

COUNTY OF ONSLOW, NORTH CAROLINA
EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT (the "Agreement"), effective the 1st day of February, 2024, by and between the Onslow County Board of Commissioners (the "Board"), a political subdivision of the State of North Carolina, party of the first part, and David M. Smitherman ("Employee"), party of the second part, collectively the "parties," both of whom understand as follows:

WITNESSETH

WHEREAS, the Board of Commissioners desires to appoint Employee as County Manager and Clerk of the Board, pursuant and subject to Sections 153A-81 and 153A-111; and

WHEREAS, it is the desire of the Board of Commissioners to provide certain benefits, establish certain conditions of employment, and to set working conditions of said Employee; and

WHEREAS, it is the desire of the Board of Commissioners to (1) secure and retain services of the Employee and to provide inducement for him to remain in such employment, (2) to make possible full work productivity by ensuring Employee's morale and peace of mind with respect to future security, (3) to act as a deterrent against malfeasance or dishonesty for personal gain on the part of the Employee, and (4) to provide a just means for terminating Employee's services at such time as he may be unable fully to discharge his duties due to age, disability, malfeasance, or other instances, or when the Board of Commissioners may desire to otherwise terminate his employment; and

WHEREAS, Employee desires to accept the appointment as County Manager of Onslow County, North Carolina (the "County"); and

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

SECTION 1. DUTIES

The Board of Commissioners hereby appoints Employee as County Manager and Clerk to the Board to perform the functions and duties specified in Sections 153A-82 and 153-111 and to perform such other legally permissible and proper duties and functions as the Board shall from time-to-time assign, including service as the sole authority for personnel matters under the County Personnel Policy. Employee agrees to faithfully adhere to the duty of care, serving with the obedience required of an officer of the County. Employee shall not engage in any activity that is, or would create the appearance of a conflict of interest. The Employee acknowledges that he is an appointee of the Board of Commissioners report solely and directly to the Board of Commissioners, and has no grievance rights. Employee agrees that he will devote all of his full working time to the performance of his duties required hereunder, and Employee therefore agrees not to engage in any other employment.

SECTION 2. TERMINATION AND RESIGNATION

A. The obligations under this Agreement shall commence on February 1, 2024 and shall terminate on December 31, 2028 (the "Termination Date"). This Agreement will automatically renew for an additional two (2) year period, unless Employee is notified of intent to terminate at least ninety (90) days prior to Termination Date. In addition, all duties and obligations of the parties shall terminate pursuant to the provisions of Section 2, Paragraphs B, C, and D.

B. Nothing in this Agreement shall prevent, limit, or otherwise interfere with the right of the Board of Commissioners to terminate the services of Employee at any time, subject only to the provisions set forth in Section 3(A) and 3 (B) of this Agreement.

C. Nothing in this Agreement shall prevent, limit, or otherwise interfere with the right of the Employee to resign at any time from his position with the County and/or Board of Commissioners, subject only to the provision set forth in Section 3(D) of this Agreement.

D. Upon mutual agreement by the Board and Employee, this Agreement may be extended.

SECTION 3. SEVERANCE PROVISIONS

A. The Board of Commissioners may terminate this Agreement pursuant to the provisions of Sections 2(B) on or before June 30, 2024 with a one time cash payment equivalent to three (3) months base salary and benefits. The Board of Commissioners may terminate this Agreement pursuant to the provisions of Sections 2(B) on or before November 30, 2024 within with a one time cash payment equivalent to six (6) months base salary and benefits. In the event Employee is involuntarily terminated by the Board of Commissioners pursuant to the provisions of Sections 2(B) on or after December 1, 2024, and during such time that Employee is willing and able to perform the duties of County Manager and Clerk, then in that event the County and/or the Board of Commissioners agrees to pay Employee a lump sum cash payment equal to the remaining term's base salary and benefits at current aggregate salary. At no time after December 1, 2024, shall the cash payment be less than equal to twelve (12) months base salary and benefits.

B. In the event Employee is terminated for cause, then, in that event, County shall have no obligation to pay Employee severance pay or provide other benefits identified in this Agreement. Termination for cause shall include: (1) conviction of any illegal act involving personal integrity or gain to her or involving moral turpitude; (2) illegal use of a controlled substance as set forth in the General Statutes of North Carolina; (3) finding by a state or federal governmental entity that he engaged in unlawful discrimination or harassment. Termination for cause shall also include physical or mental incapacity of Employee that causes Employee to be unable to perform his duties as County Manager/Clerk for a period of four weeks beyond any accrued vacation and sick leave, in which case Employee shall receive three month's severance pay. No other benefits shall be paid.

C. In the event the County and/or Board, at any time during the employment term, reduces the salary or other financial benefits of Employee in a greater percentage than an applicable across-the-board reduction for all County employees, or in the event the County and/or Board of Commissioners refuses, following written notice, to comply with any other provision benefiting Employee herein, or the Employee resigns following a formal suggestion by the Board of Commissioners that he resign, then, in that event, the Employee may at his option, be deemed to be "terminated" at the date of such reduction or such refusal to comply within the meaning and context of the herein severance pay provision. The County and/or Board, by act of executing this Agreement,

authorizes payment of said severance pay upon request by the Employee in accordance and subject to Paragraph 3(A) or (B) above, and hereby authorizes a check to be drawn upon the County's General Fund, Administration Department, of the then current County appropriation, and also orders the County Finance Director to issue said check.

D. In the event Employee voluntarily resigns his position with the County, then Employee shall give the County sixty (60) days' notice in advance. No severance payment, as described in Section 3(A), shall be made in this event.

SECTION 4. SALARY

A. The Board of Commissioners and/or County agrees to compensate Employee for services rendered pursuant hereto an annualized base salary \$280,000.00.

B. The parties hereto agree that the Employee's annualized salary shall be increased by the same cost of living allowance (COLA) as approved by the Board of Commissioners for other County employees as a whole.

C. Employee's salary are payable at the same interval as general employees.

D. The Board of Commissioners shall provide on-going job performance evaluations, at a minimum of once per Term as provided for herein, on or before December 1st of each year. The Board shall use the performance evaluation as a basis to determine whether the Employee receives an annual base salary increase less than the maximum performance-based increase available to all Employees. The evaluation will be based upon annual goals and objectives identified by the Employer and the Employee. The goals and objectives shall be oriented toward the proper operation of the County and toward the attainment of the Board's policy objectives. The goals and objectives and their relative priority shall be established and memorialized in writing and shall be generally attainable within the specified time limitations, as specified by the annual operating and capital budgets and the appropriations provided. The evaluation process should include the opportunity for both parties to: (1) prepare a written evaluation; (2) meet and discuss the evaluation; and (3) present a written summary of the evaluation results, which summary shall be completed and delivered to the Employee within thirty (30) days of the evaluation.

SECTION 5. HOURS OF WORK

A. Normal office hours are considered to be 8:00 a.m. - 5:00 p.m., Monday through Friday.

B. It is recognized that Employee must devote a great deal of his time outside normal office hours to business of the County. The Employee is expected to devote whatever time is reasonably necessary to the business of the County including hours outside normal office hours. The Employee recognizes he is not to receive any additional compensation for hours worked beyond forty (40) hours in a workweek or on weekends or holidays. Likewise, the Employer understands the need to rely upon the discretion and sound judgment of the Employee to determine how to balance the demands of work with the need or desire to be absent from work during normal office hours in order to attend to personal business, family matters or even recreational activities. Employee shall be reasonably available by phone and email during the normal office hours of the County, except when on vacation, sick leave, or when other reasonably good cause exists. Employee shall not be eligible to receive

compensatory pay that is otherwise available to County employees.

C. The Employee shall have the discretion to work remotely, understanding that an ongoing and regular office presence is expected and valued by the Board of Commissioners.

SECTION 6. GENERAL EXPENSES AND TRAVEL

A. The Employee shall be entitled to reimbursement for such of his actual expenses, as are necessary and ordinarily incidental to his duties and travel on County business, upon receipt, statements, or personal affidavits.

B. In addition, Employee shall be compensated for use of his personal vehicle pursuant to his job as County Manager \$750 per month as a vehicle allowance for use within Onslow County. Travel outside of the County shall be compensated at the prevailing IRS reimbursement rate.

C. The Employee shall be provided a mobile phone allowance of \$100 monthly.

D. The Employee shall be provided a short term housing and subsistence stipend of \$4,200 per month beginning February 1, 2024 and ending upon: (i) Employee purchasing a residence in Onslow County; (ii) Employee entering into a lease of six months or longer (extensions included); or (iii) or July 31, 2024; whichever occurs first.

E. The Employee shall be provided a relocation stipend of \$10,000 once permanent status is established in Onslow County, verifiable by drivers license and voter registration.

SECTION 7. DUES AND SUBSCRIPTIONS

The Board of Commissioners and/or County agrees to budget and to pay the professional dues and subscriptions of Employee for his continuation and full participation in national, regional, state, and local associations and organizations that the Board of Commissioners deems are necessary and desirable for his continued professional participation, growth, and advancement, and for the good of the County.

SECTION 8. PROFESSIONAL DEVELOPMENT

A. To the extent that the Board of Commissioners deems it appropriate, the Board of Commissioners and/or County hereby agrees to budget and to pay the travel and subsistence expenses of Employee for professional and official travel, meetings, and occasions adequate to continue the professional development of Employee and to adequately pursue necessary official and other functions for County. National level conferences shall be permitted in accordance with budgetary means, without specific approval of the Board of Commissioners.

B. To the extent that the Board of Commissioners deems it appropriate, County also agrees to budget and to pay for the travel and subsistence expenses of Employee for short courses, institutes, and seminars that are necessary for his professional development and for the good of the County.

SECTION 9. VACATION AND SICK LEAVE

Annually, at the anniversary of this Agreement, incepting February 1, 2024, Employee shall be issued twenty five (25) vacation days and twelve (12) sick days. Upon issuance, said days shall be immediately usable by the Employee. At the Employee's termination of employment with the County, the Employee shall be reimbursed for accumulated vacation days, but not sick days. All accrued vacation leave in excess of two hundred and forty hours on February 1st of each year shall be credited to sick leave on an hour for hour basis.

SECTION 10. RETIREMENT AND HEALTH AND LIFE INSURANCE

A. The Board of Commissioners and/or County agrees to put into force and to make required premium payments for Employee for the Retirement Program and insurance policies for life and disability income benefits, through the North Carolina Local Government Employees Retirement System, as with any other employee of the County.

B. The Board of Commissioners and/or County agrees to provide hospitalization, surgical, and comprehensive medical insurance for Employee and Employee's family at the County's expense and to allow the Employee to participate in the benefit plans as permitted for all other County employees.

C. The Board of Commissioners and/or County agrees to purchase and maintain a life insurance policy equivalent to the employees annual salary payable to the beneficiary of the Employee's designation throughout the term of this agreement.

D. In addition to the annual salary paid to the Employee, the County will contribute, five percent (5%) of the Employee's annual salary as deferred compensation to the retirement plan selected by the Employee on December 15th each year.

E. Provided Employee is an employee of Onslow County at the time he elects to retire through the North Carolina Local Government Employees Retirement System, Employee shall be eligible to fully participate in the Onslow County Employees Hospitalization Insurance Policy Plan, and the County hereby specifically waives any length of service or other requirements that might be stated in the Plan in order to ensure that Employee is eligible to fully participate in the Plan immediately upon his retirement. Employee acknowledges that Employer may terminate the Employees Hospitalization Insurance Policy Plan at any time and that no right or privilege to such plan exists upon its termination.

SECTION 11. OTHER TERMS AND CONDITIONS OF EMPLOYMENT

A. Employee shall maintain permanent residency in Onslow County, North Carolina, while employed in said position.

B. The Board of Commissioners shall fix any such other terms and conditions of employment, as it may determine from time-to-time, relating to the performance of Employee, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this Agreement, the North Carolina General Statutes, or any other applicable law.

C. All provisions of the General Statutes, and regulations and rules of the County relating to vacation, military leave, and sick leave, retirement, and pension system contributions, holidays, and other fringe benefits, and working conditions as they now exist or hereafter may

be amended, also shall apply to Employee as they would to any other employees of the County, in addition to said benefits enumerated specifically for the benefit of Employee, except as herein provided.

SECTION 12.EMPLOYMENT-AT-WILL

A. Nothing in this Agreement shall prevent, limit, or otherwise interfere with the right of the Employer to terminate the services of the Employee at any time, subject to the terms set forth in Section 3 above. The employment relationship shall be at-will and the Employee may be terminated for any reason, or no reason with or without notice or cause, subject to the terms set forth in Section 3.

B. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the Employee to resign at any time from his position with the Employer, subject only to the provisions set forth in this Agreement.

SECTION 13.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 personal representatives of the Employee.

C. This Agreement shall become legally effective upon execution, and end December 31, 2028, unless the contract period is extended.

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

E. This Agreement shall be administered and interpreted in accordance with the laws of the State of North Carolina without regard to its conflict of laws provisions. Any actions arising out of this Agreement, bonds or other obligations securing the obligations of this Agreement shall be filed and maintained solely and exclusively in the County of Onslow, North Carolina.

F. Employee agrees that Employer has advised Employee that Employee should seek an attorney to provide separate independent counsel and review of this Agreement.

IN WITNESS WHEREOF, the Board of Commissioners has caused this Agreement to be signed and executed on its behalf by its Chairman and the Employee has signed and executed this Agreement, both in duplicate, the day and year written below.

SIGNATURE PAGE TO FOLLOW

Tim Foster
Chairman, Onslow County Board of Supervisors
Date: 11/20/2023

ATTEST:

Angela G. Hoffman
Date: 11/20/2023

David M. Smitherman
Employee
Date: 11/07/23

APPROVED AS TO FORM:

Brett DeSelms
Onslow County Attorney
Date: 11/7/23

THIS INSTRUMENT HAS BEEN PREAUDITED
IN THE MANNER REQUIRED BY THE
LOCAL GOVERNMENT BUDGET AND
FISCAL CONTROL ACT

Interim FINANCE OFFICER