

## **TOWN MANAGER EMPLOYMENT AGREEMENT**

**THIS EMPLOYMENT AGREEMENT** (hereafter "Agreement"), made and entered into this 18<sup>th</sup> day of October, 2021 by and between the Town of North Topsail Beach, North Carolina, a municipal corporation, organized and existing under the laws for the State of North Carolina, having its principal place of business at 2008 Loggerhead Court in North Topsail Beach (hereinafter the "Town") as party of the first part, and Alice C. Derian hereinafter called "Employee or Town Manager" as party of the second part, both of whom understand as follows:

### **WITNESSETH**

**WHEREAS**, the Town, pursuant to North Carolina General Statute § 160A-47, is mandated to appoint a Town Manager to serve at the Board of Aldermen's pleasure.

**WHEREAS**, the Town is authorized under Chapter §160-A, Article 2, §11, 12, Article 3, § 16, 17 and 20.1 of the North Carolina General Statutes to employ personnel and to enter into this Agreement.

**WHEREAS**, the Town desires to implement this employment agreement with Employee for the position of Town Manager; and the Employee desires to be employed as Town Manager and accepts the position together with the valuable benefits associated therewith and agrees to provide assurances for the protection of the business of the Town, the goodwill generated thereby and to protect any non-public confidential information of the Town.

**NOW THEREFORE**, in consideration of the mutual covenants herein contained, the sufficiency of which is hereby acknowledged, the parties agree as follows:

### **ARTICLE ONE (Purpose and Effective Date)**

Town agrees to employ Alice C. Derian as Town Manager of the Town of North Topsail Beach to perform the functions and duties specified in the North Topsail Beach Code §2.60 and North Carolina Government Statues §160A-148 as amended. The Town Manager agrees to perform all duties and responsibilities faithfully, industriously, and to the best of his ability and in a professional and competent manner. Employment as the Town Manager shall commence on the 18<sup>th</sup> day of October, 2021.

### **ARTICLE TWO (Powers and Duties of the Town Manager)**

A. The Town Manager shall remain in the exclusive employ of the Town and shall devote all such time, attention, knowledge, and skills necessary to faithfully perform the duties under this Agreement. The Town Manager may, however, engage in educational and professional activities and other employment activities upon receipt of written prior approval by the Town Board of Aldermen, provided that such activities shall not interfere with his primary obligation to

the Town as its Town Manager. The Town Manager shall dedicate no less than an average of forty (40) hours per week in the performance of his duties hereunder.

B. Town Manager shall not serve on any appointed boards or elected boards of any professional organization or serve on any committees related to his professional activities without the prior written approval of the Town Board of Aldermen.

### **ARTICLE THREE (Compensation and Benefits)**

**SALARY AND OTHER COMPENSATION.** Employee shall receive for services hereunder during the Employee's term of employment an annual salary of One Hundred Fifteen Thousand Dollars (\$115,000). Salary will be payable in installments on the regular payroll dates for salaried employees of Employer as such dates might be established from time to time, provided that installments will be paid no less frequently than on each calendar month. Currently, there are twenty-six (26) pay periods per year. All payments shall be deemed gross salary and shall be subject to all applicable withholding and other taxes applicable to employees of Employer. Employee shall be entitled to the same cost of living increases and similar adjustments as other employees of the Employer.

Employer will pay up to One Thousand Dollars (\$1,000) per year for Employee's Professional Membership dues with respect to organizations related to Employee's role as Town Manager.

Employer may pay up to Two Thousand Five Hundred Dollars (\$2,500) per year towards Employee's continuing education or conference attendance for education related to Employee's job duties.

**HEALTH INSURANCE COVERAGE.** Employee has the option of participating in the same health insurance plan as all other employees of North Topsail Beach. Note there is some employee financial participation required, depending on coverage.

**VEHICLE.** During the term of this Agreement, Employee shall have the use of a vehicle owned by Employer ("The Town Car"). The Town Car shall be used by Employee solely to advance the interests of the Town.

#### **VACATION.**

1. Employee shall accrue one hundred twenty (120) hours (equal to 15 working days) paid vacation days per year of employment with the Town, disbursed in accordance with the Town's vacation policy. In the event of termination of employment for any reason, and / or death or permanent disability of Employee, Employee shall be entitled to receive full monetary compensation for any unused vacation time accumulated, to the maximum accrual of Two Hundred Forty (240) hours (equal to 30 working days). For the purposes of this Agreement one year shall mean the period of time between the effective date of this Agreement and the first anniversary of the effective date.

2. Vacation shall be taken upon adequate notice to Employer and shall be at a time least likely to obstruct normal operations of the Town.

**SICK LEAVE.**

1. Employee shall be entitled to accrue annual sick leave of Ninety-Six (96) hours (equal to 12 working days) for each 12 full months of employment with the Town. Employee shall be entitled to any unused sick leave accumulated as specified in the Local Governmental Employees' Retirement System. In the event any illness requires absence for a period exceeding three (3) days, Employee shall notify the Mayor of the Governing Body immediately.

2. Sick leave may be used if an immediate family member becomes ill or requires extraordinary treatment.

**PROFESSIONAL AND EDUCATIONAL LEAVE.** Employee shall be permitted and encouraged to attend educational seminars and professional meetings without loss of pay or use of vacation hours, and at the expense of the Employer to the extent reasonable and necessary to the activity. Employer agrees to pay for dues and subscriptions in professional organizations as deemed (by Employer) necessary and / or useful in promoting the interests of Employer.

**LIFE INSURANCE.** Life insurance shall be provided to Employee on the same basis as that provided for other employees of the Town.

**CONTRIBUTIONS TO 401(K).** Employer shall contribute an amount equal to 3% of Employee's pay into the Employee's North Topsail Beach 401(K) account.

**RETIREMENT.** Employer shall pay retirement to the North Carolina Local Government Employees' Retirement System for the benefit of the Employee.

**MOVING & TEMPORARY LIVING PAYMENT.** Employer shall give Employee a one-time payment of \$5,000 for relocating Employee and family to the North Topsail Beach area. In the event Employee resigns, retires, or accepts a position elsewhere, within two years of the Town's payment of relocation expenses, Employee will return a prorated portion of any expenses it has paid to assist with relocation. The proration will be based on the number of months served since the relocation divided by 24 months. Reimbursement to the Town of relocation expenses is not required if the Employee should die within the first two (2) years or resign within such time due to disability.

**EVALUATION.** Employee will be evaluated by the Town Board of Aldermen after the first six months of employment and thereafter annually according to an evaluation process determined by the Town. This evaluation shall serve as a forum to evaluate the past performance of the Employee and to establish goals and objectives for the coming year. Said review should include consideration of merit pay increase for Employee as well as cost of living and other adjustments in compensation.

## ARTICLE FOUR (Termination)

A. Pleasure of the Board of Aldermen. The Town Manager shall serve at the pleasure of the Town Board, and the Town Board may terminate this Agreement and the Town Manager's employment with the Town at any time, for any reason or for no reason.

B. Vote to Terminate Employment. Should a majority of the Board vote to terminate the services of the Town Manager "without cause", then within forty-five (45) calendar days following such vote, the Board shall cause Employee to be paid any accrued and unpaid salary and benefits earned (including personal time off, holiday time and insurance but excluding such items and allowances as are used in conducting Town business such as, but not limited to, the use of the Town computer and the automobile) prior to the date of termination based on a forty (40) hour work week. Within forty-five (45) calendar days following the vote to terminate the Employee's employment, the Board shall cause Employee to be paid a lump sum severance pay equal to three (3) months of his base salary as full and complete payment and satisfaction of any claims of Employee of any nature arising out of this Agreement or otherwise. As consideration for such payment, Employee, prior to receipt thereof, execute and deliver to the Town a general release of the Town and its Board members and its officers, agents, and employees for all acts and actions (whether accrued or subsequently accruing) from the beginning of time until the date of release, said release to be prepared by the Town Attorney.

C. Termination for Cause. In the event Employee is terminated for "just cause," the Town shall have no obligation to pay the severance amount outlined in Article 4, Paragraph b of this Agreement. For purposes of this Agreement, "just cause" is defined, but not limited to, any of the following:

- (1). Misfeasance, malfeasance and/or nonfeasance in performance of the Town Manager's duties and responsibilities.
- (2). Conviction or a plea of guilty or no contest to a misdemeanor or felony crime, whether or not adjudication is withheld.
- (3). Neglect of duty, including the inability or unwillingness to properly discharge the responsibilities of office.
- (4). Violation of any substantive Town policy, rule, or regulation, which would subject any other Town employee to termination.
- (5). The commission of any fraudulent act against the interest of the Town.
- (6). The commission of any act which involves moral turpitude, or which causes the Town disrepute.
- (7). Violation of the International City/County Management Association Code of Ethics.

- (8). Any other act of a similar nature of the same or greater seriousness.
- (9). "Just cause" as described in North Carolina Pattern [Jury] Instruction Civil 640.14, attached hereto as Exhibit A and incorporated herein by reference.

D. Reduction in Salary or Benefits. In the event the Board, at any time during the employment term, reduces the salary or other benefits of Employee, as identified herein, in a greater percentage than an equivalent across-the-board reduction for all full-time Town employees, or in the event the Town allegedly refuses to comply with any other material provision of this Agreement benefiting Employee, Employee shall notify the Board in writing of the alleged violation. The Board shall have forty-five (45) days from such notice within which to cure the violation, otherwise, Employee may at Employee's option, consider such violation as termination "without cause" as of the date of such alleged reduction or refusal, and the severance pay provision and other termination provisions contained herein shall become applicable at the annual salary and benefit level in effect prior to the reduction or refusal.

E. Termination by the Employee. Employee may terminate this Agreement at any time by delivering to the Town Board a written notice of termination not later than ninety (90) days prior to the effective date of the termination. If Employee terminates this Agreement, then the provisions of Section 12, Paragraph B above, shall not apply. If Employee voluntarily resigns pursuant to this Section, the Town shall pay Employee all accrued compensation due Employee up to the Employee's final day of employment, including any accrued personal time off. The Town shall have no further financial obligation to Employee pursuant to this Agreement. This subsection shall not prevent Employee from collecting any money earned as a result of participation in the Town's deferred retirement program.

#### **ARTICLE FIVE (Disability)**

If Employee becomes permanently disabled or is otherwise unable to perform their duties because of sickness, accident, injury, mental incapacity, or health for a period of four consecutive weeks beyond any accrued leave, the Town shall have the option to terminate this Agreement, subject to the severance pay provision outlined in Section 12, Paragraph B of this Agreement.

#### **ARTICLE SIX (Indemnification)**

A. Town shall defend, save harmless, and indemnify Employee against any action for any injury or damage suffered as a result of any act, event, or omission of action that is adjudicated to have occurred within the scope of Employee's duties or function, unless Employee acted in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property. The Town will compromise and settle any such claim or suit and pay the amount of any settlement or judgment rendered thereon. The Town shall not be liable for the acts or omissions of Employee committed while acting outside the course and scope of the

agreed duties or committed in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property. In such instance, Employee shall reimburse the Town for any legal fees and expenses the Town has incurred or otherwise paid, for or on Employee's behalf, in connection with the charged conduct.

B. Said indemnification shall extend beyond the termination of employment and the expiration of this Agreement to provide protection for any such acts undertaken or committed in Employee's capacity as Town Manager, regardless of whether the notice of claim or filing of a lawsuit occurs during or following employment with the Town.

#### **ARTICLE SEVEN (Bonding)**

The Town agrees to bear the full cost of any fidelity or other bonds required of Employee under any policy, regulation, ordinance, or law.

#### **ARTICLE EIGHT (Code of Ethics)**

The "Code of Ethics" promulgated by ICMA is incorporated herein, and by this reference made a part hereof. Said "Code of Ethics" shall furnish principles to govern the Employee's conduct and actions as Town Manager of the Town.

#### **ARTICLE NINE (General Terms and Conditions)**

A. If any provision, or any portion thereof, contained in this Agreement is held by a court of competent jurisdiction 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.

B. 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.

C. This Agreement shall be binding upon and inure to the benefit of the heirs at law or personal representative of Town Manager.

D. This Agreement contains the entire Agreement of the parties. It may not be changed verbally, but only by an Agreement in writing signed by the parties.

E. North Carolina law shall govern this Agreement and any litigation that may arise from this Agreement, shall be filed, and litigated in Onslow County, North Carolina or the Eastern District Court of North Carolina, Southern Division (federal court).

F. Upon Employee's death, the Town's obligations under this Agreement shall terminate except for:

1. Transfer of ownership of retirement funds, if any, to his designated beneficiaries;
2. Payment of accrued leave balances in accordance with this Agreement;
3. Payment of all outstanding hospitalization, medical and dental bills in accordance with Town's insurance policies or plans; and
4. Payment of all life insurance benefits in accordance with the Town's insurance policies or plans.

G. The parties acknowledge that each has shared equally in the drafting and preparation of this Agreement and, accordingly, no court construing this Agreement shall construe it more strictly against one party than the other and every covenant, term and provision of this Agreement shall be construed simply according to its fair meaning.


H. This Agreement may be executed in duplicate or counterparts, each of which shall be deemed an original and all of which together shall be deemed one and the same instrument. No term, condition or covenant of this Agreement shall be binding on either party until both parties have signed it.

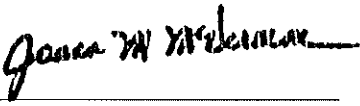
I. The effective date of this Agreement shall be the first listed above.

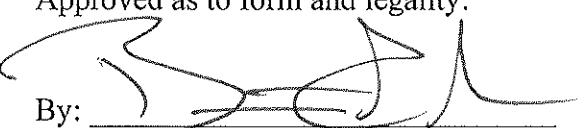
**IN WITNESS WHEREOF**, the Town of North Topsail Beach has caused this Agreement to be signed and executed and duly attested by its Town Clerk, and the Mayor has signed and executed this Agreement, the day and year first written above.

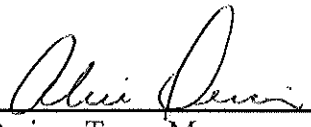
**ATTEST:**

**TOWN OF NORTH TOPSAIL BEACH**

By:   
Danyale Lundy, Town Clerk

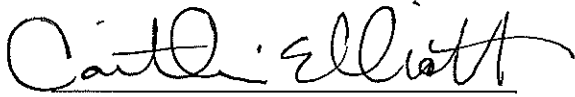
By:   
Joann McDermon, Mayor

Approved as to form and legality:  
By:   
Brian Edes, Town Attorney

Employee:  
By:   
Alice Derian, Town Manager

PRE-AUDIT CERTIFICATE

I affirm that this instrument has been duly pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

A handwritten signature in black ink, reading "Caitlin Elliott". The signature is written in a cursive style with a horizontal line underneath it.

Caitlin Elliott, Finance Officer  
Town of North Topsail Beach