

NORTH CAROLINA

DARE COUNTY

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.



Finance Director

EMPLOYMENT AGREEMENT

THIS AGREEMENT, made and entered into this 19th day of May, 2020, by and between the Town of Southern Shores, North Carolina, a body corporate and politic existing pursuant to the laws of the State of North Carolina, (the "Employer"), and Cliff Ogburn (the "Employee"), both of whom understand as follows:

RECITALS:

Employer desires to employ the services of the Employee as Town Manager of the Town of Southern Shores, North Carolina as provided for in Article 7, Chapter 160A of the General Statutes of North Carolina; and

It is the desire of the Employer to establish certain conditions of employment and to set working conditions of the Employee; and

It is the desire of the Employer to (1) secure and retain the services of the Employee, and to provide inducement for him to remain in such employment, (2) to make possible full work productivity and independence by assuring Employee's morale and peace of mind with respect to future security, and (3) to provide a just means for terminating Employee's services at such time that the Employer may desire to terminate his employ; and

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties agree as follows:

Section 1. Powers and Duties of the Manager

A. Employer hereby agrees to employ Employee as Town Manager of the Town of Southern Shores to perform the functions and duties specified in the General Statutes of North Carolina and herein. Employment shall commence pursuant to the terms of this Agreement on the 1st day of July, 2020, or as soon as Mr. Ogburn becomes available to work for the Town of Southern Shores.

B. Neither the Employer's Town Council, nor any of its members shall direct or request the appointment of any person to, or removal from, office by the Employee or any of his subordinates, or in any manner take part in the appointment or removal of officers and employees in the service of the Town of Southern Shores, except where expressly provided for by the ordinances and policies of the Town of Southern Shores or the General Statutes of the

State of North Carolina. The Employer's Town Council and its members shall deal with employees of the Town of Southern Shores solely through the Employee and neither the Employer's Town Council nor any member thereof shall give orders to any subordinate of the Employee, either publicly or privately.

C. The Employee as Town Manager shall be the Chief Administrative Officer of the Town of Southern Shores. He may head one or more departments and shall be responsible to the Employer's Town Council for the proper administration of all affairs of the Town of Southern Shores. To that end, he shall have the power and be required to perform those duties provided in Part 2, Article 7, Chapter 160A of the General Statutes of North Carolina.

Section 2. Term

A. The Employee serves at the pleasure of the Employer's Town Council and nothing herein shall be taken to prevent, limit or otherwise interfere with the right of the Employer's Town Council to terminate the services of the Employee at any time subject only to the provisions of Section 3 to this Agreement.

B. The term of this Agreement shall be for an initial period beginning on the initial employment date set forth herein and concluding June 30, 2023. The term (and, if extended, any extended term) may be extended for successive one year periods unless either party provides notice to the other party at least 90 days prior to the concluding date of the term then in effect that the party elects not to renew the Agreement.

C. In the event Employee voluntarily resigns as Town Manager, then Employee shall give the Employer's Town Council ninety (90) days' advance notice unless the parties agree otherwise.

D. Employee agrees to remain in the exclusive employ of the Town of Southern Shores during the term of this Agreement.

Section 3. Termination and Payment for Past Service Rendered

A. In the event the Employee is terminated without "just cause" by Employer before the expiration of the original term or any extension thereof, then the Employer agrees to pay Employee a lump sum cash payment equal to six (6) months' aggregate compensation. Such aggregate compensation shall include an amount equal to six (6) months salary and compensation for six (6) months of benefits if Employee elects to receive compensation for benefits pursuant to Section 3.B. below. Employee shall also be compensated for all earned vacation accrued to date, calculated at the rate of pay in effect upon termination.

B. In the event the Employee is terminated without "just cause" by Employer before the expiration of the original term or any extension thereof, then Employee may elect to either (i) include the estimated cost to the Employer of six (6) months of life, health, dental, and disability

insurance and all other Employer provided benefits in the lump sum payment of "aggregate compensation" referenced in Section 3. Paragraph A. above; or (ii) have Employer continue to pay for life, health, dental, and disability insurance and all other Employer provided benefits for a period not to exceed six (6) months. In either case, said benefits shall continue in full force and coverage for a period of six (6) months or until similar coverage is provided to Employee by a subsequent employer (and is in full force and effect) whichever comes first. If the Employee elects to include said benefits in the calculation of a lump sum payment, said benefits shall continue at Employee's expense. Any continuation of group health insurance coverage shall be in addition to any protection afforded Employee by the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA). Coverage under COBRA shall begin at such time as the law requires, but no later than on the date all coverage extended under the severance provisions herein expires.

C. In the event the Employer's Town Council at any time reduces the salary, compensation or other benefits of the Employee in a greater amount than an applicable across-the-board reduction for all full time employees of the Employer or in the event the Employer's Town Council refuses to comply with any other provision benefiting the Employee herein after written request from Employee to comply with such provision, then Employee may at his option, be deemed to be terminated, as provided herein.

D. In the event the Employee is terminated for "just cause," then Employer's only obligation to Employee is to pay all compensation and benefits accrued but unpaid as of the date of termination. "Just cause" for the purposes of this Agreement is described as: (1) willful violation of any of the policies, rules, regulations and ordinances adopted by Employer's Town Council; (2) Employee's willful or intentional presentation of false information to Employer's Town Council; (3) participation in any activity that represents a conflict of interest with the interests of the Employer; (4) habitual use of intoxicants or drugs rendering the Employee unable to perform the duties of Town Manager; (5) commission of a felony or crime involving moral turpitude; (6) the physical or mental inability to perform the essential functions of Employee's position as Town Manager unless Employee can perform those essential functions with a reasonable accommodation; (7) willful disregard of the duties imposed on Employee by law or lawful directive of the Town Council; (8) failure to make a good faith effort to achieve the goals and objectives established during Employee's annual performance evaluation which goals and objectives shall be reasonably attainable within the time limitations as specified, and the annual operation budget and capital budget and appropriations provided; (9) a material breach of any of the provisions of this Agreement. The Town Council's determination of whether just cause exists shall be final.

E. Should the Employee be permanently disabled or otherwise unable to perform his duties because of sickness, accident, injury, mental incapacity or health for a period of four successive weeks beyond any accrued leave available to Employee, Employer may terminate this Agreement subject to the severance provisions of Sections 3.A. and 3.B. above.

G. The terms of this Agreement shall remain in full force and effect and hold over

until employment be terminated under the terms herein, or a new Agreement has been negotiated and entered into by the Employee and Employer's Town Council.

H. Contemporaneously with the delivery of the payment specified in Section 3. Paragraph A above, Employee agrees to execute and deliver to Employer a release, releasing Employer of all claims that Employee may have against Employer, on terms acceptable to Employer.

Section 4. Salary

Employer agrees to pay Employee for his services rendered pursuant hereto as Town Manager an annual base salary of One Hundred Thirty-Two Thousand Six Hundred Forty-Three and No/100 Dollars (\$132,643.00), payable in installments at the same time as other employees of the Employer are paid.

Section 5. Retirement Benefits

The Employee shall be allowed to participate in and governed by the same retirement system as all other non-public safety employees of the Employer.

Section 6. Insurance Coverage

The Employee shall be allowed to participate in and be covered by the same health and dental plans as all other employees of the Employer.

Section 7. Town Issued Equipment

Employer shall provide the Employee a cellular telephone for business use or reimburse Employee for the reasonable costs of using his own phone for business purposes. Any equipment provided by the Town to the Employee shall be returned to the Town immediately upon termination of this Agreement or upon any suspension of the Employee pursuant to Section 13 of this Agreement.

Section 8. Other Benefits

A. All provisions of the Employer's personnel rules and regulations relating to fringe benefits and working conditions as they now exist or hereafter may be amended, shall also apply to the Employee as they would to all other employees of Employer, in addition to said benefits enumerated specifically for the benefit of the Employee herein. Except that all benefits which vary according to tenure shall be calculated and granted in accordance with Employer's personnel rules and regulations using the initial employment date set forth herein.

B. The Employee shall accrue vacation leave at the rate and in the amount available to an employee of the Town having five years' experience with the Town. Employee shall receive personal leave and emergency leave as provided by Employer's personnel rules and

regulations and as applicable to all other employees of Employer. At the time of termination Employee shall have the right to liquidate accrued annual leave as provided by Employer's personnel rules and regulations, at his then current rate of pay.

C. At the beginning of the term of this Agreement, Employee's accrued sick leave shall include the amount of accrued sick leave available to Employee from Employee's last employer, the Town of Nags Head, as of the date of termination of that employment.

Section 9. Hours of Work.

Employee recognizes that as the Town Manager of Employer, Employee must devote a great deal of time outside normal office hours to the business of Employer, and he shall not be compensated for such time other than set forth herein.

Section 10. Professional Development

Employer agrees to budget for and to pay the professional dues, subscriptions, travel and subsistence expenses of the Employee for professional participation and travel, meetings and occasions adequate to continue his professional development as Town Manager. Said participation on Employer time to include, but not to be limited to the North Carolina League of Municipalities, International City/County Management Association, North Carolina Association of City/County Managers, the regional association of city/county managers, and such other national, regional, state and local governmental groups and committees thereof which Employee serves as a member, or which said participation is beneficial to Employer, as well as associated short courses, institutes, and seminars.

Section 11. General Expenses

A. Employer shall bear the full cost of any fidelity or other bonds required of the Employee in his capacity as Town Manager under any law or ordinance.

B. The Finance Director (or other designated employee) is hereby authorized to disburse funds as needed to fulfill all provisions of this Agreement, upon receipt of duly executed expense or petty cash vouchers, receipts, statements, or personal affidavits.

Section 12. Performance Evaluation

A. The Employer's Town Council shall review and evaluate the performance of the Employee no later than July 31 of each year beginning in calendar year 2021. It is further understood that merit increases based on annual performance evaluations and salary reviews are exclusive of any general cost-of-living increases provided to other employees. Employee shall receive all cost-of-living increases, if any, which Employer may grant to its' other employees, at the same time and in the same manner said increases are granted to those employees.

B. The review and evaluation of Employee's performance shall be in accordance

with specific criteria developed jointly by the Employer's Town Council and Employee. The criteria may be added to or deleted from as the Employer's Town Council may from time to time determine, in consultation with the Employee.

C. Employer's Mayor shall provide the Employee with a summary written statement of the findings of the Employer's Town Council and provide an adequate opportunity for the Employee to discuss the evaluation with the Employer's Town Council.

D. Annually, the Employer's Town Council and the Employee shall jointly define such goals and performance objectives that they determine necessary for the proper operation of the Town of Southern Shores, and in the attainment of the policy objectives of Employer's Town Council and shall further establish a relative priority among those various goals and objectives; said goals and objectives to be reduced to writing. The goals and objectives shall generally be attainable within the time limitations as specified, and the annual operation budget and capital budget and appropriations provided.

Section 13. Suspension

The Employer's Town Council may suspend the Employee either with or without full pay and benefits at any time during the term of this Agreement either as a disciplinary measure or to permit the employer to investigate whether "just cause" exists. Employee shall be given notice setting forth the reason(s) for such suspension.

Section 14. Residence.

Employee must maintain his primary residence within a 15 mile radius of Town Hall.

Section 15. Indemnification

To the extent provided by law, Employer shall defend, save 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 performance of Employee's duties as Town Manager. Employer will compromise and settle any such claim or suit and the amount of any settlement or judgment rendered thereon. To the extent provided by law, said indemnification shall extend beyond termination of employment, and the otherwise expiration of this Agreement, to provide full and complete protection to Employee, by the Employer, as described herein, for any acts undertaken or committed in his capacity as Town Manager, regardless of whether the notice of filing of a lawsuit for such tort, claim, demand, or other legal action occurs during or following Employee's employment with Employer.

Section 16. Conflict of Interest Prohibition

It is further understood and agreed that because of the duties of the Employee within and on behalf of the Employer and its citizenry, the Employee shall not, during the term of this Agreement, individually, as a partner, joint venture, officer or shareholder, invest or participate

in any business venture conducting business in the boundaries of the Town of Southern Shores, except for stock ownership in any company whose capital stock is publicly held and regularly traded, without prior approval of the Employer's Town Council. For and during the term of this Agreement, Employee further agrees, except for a personal residence or residential property acquired or held for future use as his personal residence, not to invest in any other real estate or property improvements within the boundaries of the Town of Southern Shores, without the prior consent of the Employer's Town Council.

Section 17. General Provisions

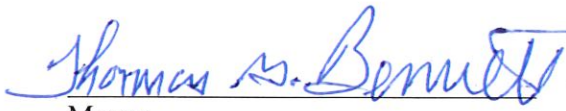
A. The text herein shall constitute the entire Agreement between the parties.

B. This Agreement shall be binding upon and inure to the benefit of the heirs at law and executors of the Employee.

C. This Agreement shall become effective upon adoption and approval by the Employer's Town Council.

D. If any provision, or any portion thereof, of this Agreement is held unconstitutional, invalid or unenforceable, the remainder of this Agreement, or portion thereof, shall not be affected and shall remain in full force and effect.

IN WITNESS WHEREOF, the Employer has caused this Agreement to be signed and executed in its behalf by the Mayor for the Town of Southern Shores and duly attested by its Town Clerk, and the Employee has signed and executed this Agreement, both in duplicate, the day and year first written above.

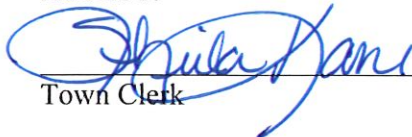


Mayor



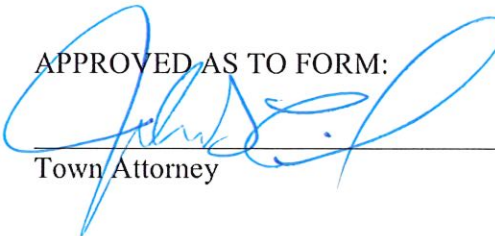
Cliff Ogburn

ATTEST:



Town Clerk

APPROVED AS TO FORM:



Town Attorney

