

Town of Oriental
Town Board Closed Session Meeting
June 28, 2017

The Town Board of Oriental went into Closed Session at 7:04PM from the scheduled open meeting as follows:

MOTION by David White: G.S. 143-318.11(a)(3):

To consult with an attorney employed or retained by the public body in order to preserve the attorney-client privilege between the attorney and the public body, which privilege is hereby acknowledged. The public body may consider and give instructions to an attorney concerning the handling or settlement of a claim, judicial action, mediation, arbitration, or administrative procedure. If the public body has approved or considered a settlement, other than a malpractice settlement by or on behalf of a hospital, in closed session, the terms of that settlement shall be reported to the public body and entered into its minutes as soon as possible within a reasonable time after the settlement is concluded.

Present were: Mayor Belangia, Mayor Pro Tempore Venturi Commissioners White, Overcash, and Price. Also present: Town Attorney Scott Davis and Town Manager Diane Miller.

---Closed Session---

After briefing by the Attorney on the signed settlement forwarded by Dwaine Moore's attorney, a MOTION was made by Commissioner Overcash to authorize the Town Manager to:

- a) Sign the agreement
- b) Record the authorization in Closed Session Minutes
- c) Have Minutes prepared for the Board to approve and release with the agreement at their August Board meeting.

Seconded by Commissioner White. Discussion included legal protection afforded the Town by the offered agreement. Unanimous vote.

MOTION: Mayor Pro Tempore Venturi made a Motion to go back into Open Session, Commissioner Overcash seconded. Motion passed unanimously. Closed Session ended at approximately 7:15PM.

Mayor Sally Belangia

Diane H. Miller, Manager/Clerk

Approved/ Released

8/1/17 *DHM*

NORTH CAROLINA

PAMLICO COUNTY

SEPARATION AGREEMENT AND RELEASE

THIS SEPARATION AGREEMENT AND RELEASE (“Agreement”) is made and entered into as of the 12th day of May, 2017 (“Effective Date”), by and between the TOWN OF ORIENTAL (“Oriental”), a North Carolina municipal corporation; and DWAINE JOHN MOORE, a citizen and resident of Pamlico County, North Carolina (“Employee”).

WITNESSETH:

WHEREAS, Employee was hired by Oriental on or about July 15, 2011, and has been employed by Oriental as its police chief; and

WHEREAS, Employee is voluntarily resigning from employment with Oriental, effective as of April 24, 2017 at 5:00 p.m. (the “Separation Date”); and,

WHEREAS, Oriental and Employee have reached an agreement concerning Employee’s separation from employment with Oriental and certain other matters as contained herein, and desire to set forth the terms and conditions thereof.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements herein contained, and other good and valuable considerations, the receipt and sufficiency of which hereby are acknowledged, Oriental and Employee hereby agree as follows:

1. **SEPARATION**. Employee hereby voluntarily resigns from his employment with Oriental effective as of the Separation Date, and his employment with Oriental is terminated as of the Separation Date. Employee recognizes and agrees that Employee has no authority as an employee or agent of Oriental following the Separation Date, and specifically recognizes and agrees that this Agreement is a full and complete resolution, settlement, and termination of any rights which Employee may have had, or alleges to have had, to any further employment with Oriental following the Separation Date.

2. **FINAL COMPENSATION**. Oriental shall pay to Employee his normal compensation in the gross amount of \$2,976.92, less normal deductions and withholdings (\$146.54 – 401K, \$234.46 ORBITZ retirement account, \$224.20 FICA and medical, and \$630.47 State and Federal tax) through and including the Separation Date for a net amount due Employee of \$2,069.52. Oriental shall also pay Employee for 124.97 accrued but unused vacation hours in the gross amount of \$2,289.11 (124.97 hours at the rate of \$18.31 per hour), less normal deductions and withholdings (\$114.45 – 401K, \$183.12 ORBITZ retirement account, \$175.11 FICA and medical, and \$445.68 State and Federal tax) through and including the Separation Date for a net amount due Employee of \$1,505.97.

3. **CONSIDERATION.** In consideration for the covenants, agreements, and releases set forth herein, Oriental will pay Employee the sum of \$100.00. Employee acknowledges that Oriental has no prior legal obligation to furnish Employee with this additional consideration. This payment shall be made by separate check and payable on or before May 16, 2017 along with the final compensation due Employee as provided in Section 2.

4. **RELEASE.** Except for Employee's specific contractual rights and benefits under this Agreement, Employee hereby fully releases, acquits, quitclaims, and discharges Oriental, and its employees, agents, representatives, attorneys and public officials, and their respective successors and assigns (collectively, the "Releasees"), of and from any and all actions, causes of action, debts, liabilities, claims, demands, damages, costs, loss of services, expenses, and compensation, and for all consequential, compensatory, actual, punitive, or liquidated damages, known or unknown, on account of, or in any way growing out of the employment or any other relationship between Employee and the Releasees and any and all collateral matters pertaining thereto, whether directly, indirectly, or in any way connected with any Releasee, which Employee ever had or now has with respect to anything done or omitted to be done up through the date Employee signs this Agreement.

As part of the consideration for this Agreement, Employee agrees that neither Employee, nor any of Employee's heirs, legal representatives, or assigns, will make or file any claim, charge, or lawsuit, or cooperate voluntarily in any investigation, suit, or legal or administrative proceeding by any individual, entity, or agency, against or involving any Releasee, for or on account of any claim Employee may have or may have had against any Releasee in connection with his employment or any other relationship with Oriental, the matters referenced above, and/or the cessation of his employment with Employer.

The claims being released include, but are not limited to, (i) all claims related to Employee's employment with Oriental and the termination of the same; (ii) all claims for additional compensation or benefits other than the compensation and benefits specifically set forth in this Agreement, including but not limited to wages, deferred compensation, bonuses, long-term incentive plans, leave periods or other benefits of any kind; (iii) all claims relating to employment practices or policies of Oriental; (iv) all claims under any express or implied employment contract with Employee which Employee's successors, assigns, or representatives may claim existed with any of the Releasees; (v) all claims arising under any state or federal labor or employment statutes or common law, including but not limited to: the Family Medical Leave Act; Title VII of the Civil Rights Act of 1964; the Equal Pay Act; and the Americans with Disabilities Act; and (vi) all claims arising under the North Carolina Workers' Compensation Act, as set forth in Chapter 97 of the North Carolina General Statutes.

Employee further represents that he has no current or potential workers' compensation claims against the Releasees, and that he has not filed any workers' compensation claims against the Releasees, and that there would be no valid basis for him to do so.

Employee represents and warrants that Employee has not filed any lawsuits, complaints, or charges based on any of the claims released in this Agreement. Employee represents and warrants that

Employee is the sole owner of any and all claims that Employee may have, and that Employee has not assigned or otherwise transferred Employee's right or interest in any claim.

In signing this Agreement, Employee acknowledges and intends that the release set forth in this Section 4 shall be effective to the fullest extent allowed by law as a bar to each and every one of the potential claims hereinabove mentioned or implied. If it is determined by a court of competent jurisdiction that any claim covered by this release cannot be waived as a matter of law, Employee expressly agrees that the remainder of the release shall nevertheless remain valid and fully enforceable as to the remaining released claims.

5. KNOWING AND VOLUNTARY RELEASE. Employee has and has had the right to consult with an attorney regarding this Agreement before signing this Agreement, and Employee acknowledges that Oriental has advised Employee to consult with an attorney and that Employee has obtained such legal counsel as Employee deems necessary, such that Employee is entering into this and signing this Agreement freely, knowingly, and voluntarily. Employee acknowledges and agrees that Oriental has been represented in this matter by Michael Scott Davis of Davis Hartman Wright, PLLC, and that Employee has been represented in this matter by Steven E. Lacy, Attorney at Law.

6. EMPLOYEE ACKNOWLEDGEMENTS AND REPRESENTATIONS. Employee acknowledges and hereby represents to Oriental that Employee believes and on Employee's own free will affirms to Oriental that (a) Employee has no known workplace injuries or occupational diseases; (b) Employee has no suffered any discrimination on account of Employee's age, race, sex or any other protected characteristic; (c) Employee has not suffered any discrimination as a result of Employee's taking or applying to take any military, family or medical leave, filing a workplace or safety complaint or engaging in any other protected activity; and (d) in Employee's understanding, Employee's protected characteristics and protected activities, if any, have never been a factor in any adverse action taken toward Employee by Oriental.

Employee warrants and represents that Employee knows of no discrepancy between the hours Employee worked for Oriental and the working hours recorded by Oriental for which Employee has been paid, and hereby acknowledges that with the payment of the compensation identified in Section 2, Employee has been or will be fully paid for all hours worked for Oriental. Employee has not been asked to work and has not worked any hours or overtime that have been unrecorded or uncompensated by Oriental.

Employee warrants and represents that Employee knows of no illegal activity on the part of Oriental, or any instance of Oriental's failure to comply with all applicable federal and state laws and regulations.

7. RETURN OF ORIENTAL PROPERTY. Employee shall promptly return to Oriental all Oriental property that Employee has had in Employee's possession at any time, including, but not limited to, records, documents, tools, credit cards, identification cards, identification badges, keys, key fobs, laptop computers, computer software, diskettes, tapes, thumb drives, passwords, personnel

data, handheld devices, all equipment issued by Oriental to Employee, and any materials of any kind which contain or embody any proprietary or confidential information of Oriental.

8. BINDING EFFECT; ENTIRE UNDERSTANDING. This Agreement is binding upon Oriental and Employee and his respective heirs, representatives, successors, and assigns, as applicable. Employee acknowledges that Employee has carefully read this Agreement, which contains a RELEASE, that Employee knows and understands the contents hereof and executes the same as his free act and deed, and that the terms of this Agreement are contractual and not a mere recital. Employee further acknowledges that this Agreement is effective as against him. This Agreement contains the entire understanding between the parties hereto as to the matters contained herein, and no conditions precedent or subsequent exist which are not contained herein.

9. GOVERNING LAW AND VENUE; SEVERABILITY. This Agreement shall be construed and governed in accordance with the laws of the State of North Carolina, and any action relating to this Agreement shall be instituted and prosecuted only in the courts of Pamlico County, North Carolina. The invalidity or unenforceability of any particular provision of this Agreement shall not affect the other provisions hereof, which nevertheless shall continue in full force and effect.

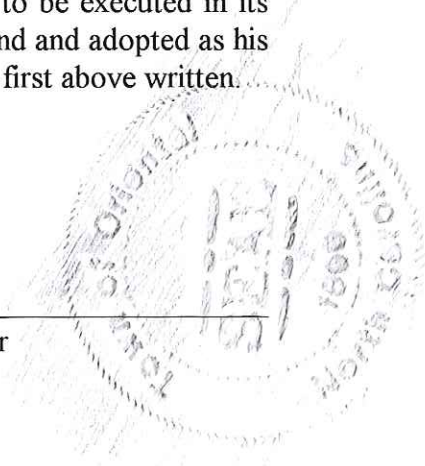
10. COUNTERPARTS. This Agreement may be executed in counterparts in order to provide each party with a fully-executed original hereof.

IN TESTIMONY WHEREOF, Oriental has caused this instrument to be executed in its corporate name by its Town Manager; and Employee has hereunto set his hand and adopted as his seal the typewritten work "SEAL" appearing beside his name, all on the date first above written.

TOWN OF ORIENTAL

By: 
Diane H. Miller, Town Manager

 (SEAL)
DWARNE JOHN MOORE



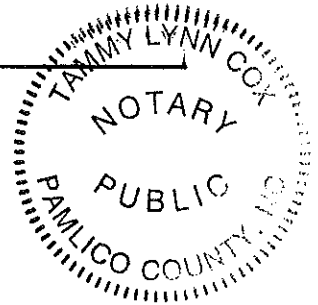
NORTH CAROLINA

PAMLICO COUNTY

I, Tammy Lynn Cox, a notary public in and for said county and state, do hereby certify that Diane H. Miller, Town Manager of the Town of Oriental personally appeared before me this day and acknowledged the due execution of the foregoing Agreement for the purposes therein expressed.

WITNESS my hand and notarial seal, this ~~29th~~ ^{JUNE} day of ~~May~~, 2017.

Tammy Lynn Cox
NOTARY PUBLIC
My Commission Expires:
11-19-2021



NORTH CAROLINA

PAMLICO COUNTY

I, Patricia L. Cross, a notary public in and for said county and state, do hereby certify that Dwaine John Moore personally appeared before me this day and acknowledged the due execution of the foregoing Agreement for the purposes therein expressed.

WITNESS my hand and notarial seal, this 21 ^{June} day of ~~May~~, 2017.

Patricia L. Cross
NOTARY PUBLIC

My commission expires:

11/26/18

