



TOWN OF LAUDERDALE-BY-THE-SEA

AGENDA ITEM REQUEST FORM

Town Attorney

Department Submitting Request

Susan L. Trevarthen

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 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 25 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 checked="" 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"/> Ordinance | <input type="checkbox"/> Old Business |
| <input type="checkbox"/> Reports | <input checked="" type="checkbox"/> Resolution | <input type="checkbox"/> New Business |
| <input type="checkbox"/> Consent Agenda | <input type="checkbox"/> Quasi Judicial | <input type="checkbox"/> Other |

SUBJECT TITLE: A RESOLUTION OF THE TOWN OF LAUDERDALE-BY-THE-SEA, ADOPTING AN EMPLOYMENT AGREEMENT FOR CONSTANCE HOFFMANN AS TOWN MANAGER; PROVIDING FOR CONFLICT; PROVIDING FOR AN EFFECTIVE DATE

EXPLANATION: At its regular meeting on August 25, 2010, the Town Commission directed that an Employment Agreement be negotiated with Constance Hoffmann to serve as the Town Manager, and designated Mayor Minnet as the Commission liaison for this matter. An agreement has been negotiated and, by Town Charter, must be approved by resolution of the Town Commission. Key points of the Agreement are summarized below.

- The Agreement has a three year term. By 6/30/13, Commission decides to extend, enter into new agreement or let agreement expire.
- However Manager may separate from the Town, she is entitled to earned but unpaid salary to date, to reimbursement of outstanding expenses such as mileage, to legally required payments such as FICA, to up to 40 days of accrued Vacation Leave, and to accrued retirement obligations. Manager shall never receive payment for Sick, Funeral or Civil (Court) Leave. Commission approves accuracy of all calculations of payments related to Manager's separation from the Town for any reason, and they are paid within 30 days.
- If Commission does not act by 6/30/13, the Agreement expires.
- Manager serves at pleasure of Commission:
 - If Manager terminated without cause, receives 3 months severance payment. Half of severance to be paid within 30 days, and the other half of severance to be paid within 180 days. Manager also receives one year of the various health insurances. The health insurance is paid for by the Town (a cost of \$6,243 if paid out at 2011 rates), and the other coverages are paid for by Manager. Her COBRA eligibility begins one year after termination. After 5/1/13, severance increases to 4 months.
 - If Manager terminated with cause, no additional payments.
 - If Manager resigns, 60 day notice required, and no additional payments.



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- \$160,000 salary.
- Typical paid holidays; if Manager works a holiday, can take another workday instead. Twenty days vacation a year, with an initial grant of 10 additional days. If at the end of any fiscal year Manager's vacation days exceed 30, Town will pay out the excess days at Manager's then-current rate of pay, so that only 30 days are carried forward into new fiscal year.
- Sick leave bank of 45 days upon execution, and regular sick leave of 12 days a year. No sick leave is ever paid out.
- Funeral leave and civil (court) leave similar to other Town employees (described in Agreement), and never paid out.
- Insurances: same health, dental, vision, and short term disability as other Town employees. \$100,000 life insurance. Town pays half of cost of long term disability insurance policy to be mutually determined. Insurance post retirement is determined by laws in effect at that time.
- Retirement: FRS Senior Management Service Class. At current rates, this will cost the Town \$23,312 annually. Town contributes \$7,500 to a supplemental retirement plan to be agreed to by the parties in year 1, and contributes \$10,000 in future years of agreement.
- If Town Commission disproportionately reduces Manager's salary, holidays, leave or benefits, or if majority of Town Commission suggests that she resign, Manager may treat situation as a termination without cause.
- When Manager away, Assistant Town Manager to be in charge. If another designated, notice to Town Commission. Prior notice to Commission if Manager to be away for more than 5 business days in a row. Town Commission approval required for Manager to take more than 10 vacation days in a row.
- Performance evaluation each October (2011 and 2012). By November 1, 2010 and October 1 of 2011 and 2012, Manager and Town Commission develop written, prioritized, mutually agreed upon goals and objectives that are reasonably attainable within time and budget constraints. Commission can increase salary, holidays, leave and benefits or can give a one-time performance reward, consistent with Town's fiscal situation at the time. Commission can reduce salary up to 2.5% if 4 Commissioners vote that Manager has failed to meet their expectations in the performance review.
- Manager to devote herself to Town full-time. If she wishes to take on outside teaching or consulting opportunities, they must not interfere with managerial role and must not create a conflict of interest, and she must give 7 days prior notice to Town Commission. Commission can refuse to approve or require her to withdraw if, in its sole discretion, it determines that the outside opportunity is compromising the managerial role. Manager shall not have an interest in a Town business, unless publicly traded, but may own and rent residential property within Town.
- Town indemnifies Manager for reasonable actions within the course and scope of her employment. If conflict of interest arises for matters where Manager is not a party, Town will pay for independent legal representation. Town retains control of decision to settle. Town pays reasonable litigation costs when Manager is serving as witness, consultant or party on Town's



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behalf, even after Agreement is no longer in effect and after Manager leaves Town. Town will not pay fees and costs if Manager takes a position adverse to the Town in a matter not involving this Agreement.

- Manager's professional memberships and dues are covered. Town Commission approval needed if she is to serve as officer of a professional organization, and approval shall not be unreasonably withheld. Town pays for a minimum of one national conference a year, subject to budget constraints. Manager can attend additional conferences, seminars and courses, and Town may pay if budgeted. Town covers incidental professional costs, such as costs for professional journals, reference books, etc., on submission of proper documentation to Finance Director.
- No vehicle allowance and no vehicle provided. Town pays mileage at IRS rate for conducting Town business outside of Town boundaries. Manager can use Town vehicles in emergency situations, and for routine inspections and other routine Town business if needed.
- In any litigation over this Agreement, non-prevailing party to bear fees and costs.

RECOMMENDATION: Review and discuss item, and decide whether to approve agreement by resolution.

EXHIBITS: 1. Resolution with Exhibit A, Employment Agreement
2. Excerpts from Town Charter – Sections 5.3 and 5.5

FISCAL IMPACT AND APPROPRIATION OF FUNDS:

Amount \$ _____ Acct # _____
 Transfer of funds required From Acct # _____

Town Attorney review required

Yes No

Town Manager's Initials: _____

RESOLUTION NO. 2010-31

**A RESOLUTION OF THE TOWN OF LAUDERDALE-BY-
THE-SEA, FLORIDA, ADOPTING AN EMPLOYMENT
AGREEMENT FOR CONSTANCE HOFFMANN AS TOWN
MANAGER; PROVIDING FOR CONFLICT; PROVIDING
FOR AN EFFECTIVE DATE**

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7 **WHEREAS**, at a meeting of the Town Commission held April 26, 2010,
8 Constance Hoffmann was appointed to serve in the position of Interim Town Manager for the
9 compensation and for such terms as specified in Exhibit A, until the Town appointed a Town
10 Manager, and Ms. Hoffmann began her service as Interim Town Manager immediately
11 thereafter; and

12 **WHEREAS**, Resolution 2010-10 was adopted by the Town Commission on April 27,
13 2010, appointing Ms. Hoffmann as Interim Town Manager and setting her compensation at the
14 biweekly rate of \$5,000.00, and Resolution 2010-11 was adopted by the Town Commission on
15 May 11, 2010, setting a corrected biweekly rate of compensation and replacing Resolution 2010-
16 10; and

17 **WHEREAS**, Resolution 2010-22 was adopted by the Town Commission on August 25,
18 2010, further amending Ms. Hoffmann's appointment to recognize that the Town was required to
19 maintain Ms. Hoffmann as a member of the Florida Retirement System; and

20 **WHEREAS**, the Town Commission finds that Ms. Hoffmann meets the educational and
21 experience requirements of Section 5.3 of the Town Charter; and

22 **WHEREAS**, pursuant to Town Charter Section 5.3, the Town Manager shall "be
23 appointed by Resolution approving an employment contract between the Town and the Town
24 Manager;" and

1 **WHEREAS**, the Town Commission seeks to offer Ms. Hoffmann the position of Town
2 Manager, and Ms. Hoffmann has agreed to accept it, as further specified in the Employment
3 Agreement attached hereto as Exhibit "A."

4 **NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COMMISSION OF**
5 **THE TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA THAT:**
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7 **SECTION 1. Recitals.** The foregoing "WHEREAS" clauses are true and correct, and
8 are hereby ratified and confirmed by the Town Commission and incorporated herein.

9 **SECTION 2. Amendment.** The Town Commission hereby adopts the Employment
10 Agreement with Constance Hoffmann to serve in the position of Town Manager, attached hereto
11 as Exhibit "A."

12 **SECTION 3. Conflicts.** All other Resolutions or parts of Resolutions in conflict herewith,
13 be and the same are repealed to the extent of such conflict.

14 **SECTION 4. Effective Date.** This Resolution is effective immediately upon passage and
15 adoption.

16 **PASSED AND ADOPTED** by the Town Commission of the Town of Lauderdale-By-The-
17 Sea, Florida, this ____ day of September, 2010.

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MAYOR ROSEANN MINNET

ATTEST:

June White, CMC
Town Clerk

APPROVED AS TO FORM:

Susan L. Trevarthen, Town Attorney

EXHIBIT "A"

EMPLOYMENT AGREEMENT

THIS AGREEMENT (the "Agreement") is made and entered into as of the _____ day of September, 2010, between the Town of Lauderdale-By-The-Sea (the "Town") and Constance Hoffmann (the "Employee").

BACKGROUND

The Town currently employs Employee as Interim Town Manager. The Town wishes to continue to employ Employee, in the position of Town Manager, and Employee wishes to accept employment as Town Manager under the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the Town and Employee agree to the following:

SECTION 1. DUTIES AND QUALIFICATIONS

- 1.1 **Qualifications:** The Town Commission hereby finds that the Town Manager satisfies the educational, experience and other requirements of Section 5.3 of the Town Charter. Employee is not required to be a member of the International City Management Association, and is not required to be a resident of the Town.
- 1.2 **Duties:** Town agrees to employ Employee as Town Manager to perform the duties and exercise the powers as prescribed by state law (including, but not limited to Chapter 112, Florida Statutes, Code of Ethics), the Town Charter (including, but not limited to Section 5.5) and the Town Code, and to perform such other legally permissible and proper duties and functions as assigned by the Town Commission from time to time. The Town Manager is an exempt employee under the Fair Labor Standards Act and, as such, Employee is not entitled to payment of overtime or accrual of any kind of compensatory time leave or payment. Without limitation, the Town Manager shall also oversee the operation of the Town's public safety contractors, and shall provide regular status reports on pending projects if requested by the Town Commission.

SECTION 2. TERM

- 2.1 **Term:** This Agreement shall have a term of three (3) years commencing on September 27, 2010 ("Commencement Date") and ending on September 30, 2013 ("Expiration Date"), unless earlier terminated or amended as provided elsewhere in this Agreement.
- 2.2 **Notice to Enter Into a New Agreement, Extend or Allow Expiration:** No later than June 30, 2013, the Town Commission shall notify Employee of its intention to: (a) enter into a new agreement, (b) extend this Agreement for such term as the parties may agree, or (c) allow this Agreement to expire on the Expiration Date.
- 2.3 **Failure to Act is Expiration:** Failure of the Town Commission to provide notice

pursuant to Subsection 2.2 shall be deemed a decision to allow this Agreement to expire on the Expiration Date.

2.4 **Service At Pleasure of Commission:** Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the Town Commission to terminate the services of Employee at any time, subject only to the provisions set forth in Section 3 of this Agreement.

2.5 **Payments to Employee Upon Separation from Town for Any Reason:** Notwithstanding any other provision of this Agreement, and regardless of the reason for Employee's separation from the Town's employ, the Town shall pay Employee upon her separation from the Town any and all:

A. earned but unpaid Salary, as defined in Subsection 5.1, through the effective date of separation; and

B. unreimbursed expenses such as mileage, through the effective date of separation; and

C. legally required payments towards benefits or other payments including, but not limited to, FICA and COBRA; and

D. retirement contributions accrued but unpaid as of the effective date of separation, as prescribed in Subsection 5.4B below; and

E. a maximum of forty days of accrued Vacation Leave as defined in Subsection 5.3A, at the current hourly rate of her Salary at the time of the effective date of her separation from the Town.

The Town Commission shall review and approve the accuracy of the amount of all payments required to be made to Employee upon her separation from the Town's employ, prior to payment. Payment shall be within 30 days of the effective date of the separation. There shall be never be any payment to Employee for unused Sick, Civil (Court), or Funeral Leave, as defined in Subsection 5.3, on her separation from the Town.

2.6 **Effect of Expiration:** If the Town has notified Employee of its intention to allow this Agreement to expire pursuant to Subsection 2.2, or if this Agreement is allowed to expire pursuant to Subsection 2.3, then no Severance Payment, as defined in Subsection 3.1, shall be due to Employee, and only the payments identified in Subsection 2.5 shall be due to Employee.

SECTION 3. TERMINATION BY TOWN

3.1 TERMINATION OTHER THAN FOR CAUSE

A. **Until May 1, 2013:** In the event Employee is terminated by the Town

Commission prior to September 30, 2013, other than for cause (as is defined in Section 3.2 of this Agreement) and during such time that Employee is willing and able to perform her duties under this Agreement, the Town agrees to pay Employee a cash payment equal to three (3) months of her Salary at the rate on the effective date of termination ("Severance Payment").

The accuracy of the amount of the Severance Payment shall be approved by the Town Commission prior to payment to the Employee. One half of the Severance Payment shall be paid within thirty (30) days of termination, and the other half of the Severance Payment shall be paid within one hundred eighty (180) days of termination.

The Town shall also have the following financial obligations to Employee:

(i) The Town shall continue to provide medical coverages (health, vision, dental, short term disability and 50% of long term disability as provided in Section 5.4A "Insurance Benefits") for Employee for twelve (12) months following the Termination Date, in the same manner and in the same amount as Employee is receiving at the Termination Date. The health insurance coverage shall be paid for by the Town, and the other coverages shall be paid for by Employee, if Employee chooses to continue those coverages.

(ii) After twelve months, the Employee shall be entitled to continuation of benefits at her own expense as provided by COBRA or other federal or state laws in effect at the time. For purposes of continuation of health insurance under COBRA, the first day of the thirteenth month following Employee's termination shall be considered the initial eligibility date for beginning COBRA benefits.

B. **On or After May 1, 2013:** The provisions of Subsection 3.1A. shall continue to apply, except that the number of months of Salary that constitute the Severance Payment shall be increased from three (3) months to four (4) months.

3.2 TERMINATION FOR CAUSE

A. **Cause Defined:** "Cause" for the purpose of this Agreement is defined as: (i) fraud, misappropriation or embezzlement; (ii) Employee's intentional breach of the provisions of this Agreement; (iii) Employee's repeated willful failure to perform services hereunder; (iv) Employee's violation of Chapter 112, Florida Statutes, Code of Ethics; (v) Employee's willful and continued failure to substantially perform her duties for the Town (other than as a result of incapacity due to physical or mental illness); or (vi) willful conduct by Employee that is demonstrably and materially injurious to the Town, monetarily or otherwise. For purposes of this paragraph, an act, or a failure to act, shall not be deemed "willful" or "intentional," as those terms are used herein, unless it is done, or omitted to be done, by Employee in bad faith or without a reasonable belief that her action or omission was in the best interest of the Town. Failure to meet performance standards or objectives, by itself, does not constitute "Cause."

B. **Termination for Cause:** If Employee's employment is terminated with Cause as defined in subsection 3.2A above, the Town shall pay to Employee the amounts due under Subsection 2.5 only.

SECTION 4. TERMINATION BY EMPLOYEE (RESIGNATION)

In the event that Employee voluntarily resigns her position during the term of this Agreement, Employee shall give the Town at least sixty (60) days written notice of the effective date of such resignation ("Resignation Date"), unless the Town Commission and Employee mutually agree to a shorter notice period. Employee shall not be entitled to receive Severance Payment pursuant to Subsection 3.1 or continued Insurance Benefits pursuant to Subsection 5.4A below. Employee shall only be entitled to the payments described in Subsection 2.5 of this Agreement. The Town Commission and Employee may negotiate other provisions upon resignation, in the event that the Town Commission determines such provisions to be in the best interests of the Town.

SECTION 5. SALARY, HOLIDAYS, LEAVE AND BENEFITS

5.1 **Salary:** The salary of Employee shall be One Hundred and Sixty Thousand Dollars (\$160,000.00), which shall be payable in installments at the same time as other employees of the Town are paid ("Salary").

5.2 **Holidays:** Employee shall receive the following paid holidays: Veterans' Day, Thanksgiving, the day after Thanksgiving, Christmas Eve, Christmas Day, New Years Day, Martin Luther King Day, Presidents Day, Memorial Day, Fourth of July and Labor Day. If any of the holidays fall on a weekend, Employee shall receive either the previous Friday or the following Monday as the holiday. In the event Employee deems it necessary or advisable to work on a holiday, that paid day off may be taken on some other regular work day.

5.3 **Leave**

A. **Vacation Leave:** Employee shall be credited with ten (10) days vacation time upon execution of this Agreement, in recognition of the time she has already worked for the Town. Employee shall begin accruing vacation, at the rate of 6.154 hours accruing in each two-week pay period (equivalent to twenty days a year), beginning with the effective date of this Agreement. In the event Employee has accumulated more than thirty (30) days vacation leave as of September 30 of any year, the days over thirty (30) days shall be considered "Excess Vacation Leave." In any year in which Employee has Excess Vacation Leave, the Excess Vacation Leave shall be paid out in cash to Employee no later than October 31, at the rate of her Salary as of September 30.

B. **Sick Leave:** Employee shall be credited with a bank of forty-five (45) sick days upon execution of this Agreement. Thereafter, she shall earn regular sick leave at the rate of 3.7 hours per pay period, beginning on the effective date of this Agreement (equivalent to approximately twelve days a year). Town acknowledges that Employee has already accrued _____ hours of sick leave time

with the Town, prior to execution of this Agreement, and agrees to credit Employee with that amount of accrued sick leave upon execution of this Agreement.

2. **No Payment for Unused Sick Leave:** There shall be no payment to Employee for unused Sick Leave, at the time she leaves the employ of the Town.

C. **Funeral Leave:** In case of a death in Employee's Immediate Family, up to three days of leave with pay ("Funeral Leave") may be used by Employee. "Immediate Family" includes parent, child, spouse, sibling, parent-in-law, sibling-in-law, and grandchildren. If Employee desires to take Funeral Leave, Employee shall place appropriate documentation of the death in her personnel file. If Employee desires to take leave for a funeral that does not satisfy the requirements of this paragraph, it shall be taken from Employee's Vacation Leave. There shall be no payment to Employee for unused Funeral Leave, at the time she leaves the employ of the Town.

D. **Civil (Court) Leave:** If selected for jury duty, or if required to appear in court as a witness or to testify in some official capacity on behalf of the Town, Employee shall be entitled to Civil Leave with pay for the days (or portions of days) of absence from work due to court appearance. Those days shall not be deducted from Employee's Vacation Leave or Sick Leave. Court appearances due to private litigation matters in which Employee is a party shall be without pay, or with pay as Vacation Leave. Employee shall place appropriate documentation of the summons or other court order or requirement to appear justifying any Civil Leave in her personnel file. Any witness fees paid may be retained by Employee. There shall be no payment to Employee for unused Civil (Court) Leave, at the time she leaves the employ of the Town.

5.4 **Benefits**

A. **Insurance Benefits:** Employee shall receive health, vision, dental, short-term disability in the manner and amount of coverage as provided to all Town employees. Town shall pay 100% of the cost of the health, vision, dental and short-term disability policies and a \$100,000 life insurance policy for Employee. Town shall pay 50% of the cost of a long-term disability policy to be mutually agreed upon by the parties. Upon Employee's retirement from the Town, Employee's eligibility to continue to participate in any of the Town's insurance benefits at her own expense shall be determined by the then-applicable state and federal laws and Town ordinances and resolutions.

B. **Retirement Benefits:**

(a) Employee shall be placed in the Florida Retirement System's Senior Management Service Class and the Town shall make the state-required employer contributions to the Florida Retirement System for an employee in the Senior

Management Service Class.

(b) Town also agrees to execute all necessary agreements provided by the ICMA Retirement Corporation [ICMA-RC] or another comparable Section 457 deferred compensation plan for Employee's continued participation in such supplemental retirement plan. The Town further agrees to make the following contributions towards such a plan:

(i) \$7,500, in the first year of this Agreement paid in equal installments of \$288.46 each pay period; and

(ii) \$10,000 (\$384.62 bi-weekly) in both the second and third years of this Agreement.

5.5 **Reduction of Salary, Holidays, Leave or Benefits:** In the event the Town Commission at any time during the term of this Agreement reduces the Salary, Holidays, Leave or Benefits of Employee in a greater percentage than an applicable across-the-board reduction for all employees of Town, or Employee resigns following a suggestion by a majority of the Town Commission that she resign, then the Employee may, at her option, be deemed to be terminated without cause at the date of such reduction or of such suggestion to resign. Such termination without cause shall be handled as provided in Section 3.1 of this Agreement.

5.6 **Notice/Approval for Temporary Absence From Town:** When Employee is temporarily away from the Town, Employee shall ensure that Town matters are properly handled in her absence by the Assistant Town Manager. If another person is designated to handle matters on her behalf, Employee shall notify the Town Commission of the identity of that person. Employee shall provide prior notice to the Town Commission if she anticipates being away from the Town for more than five (5) business days in a row. Employee shall only take more than ten (10) business days Vacation Leave in a row with the prior approval of the Town Commission.

5.7 **Pay for Performance:** Any adjustment in Employee's Salary, Holidays, Leave, or Benefits based on the Town Commission's evaluation of Employee's performance shall be made pursuant to Section 6 of this Agreement.

SECTION 6. PERFORMANCE EVALUATION

6.1 **Performance Goals:** By November 1, 2010, and by each October 1 thereafter during the term of this Agreement, the Town Commission and Employee will mutually agree on performance goals and objectives for the fiscal year. The Town Commission shall establish a relative priority among the goals and objectives, which shall be reduced to writing. The goals and objectives shall be reasonably attainable within the time constraints set for them, and adequate operating budgets or capital appropriations shall be funded to enable their

accomplishment.

- 6.2 **Performance Review:** The Town Commission shall conduct annual performance reviews of Employee in October 2011 and 2012, based on the criteria that were mutually agreed to at the beginning of the fiscal year. The process, at a minimum, shall include the opportunity for both parties to: (a) prepare a written evaluation, (b) meet and discuss the evaluation, and (c) present a written summary of the evaluation results. The Town Commission's final written evaluation shall be completed and delivered to Employee within thirty (30) days of the date of the evaluation meeting.
- 6.3 **Pay for Performance:** Based on the performance review, the Town Commission may increase the Salary, Holidays, Leave or Benefits granted under this Agreement, or may grant a high performance reward to be paid in a lump sum amount. Any lump sum award for performance shall not be added to Employee's Salary, but shall be considered wages for purposes of retirement. The amount of the pay for performance shall take into account the Town's fiscal condition and ability to pay at that point in time. In the event that at least four (4) members of the Town Commission vote that Employee failed to meet their expectations, as those expectations are defined in her performance review, the Town Commission may choose to reduce Employee's Salary by an amount not to exceed two and a half (2.5) percent. Such reduction shall not be interpreted to trigger Subsection 5.5 of this Agreement, and Employee may not choose to treat this reduction as termination without cause.

SECTION 7. HOURS OF WORK; OTHER EMPLOYMENT

- 7.1 **Full Time Employee:** Employee agrees to remain in the full-time employ of the Town and shall not accept any other full-time employment during the term of this Agreement. Employee further agrees to devote that amount of time and energy which is reasonably necessary for Employee to faithfully perform her duties under this Agreement.
- 7.2 **Outside Opportunities:** Recognizing that certain outside teaching and consulting opportunities ("Outside Opportunities") may provide indirect benefits to the Town and to the community, the Employee may elect to accept limited Outside Opportunities with the understanding that such Outside Opportunities must not interfere with nor create a conflict of interest with her responsibilities under this Agreement. Employee shall provide a minimum of seven (7) days prior notice to the Town Commission before accepting such Outside Opportunities. If, however, the Town Commission determines, in its sole discretion, that Employee's performance may be compromised by her engagement in any proposed Outside Opportunity, or her continued engagement in an existing Outside Opportunity, the Town Commission may require that Employee decline to accept or withdraw from that Outside Opportunity. Employee shall not hold an ownership interest in any business located in the Town unless it is a publicly traded company. For purposes of this Agreement, the Employee's ownership and leasing of residential property to others shall not be

considered to be an ownership interest in a business.

SECTION 8. INDEMNIFICATION

- 8.1 **Indemnification.** Unless otherwise required by Federal, State or local law, Town shall defend, hold harmless and indemnify Employee 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 course and scope of Employee's performance of her duties as Town Manager or resulting from the reasonable exercise of judgment or discretion in connection with the performance of her Town duties or responsibilities, unless the act or omission involved willful or wanton conduct. Town's indemnification of Employee under this paragraph shall extend to any and all losses, damages, judgments, interest, settlements, fines, court costs and other reasonable costs and expenses of legal proceedings, including attorneys fees and any other liabilities incurred by, imposed upon, or suffered by Employee in connection with or resulting from any claim, action, suit, or proceeding, actual or threatened, arising out of or in connection with the course and scope of performance of her duties.
- 8.2 **Representation.** Employee may request, and the Town shall not unreasonably refuse to provide independent legal representation at Town's expense if there is a conflict of interest between Employee's interests and the Town's interests in a matter in which Employee is not a party. Legal representation provided by Town for Employee shall extend until a final determination of the legal action, including any appeals brought by either party. This paragraph shall not apply to litigation over this Agreement, which shall be handled pursuant to Subsection 11.5 of this Agreement.
- 8.3 **Settlement.** Any settlement of any claim must be made with prior approval of the Town Commission in order for indemnification, as provided in this Section, to be available. Employee recognizes that Town shall have the right to compromise such claims against it or against Employee in her official capacity, in its sole discretion.
- 8.4 **Litigation Support from Employee During and Following Employment with Town.** Town agrees to pay all reasonable litigation expenses of Employee throughout the pendency of any litigation in which the Employee is requested to be a witness on behalf of or advisor to the Town, is compelled to be a witness by an adverse or other party, or in which the Employee is a party in her capacity as an employee of the Town. The requirement to cover such expenses shall survive the expiration or termination of this Agreement as long as Employee's services continue to be requested or required in relation to such litigation, or as long as she is a named party to such litigation. Further, Town agrees to pay Employee reasonable consulting fees and travel expenses when Employee serves as a witness, advisor or consultant to the Town regarding litigation after her employment with the Town is concluded. Notwithstanding the foregoing, in any litigation in which the Employee takes a position adverse to the position of the Town, the Town shall not pay her costs or attorneys' fees, except where required to comply with Subsection 11.5 of this Agreement.

SECTION 9. PROFESSIONAL DEVELOPMENT

- 9.1 **Memberships:** Subject to budget constraints and state law, the Town agrees to pay the reasonable professional dues and subscriptions of Employee necessary for her continuation and participation as a member in national, regional, state and local professional associations and organizations that are commensurate to her role as Town Manager, necessary and desirable for her continued professional participation, growth and advancement, and for the good of the Town. Employee shall not hold office in any local, state, regional or national professional association or organization without prior approval of the Town Commission, which approval shall not be unreasonably withheld.
- 9.2 **Courses and Conferences:** Subject to then-applicable Town policies regarding travel, budget constraints and state law, the Town Commission shall budget for and pay the registration, travel, lodging, meal and other related expenses of Employee for travel to at least one national professional conference to be held in the United States each year. The Town Commission may choose to budget and pay for Employee to attend additional conferences, seminars or courses.

SECTION 10. NOTICE

Notices pursuant to this Agreement shall be given by certified mail through United States Postal Service delivery, addressed as follows:

Town: Mayor and Members of the Town Commission
Town of Lauderdale-By-The-Sea
4501 Ocean Drive
Lauderdale-By-The-Sea, Florida 33308

Employee: Constance Hoffmann
7664 Courtyard Run W.
Boca Raton, Florida 33433

Town Attorney: Weiss Serota Helfman Pastoriza Cole & Boniske, P.L.
200 East Broward Blvd., Suite 1900
Fort Lauderdale, Florida 33301

SECTION 11. OTHER TERMS AND CONDITIONS

- 11.1 **Severability:** If any provision, or any portion thereof, contained in this Agreement is held to be unconstitutional, illegal, invalid, or unenforceable, the remainder of this Agreement, or portion thereof, shall not be affected and shall remain in full force and effect.
- 11.2 **Waiver:** The waiver by either party of a breach of any provision of this Agreement by the other shall not operate or be construed as a waiver of any subsequent breach by that party.
- 11.3 **No Assignment or Transfer:** The rights and obligations herein granted are personal in

nature and cannot be transferred by the Employee.

- 11.4 **Entire Agreement; Amendment:** This Agreement contains the entire agreement of the parties, and is being adopted by Resolution as required by Town Charter. It may not be changed orally, but only by an amendment in writing signed by the parties hereto and executed with equal dignity.
- 11.5 **Governing Law; Attorneys Fees:** This Agreement shall be governed by Florida law, and any litigation which may arise from this Agreement shall be filed and litigated in Broward County, Florida. The non-prevailing party shall bear the fees and costs for such litigation over this Agreement.
- 11.6 **Bonding:** The Town shall bear the cost of any fidelity bond or other guarantee that may be required of Employee.
- 11.7 **Expenses:** The Town recognizes that certain expenses of a non-personal and job-related nature, such as the purchase of professional journals and reference materials, will necessarily be incurred by Employee as Town Manager, and agrees to reimburse or to pay said general expenses. In recognition of the Town Manager's purchasing authority, the Finance Director is authorized to disburse such monies, upon receipt of duly executed expense or petty cash vouchers, receipts, statements or personal affidavits.
- 11.8 **Automobile Reimbursement:** Employee shall not receive a vehicle allowance. Employee shall receive mileage reimbursement at the then-current IRS rate for the use of her personal vehicle on Town business outside of the Town limits. Employee is authorized to use Town vehicles as needed during emergency conditions (hurricane, flooding, etc.). During normal conditions, Employee may use Town vehicles for routine inspections or other Town business.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed and executed, in duplicate, on the day and year first written above.

TOWN OF LAUDERDALE-BY-THE-SEA

By: _____
Mayor Roseann Minnet

Pursuant to Town Commission Approval Given
on September ____, 2010.

EMPLOYEE

By: _____
Constance Hoffmann

Attest:

Town Clerk June White

Approved as to Form and Legal Sufficiency:

Town Attorney Susan L. Trevarthen

EXCERPTS FROM TOWN CHARTER

Sec 5.3 Town Manager—Appointment, qualifications and compensation.

The Town Commission shall appoint a Town Manager who shall be the administrative head of the municipal government under the direction and supervision of the Town Commission. The Town Manager shall hold office at the pleasure of the Town Commission. The Town Manager shall receive such compensation as determined by the Town Commission through the adoption of an appropriate resolution. The Town Manager shall be appointed by resolution approving an employment contract between the Town and the Town Manager. The Town Manager shall be appointed solely on the basis of education and experience in the accepted competencies and practices of local public management including, a graduate degree with a concentration in public administration, public affairs, public policy, or public finance and two (2) years' experience as an appointed city manager or county manager, or four (4) years' experience as an assistant or deputy city manager or assistant or deputy county manager.

* * * * *

Sec. 5.5. - Town Manager—Powers and duties.

The Town Manager shall be responsible to the Town Commission for the proper administration of all affairs of the Town coming under the Town Manager's jurisdiction, and the Town Manager's powers are and they shall be:

- (1) To see that the laws and ordinances of the Town are enforced.
- (2) To appoint or remove all subordinate officers and employees.
- (3) To exercise, control and direct supervision over all departments and divisions of the municipal government under the classified service, except where otherwise provided.
- (4) To see that all terms and conditions imposed in favor of the Town or its inhabitants in any public utility franchise are faithfully kept and performed; and upon knowledge of any violation thereof, to call the same to the attention of the Town Attorney, whose duty it is hereby made to take such legal steps as may be necessary to enforce the same.
- (5) To attend all meetings of the Town Commission, with right to take part in the discussions, but without having a vote.
- (6) To recommend to the Town Commission for adoption such measures as the Town Manager may deem necessary or expedient in the interest of the Town.
- (7) To keep the Town Commission fully advised as to the financial conditions and needs of the Town and at the proper time to submit to the Town Commission for its consideration an annual budget.

(8) To advise and consult with all officers and official heads of the several departments of the Town relative to the affairs of such department, and to make recommendations to the Town Commission respecting such departments as the Town Manager may see fit.

(9) To perform such other duties as may be prescribed under this Charter, or may be required of the Town Manager by motion, direction, ordinance or resolution of the Town Commission.

(10) To prepare and submit to the Town Commission an annual financial audit of its accounts and records, completed no later than six (6) months after the end of its fiscal year by an independent certified public accountant retained by the Town Commission and paid from its public funds.

(11) To sign all checks, warrants, bonds and agreements issued by the Town of Lauderdale-By-The-Sea.

(12) To assist the Town Commission to develop long-term goals for the Town and strategies to implement these goals.

(13) To encourage and provide staff support for regional and intergovernmental cooperation.

(14) To promote partnerships among the Town Commission, staff, and citizens in developing public policy and building a sense of community.