine what solutions can be handled administratively & which require ord amendments. Bud to draft amendments	July
Use/possible lease of warehouse	PIO researched records and prepared report. Awaiting info from appraiser on approx lease value.	May 26th Roundtable
<b>TRAFFIC ISSUES</b>		
Imperial Lane Traffic Calming	Bud has reviewed Town Engineer plan; may be some citizen opposition; Town Eng has recommended a stop sign in addition to temporary "choking" of the road; need County's approval for trial implementation & will seek it;	
Speeding on Seagrape	BSO has scheduled periodic traffic enforcement on Seagrape	
Trial Valet Project	Meeting was held on 5/17 with interested parties. Some disagreement on proposal. Staff indicated we would flesh out a trial period plan & bring it to the Commission Roundtable on 6/9 & for formal approval on 6/23.	6/9 Roundtable 6/23 Regular Meeting for approval
Open outlet to alley from Pier pkg lot	Bud to meet with owners regarding their interest & willingness to comply with traffic engineering requirements for safe access to alley	
<b>COMPLETED ASSIGNMENTS</b>		
Jarvis Hall lighting		