

BRUNSWICK COUNTY
NORTH CAROLINA

AGREEMENT FOR EMPLOYMENT AS TOWN MANAGER/FINANCE DIRECTOR

THIS AGREEMENT for Employment as Town Manager and Finance Director (hereinafter "Agreement") is made and entered into effective as of this the 31 day of March 2017 by and between the Town of Holden Beach, North Carolina, a municipal corporation organized under the laws of the State of North Carolina (hereinafter "Town"), by and through the Board of Commissioners of Holden Beach (hereinafter "Board") and David Wayne Hewett, a citizen and resident of Brunswick County (hereinafter "Manager"), to establish and set forth the terms and conditions of his employment as the Manager and Finance Director.

WITNESSETH

WHEREAS, the Town requires the employment of a Manager and Finance Director to manage administrative and financial matters of the Town in carrying out its responsibilities; and

WHEREAS, the Town is authorized to employ persons deemed necessary to carry out the management functions and duties assigned to them by the authority and to fix their compensation, within the limit of available funds;

WHEREAS, the Board and Manager wish to ensure the professional administration of Town affairs in a manner consistent with State law, the Town's charter, and existing policies; and

WHEREAS, the Town desires to employ the services of the Manager as the Town Manager and Finance Director, pursuant to the terms, conditions and provisions of this Agreement; and

WHEREAS, the Manager has been acting as the Manager and Finance Director since 2008 and desires to continue acting as Manager and Finance Director for the Town;

WHEREAS, it is the desire of the Board to provide certain benefits, establish certain conditions of employment and to set working conditions of said Manager, by which Manager's performance, in part, shall be measured; and

WHEREAS, Manager acknowledges that he will serve at the pleasure of the Board, is an "at will employee", and has agreed to continued employment as the Town Manager, subject to and on the terms, conditions, and provisions agreed to set forth in this Agreement;

NOW, THEREFORE, in consideration of the Manager's employment with the Town, and other good and valuable consideration, including the mutual covenants herein contained, the receipt and legal sufficiency of which are hereby acknowledged, the Town and the Manager hereby contract, covenant, and agree as follows:

Section 1: Purpose

The purpose of this Agreement is to memorialize conditions and terms of the continued employment of the Manager. Nothing in this Agreement is intended to prevent the Town and the Manager from amending this Agreement in the future to expand the scope of the Agreement.

Section 2: Duties

The Manager is to perform the duties and functions as specified in North Carolina General Statute §160A -148 and § 159-25, the Town Charter, the Laws of the State of North Carolina, the Town Personnel Policy, this Agreement, and to perform other legally permissible and proper duties and functions as the Board shall, from time to time, assign to the Manager consistent with the intent of this Agreement.

The Manager shall perform these duties in a professional manner.

Section 3: Term

- A. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the Town Council to terminate the services of the Manager at any time, subject only to the provisions set forth in Section 11, Paragraph A and B, of this Agreement.
- B. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the Manager to resign at any time from his position with the Town, subject only to the provisions set forth in Section 11, Paragraph C, of this Agreement.
- C. The terms of this Agreement shall remain in effect for five (5) years upon the execution and full acceptance of the contract by both parties at which time all provisions shall automatically be extended until such time as either party should desire to terminate the agreement under the provisions provided herein.

Section 4: Hours

It is agreed that Manager will work a minimum of forty (40) hours per week. The Manager agrees that a consistent work schedule during normal Town business hours is preferable. The Manager agrees to respond to the Town for emergency situations.

Section 5: Salary

Town agrees to pay Manager for his services a base annual salary of One Hundred Thirty Thousand Dollars (\$130,000) ("Salary") per year. This salary is payable in installments at the same time as other employees of the Town are paid. Manager is eligible for all other compensation and benefits as generally offered to employees to include any cost of living amount set forth by the Board, longevity, bonus, or other similar compensation recognized by the typical employees.

Section 6: Group Insurance Plan

Manager is eligible to participate in the Town's group insurance plan, including health, vision, dental and short term disability. The Town agrees to pay the full cost of insurance for Manager and Manager's family.

Section 7: Life Insurance Policy

While the Manager is employed by the Town, the Town shall pay the amount of premium due for term life insurance in the amount of three (3) times the Employee's annual base salary, including all increases in the base salary during the life of this agreement. The Employee shall name the beneficiary of the life insurance policy.

Section 8: Vacation, Sick and Personal Leave

It is acknowledged that as a condition of his original employment with Town, the Town agreed that the Town would allow Manager to transfer 470.50 of sick leave accrued at his previous place of employment.

At the time of execution of this agreement, Manager has accrued an additional 805.15 hours of sick leave, 112 of personal hours, and 450 hours of vacation.

In addition to the foregoing, Manager shall accrue and have credited to his personal account 21 vacation days, 12 sick days and 2 personal days per year.

Section 9: Suspension

The Board may suspend Manager with full pay and benefits at any time during the term of this agreement but only if a majority of the Board of Commissioners, after meeting in a closed session hearing, votes to suspend Manager for just cause provided.

"Just cause" for shall mean: That the Board, acting in good faith based upon the information then known to the Board, determines that Manager has committed or engaged in conduct including but not limited to: willful misconduct, gross negligence, charges of theft, fraud, or other illegal or dishonest conduct which are considered to be harmful to the Town by the majority vote of its Board of Commissioners; refusal or unwillingness to perform job duties, failure to adequately perform job duties as outlined in the job description, habitual absenteeism, substantial dependence on alcohol or any controlled substance, sexual or other forms of illegal harassment, conduct that reflects adversely upon, or making any remarks disparaging of the Town, its Board, insubordination; any willful act that is likely to and which does, in fact, have the effect of injuring the reputation, of the Town; violation of fiduciary duty, violation of any duty of loyalty, breach of any term of this Agreement, and matters of similar gravity to any of the above enumerated grounds.

Termination with Just Cause must be made with notice to Manager and an opportunity to present facts and argument on his behalf. In the event Manager is terminated for Just Cause, he will not

be entitled to any severance payments pursuant to Section 11, but will be entitled to all compensation, benefits and unreimbursed expenses accrued through the date of termination. The parties acknowledge that this definition of "Just Cause" is not intended and does not apply to any aspect of the relationship between the Town and any of its employees, including Manager, beyond determining his eligibility for severance payments.

Manager shall be given written notice setting forth any charges at least ten (10) days prior to such hearing by the Board of Commissioners bringing such charges.

Section 10: Disability

If Manager is permanently disabled or is otherwise unable to perform his duties because of sickness, accident, injury, mental incapacity or health for a period of four (4) successive weeks beyond any accrued sick leave, the Town shall have the option of terminating this agreement subject to the severance pay requirements of Section 11, Paragraph A.

Section 11: Termination, Resignation and Severance Pay

- A. In the event Manager is terminated by the Board before expiration of the aforesaid term of employment and during such time that the Manager is willing and able to perform his duties under this agreement, the Town agrees to pay Manager a lump sum cash payment equal to one (1) month salary, up to twelve (12) months, for every year Manager has been employed by Town. (Examples: If Employed 9 years, the severance pay shall be equal to 9 months compensation. If Employed 14 years, the severance pay shall be equal to 12 months compensation.) In addition to the foregoing, the Town agrees to continue providing Manager with health insurance, as provided in Section 6, for up to twelve (12) months or until such time as Manager obtains employment, whichever event occurs sooner.
- B. In the event the Manager is terminated for just cause or because of his conviction of any state or federal misdemeanor or felony, then, in that event, Town shall have no obligation to pay any severance pay as described in Section 11, Paragraph A but Manager will be entitled to all compensation, benefits and unreimbursed expenses accrued through the date of termination.
- C. In the event the Manager voluntarily resigns his position with the Town before the expiration of the term of his employment, then the Manager shall give the Town sixty (60) days notice in advance unless the parties agree otherwise. There will be no severance pay in the event that the Manager resigns his position but Manager will be entitled to all compensation, benefits and unreimbursed expenses accrued through the date of termination.

Section 12: Dues and Subscriptions

Town agrees to budget and to pay for the professional dues and subscriptions of Manager necessary for his continuation and full participation in national, regional, state and local

associations and organizations necessary and desirable for his continued professional participation, growth and advancement, and for the good of the Town.

Section 13: Professional Development

Town hereby agrees to budget for and pay the travel and subsistence expenses of Manager for professional and official travel, meetings and occasions adequate to continue the professional development of Manager and to adequately pursue necessary official and other functions for Town. Budget amounts shall be reviewed and approved by the Board.

Section 14: Performance Evaluation

- A. Annually, the Board and Manager will define goals and performance objectives which they determine necessary for the proper operation of the Town and in the attainment of the Board's policy objectives 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 operating and capital budget and appropriations that can be provided. The Mayor shall provide Manager with a summary written statement of the finding of the Board and provide an adequate opportunity for the Manager to discuss his evaluation with the Board of Commissioners.
- B. In effecting the provisions of this section, the Board and Manager mutually agree to abide by the provisions of any and all applicable laws.

Section 15: Indemnification

To the fullest extent permitted by law and except as specifically limited by Town Ordinances, the Town shall defend, save harmless and indemnify the Manager against any tort, professional liability claim or demand or other legal action, whether groundless or otherwise, arising out of any alleged act or omission occurring in the performance of the Manager's duties, and shall obtain and keep in full force and effect liability insurance, or risk pool coverage, including Public Officials coverage on a "wrongful act" basis, in sufficient amounts to assure accomplishment of such hold harmless and indemnification; provided that this section shall not be construed as creating any right, cause of action, or claim of waiver or estoppel for or on behalf of any third party, nor shall it be construed as a waiver or modification of the availability of the defense of governmental immunity or any other legal defense available to either the Town or the Manager as to any third party; and provided further that the Town shall not indemnify or hold harmless the Manager from and with respect to any claim or liability for which the conduct of the Manager is found by the Courts to have been outside the course and scope of employment of his official capacity as Manager, grossly negligent or intentionally wrongful. The Town may compromise and settle any such claim or suit, for which the Town has a duty to defend, save harmless and indemnify the Manager hereunder as hereinbefore more specifically provided.

Section 16: Bonding

The Town shall bear the full cost of any fidelity or other bonds required of the Manager under any law or ordinance.

Section 17: General Provisions

- A. **Governing Law.** This Agreement shall be construed in accordance with, and governed by, the laws of the State of North Carolina. Venue shall lie exclusively in Brunswick County, North Carolina.
- B. **Entire Agreement.** This Agreement incorporates all the agreements, covenants and understandings between the Town and the Manager concerning the subject matter hereof, and all such covenants, agreements and understandings have been merged into this written Agreement. No other prior agreements or understandings, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.
- C. **Amendment.** This Agreement shall not be modified or amended except by a vote of the Board and, upon approval of the Board, a written instrument executed by the Manager and the duly authorized representative of the Board.
- D. **Resignation/Termination.** Notwithstanding anything herein to the contrary, the Manager serves at the pleasure of the Board and this Agreement may be terminated and cancelled by the Board with or without cause, at any time and without recourse from the Manager subject to Section 11.

IN WITNESS WHEREOF, the Town and the Manager have executed this Agreement effective as of the date first written above.

[SIGNATURES ON FOLLOWING PAGE]

TOWN OF HOLDEN BEACH, NORTH CAROLINA

By

Alan Holden
Alan Holden, Mayor

ATTEST:

Heather Finnell
Heather Finnell, Town Clerk



AGREED AND ACCEPTED this, the 31 day of March 2017.

David Wayne Hewett

David Wayne Hewett, Town Manager/Finance Officer