

## **EMPLOYMENT AGREEMENT**

This Employment Agreement (“Agreement”) is entered into by and between the Town of Smithfield, a North Carolina municipal corporation (the “Town”), by and through its Town Council (the “Employer”) and Michael Leslie Scott (“Manager”).

### **WITNESSETH:**

THAT WHEREAS, the Employer desires to employ MICHAEL LESLIE SCOTT as the Manager for the Town; and

WHEREAS, it is the desire of the Employer secure and retain services of the Manager based upon the parties understanding and agreement as set forth herein;

WHEREAS, the Manager desires to accept employment with the Town as Manager based upon the parties understanding and agreement as set forth herein;

WHEREAS, all parties understand and agree that the Manager serves at the pleasure of the Employer; and

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, Employer and Manager agree as follows:

### **SECTION 1 DUTIES**

The Manager shall be employed as Manager for the Town commencing on a date to be later identified by the parties, but not later than June 1, 2016 (“Start Date”) and shall perform all such duties, responsibilities and functions of a Manager which are specified under North Carolina General Statutes, the Town Charter, the Town Ordinances, and the Town’s Policies, as well as such other duties which may be lawfully assigned by Employer during his employment.

### **SECTION 2 OTHER CONDITIONS OF EMPLOYMENT**

The Manager shall maintain his principal residence within the Town of Smithfield during the time period of his employment. The Manager agrees to devote his full time and attention to his duties with the Town and agrees that he will not engage in other compensated work activities without prior approval of the Employer, as evidenced through a vote of Town Council. It is acknowledged by the Town and Employer that the Manager presently teaches several online college and continuing education courses. The Manager shall be allowed to continue teaching any online college and continuing education courses during his employment. The Manager may also take such actions as are necessary to maintain his law enforcement certification as specified

in Section 5(h) below. These endeavors shall be on the Manager's personal time and shall not interfere with this duties as Manager.

It is recognized that the Manager must devote a great deal of his time outside of normal office hours to the business of the Town and that this employment is not limited to forty (40) hours per week. The Town Manager will be allowed to take time off as he shall deem appropriate and reasonable during normal office hours, consistent with the performance of his duties and the general commitment of the job as Manager when the job requires additional time. Other than such flexibility in schedule, the Manager shall not accrue "compensatory time" for additional hours worked.

### **SECTION 3 TERM**

It is expressly understood and agreed that in accordance with North Carolina General Statute 160A-147, the Manager serves at the pleasure of the Town Council, and as such, Employer may terminate the employment of the Manager at any time, with or without cause, either before or after the expiration of the Initial Term, subject to the provisions of this Agreement, the Town Charter, and other applicable law. It is further understood and agreed that the Manager may resign his employment at any time, before or after the expiration of the Initial Term, subject to the terms of this Agreement, the Town Charter, and other applicable law.

Notwithstanding any provision herein to the contrary, the employment of the Town Manager is "at will" employment, "terminable at will" of either party, subject to the provisions of this Agreement.

The terms of this Agreement shall be valid for one (1) year measured from the Start Date. If within three (3) months after this Agreement's annual anniversary Council should not act to renew or re-negotiate a new Agreement with the Employer, this Agreement shall automatically renew after the Initial Term for one (1) year, unless and until Employer or Manager terminates this agreement as hereinafter provided. The terminating party shall provide written notice to the other party of an intent not to renew this Agreement at least three (3) months in advance of the expiration date. If the Town decides not to renew this Agreement under this paragraph, then this shall deemed a termination without cause entitling the Manager to the severance payments under Section 7(a) of this Agreement.

### **SECTION 4 COMPENSATION**

Employer agrees to compensate Manager, commencing on the Start Date, as follows:

- (a) The Town shall pay the Manager an annual salary of ninety-five thousand and 00/100 dollars (\$95,000.00) which shall be reviewed and adjusted periodically at the discretion of the Town Council. This annual salary shall accrue and be paid on a bi-weekly basis

as other Town employees are paid, and the method of accrual and payment can be changed from time to time by the Employer.

- (b) The Town shall contribute to the Manager's State 401(k) deferred compensation plan in accordance with the formula for contribution for all non-sworn employees within the Town. The parties acknowledge that the Employer can change the contribution formula from time to time and the Manager understands that no contribution is guaranteed.
- (c) The Town shall pay to the Manager the sum of three Hundred 00/100 dollars (\$300.00) per month as Automobile Allowance, which amount may be adjusted periodically by agreement of the parties. This compensation is intended to compensate Manager for the use of his personal vehicle for Town business. The Manager shall provide a vehicle in good operating condition, and shall pay for liability, property damage, and comprehensive insurance, and for the operation, maintenance, and repair of the vehicle.

In addition to the monthly Automobile Allowance, the Town will reimburse Manager for automobile expense incurred on his automobile in trips outside the County at the IRS allowed deductible mileage rate for the month of the trip. For purposes of clarification, there shall be no mileage reimbursement for travel within Johnston County

#### **SECTION 5 OTHER BENEFITS**

Employer shall provide the following additional benefits to Manager:

- (a) **Vacation and Sick Leave.** The Town Manager shall accrue vacation and sick leave according to the formula set forth in the Town of Smithfield's Employee Handbook, which the Council may change from time to time. For purposes of calculating the accrual, the Manager will accumulate vacation time at the rate equivalent to that of a 20+ year employee, which was negotiated as part of his employment contract as Chief of Police with the Town of Smithfield dated 10/02/2009.
- (b) **Professional, Educational and Civic Expenses.** Town will budget and pay for the full cost of professional dues, subscriptions, travel and other expenses of the Manager's participation in such national, regional, state and/or local associations and organizations which shall be deemed necessary and desirable for the continued professional participation, growth and advancement of the Manager and the Town. Town will budget and pay for Manager's participation in and attendance at such courses, institutes and seminars as are necessary for the Manager's professional development and education. The Town Council has sole discretion in determining such participation and expenses the Town will pay.

Town will budget and pay for the Manager's membership in two (2) in-town local civic and other organizations which shall be deemed necessary and desirable. All such

expenses shall be subject to the general policies and guidelines established by the Town with regard to travel, training, and reimbursement and Manager will be reimbursed for such expenses.

- (c) **Cell Phone/Voice and Data Expenses.** Employer shall reimburse the Manager for the use of his cell phone, or other alternative device, and service plan which includes voice, data and messaging, in the sum of Seventy and 00/100 dollars (\$70) per month.
- (d) **General Expenses.** Employer shall reimburse the Manager for all non-personal, job related expenses incurred by the Manager in accordance with and subject to the general policies and guidelines established by the Town with regard to such reimbursements.
- (e) **Health Insurance.** The Town shall pay the Manager's health insurance premiums in accordance with the Town's policies for all employees. All parties understand that the Town may change the insurance provider for health insurance and may alter the policy benefits and deductibles by changing plans in accordance with changes in plans offered all employees.
- (f) **Retirement.** The Manager shall be enrolled in the North Carolina Local Government Employees Retirement System, and receive benefits from such enrollment, on the same terms and conditions as enrollment and benefits are generally made available to other Town employees.
- (g) **Long Term Disability Insurance.** The Town purchase and pay for long term disability for the Manager in accordance with the procedures for other management employees.
- (h) **Retention of law enforcement certification.** The Manager shall be allowed to maintain dual employment as an "auxiliary officer" with the Town of Smithfield in order to retain law enforcement certification in North Carolina. Maintaining the law enforcement certification requires annual training under the authority of a sponsoring law enforcement agency. All training shall be on the Manager's personal time and any cost shall be paid by the Manager. The Manager shall be allowed to purchase his Chief's badge and issued service weapon for \$1.00 either at the time of appointment as Manager or when the Manager's employment is terminated.

## SECTION 6 OTHER TERMS & CONDITIONS

The attach Exhibit A sets forth other terms and conditions of the Managers employment during the first year of employments. The terms and conditions as set forth in Exhibit are incorporated as though fully set forth herein.

**SECTION 7**  
**TERMINATION OF EMPLOYMENT**

The employment of the Manager is terminable at the will of either party. Controlling over any provision herein that might be interpreted to conflict with this sentence, the manager will have no rights under the Town of Smithfield Employee Handbook including but not limited to the separation procedures, disciplinary procedures, or grievance procedures therein though some rights of compensation are defined in this contract as being pegged to general town policy including vacation and sick leave benefits and retirement.

(a) **Termination without Cause.** If the Town terminates the employment of the Manager without cause, the Town shall pay the Manager Severance benefits (as hereinafter defined) as follows:

- (1) Termination within six (6) months of the Start Date - No severance benefits.
- (2) Termination between seven (7) months and twelve (12) months - 2 months' severance benefits.
- (3) Termination after one (1) year of service - 3 months' severance benefits.
- (4) Termination after two (2) years of service - 4 months' severance benefits.

(b) **Termination by Employer with Cause.** Termination With Cause in this Agreement is defined as termination for any of the following reasons: i) indictment and prosecution for any felony; ii) conviction of an offense involving moral turpitude or any illegal act involving personal gain to the Manager; iii) violation of normal ethics or any Town adopted ethics policy at the time which would result in termination of a Town employee; iv) intentional misappropriation of public funds or property; v) a demonstrated pattern of on-the-job or off-the-job behavior that demonstrates a lack of capacity or fitness to perform the duties of Manager or impugns the position of Manager or the reputation of the Town; vi) violation of the Town's personnel policies applicable to all Town employees that would result in termination of a Town employee; vii) violation of or failure to perform the conditions of this Agreement; viii) willful, knowing, grossly negligent, or habitual neglect of any duty or obligation within the job responsibilities of the Manager; ix) malfeasance, or neglect of duty; x) direct violation of the authorized instructions of the Town Council; xi) participation in any activity involving fraud, misrepresentation or dishonesty to the Town Council; xii) participation in an activity in substantial conflict with the Town.

In no event may the Manager be terminated with cause as a result of failure to comply with: a directive regarding discipline or supervision of personnel under the control of the Town Manager; a directive regarding any other item specified by applicable law, ordinance, policy or Town Charter as within the discretion and control of the Town Manager; or with a directive that would violate Town policies, professional standards, accepted Town practices, or the law.

In the event of Termination with Cause, no severance benefits will be owed.

- (c) **Definition of severance benefits.** For purposes of this Agreement, severance benefits shall mean salary only and the monthly benefit amount shall be the annual salary divided by twelve. Payment of the severance amount under this section shall be made in a lump sum as soon after the termination date as is practicable; however in no case shall payment be made later than thirty days after the date of termination. Upon termination, the Manager shall have no right to further benefits as the Manager other than the severance benefits as defined herein.
- (d) **Termination as a Result of Disability.** If the Manager becomes unable to perform his duties because of a physical or mental capacity for a period of twelve weeks, or four successive weeks beyond any accrued paid leave, whichever is longer, Employer shall have the option of terminating this Agreement without payment of severance under Paragraph (a) above, subject only to compensation to the Manager of all accrued benefits to which he is entitled at that time.
- (e) **Voluntary Termination by Manager.** The Manager may terminate this Agreement from the Start Date provided he gives sixty (60) days written notice prior to the last day of on the job service to the Town. In the event of such voluntary termination, no severance shall be owed by Employer.

## SECTION 8 INDEMNIFICATION

Employer shall provide a defense for and indemnify the Manager in any civil or criminal action or proceeding brought against the Manager, either in his official or individual capacity, or both, on account of any act done or omission made, or any act allegedly done or omission allegedly made, in the scope and course of his employment. No indemnification shall be required in the event of a final adjudication determining that the Manager's conduct was willfully malicious, conduct outside the course and scope of his employment, or criminal conduct that would warrant discharge With Cause under Section 7(b) of this Agreement. In the event that it is determined that indemnification is not required, the Manager shall reimburse Employer for the cost of the Manager's defense, upon request by the Town.

## SECTION 9 GENERAL TERMS

If any provision(s) or portion(s) of this Agreement are or become invalid, illegal or unenforceable such provision(s) or portion(s) shall be deemed stricken and the remainder of this Agreement shall remain in full force and effect.

This Agreement constitutes the full and complete understanding and agreement of the parties and supersedes and replaces any and all prior agreements, proposed or otherwise, whether written or oral.

No amendment, deletion, addition, modification, or waiver of any provision of this Agreement shall be binding or enforceable unless in writing and signed by all parties.

Employer affirms that this Agreement has been duly agreed to by the Town Council and that the Council has authorized this Agreement to be executed on its behalf by its Mayor, and duly attested by its Town Clerk.

This Agreement shall be governed by and construed in accordance with North Carolina law, and any actions to enforce this Agreement shall be brought in Superior Court in Johnston County, North Carolina.

The captions and headings contained herein are solely for convenience and reference and do not constitute part of this instrument. All words and phrases in this instrument shall be construed to include the singular and plural number, and the masculine, feminine or neuter gender, as the context requires.

If any one or more of the terms, provisions, covenants or restrictions of this agreement shall be determined by a Court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions of this Contract shall remain in full force and effect and shall in no way be affected, impaired or invalidated. If, moreover, any one or more of the provisions contained in this Contract shall for any reason be determined by a Court of competent jurisdiction to be excessively broad as to duration, geographical scope, activity or subject, it shall be construed, by limiting or reducing it, so as to be enforceable to the extent compatible with the then applicable law.

No waiver of any right or remedy shall be effective unless in writing and nevertheless shall not operate as a waiver of any other right or remedy or of the same right or remedy on a future occasion.

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IN WITNESS WHEREOF, Employer and Town Manager have executed this Agreement this 23 day of April 2016.

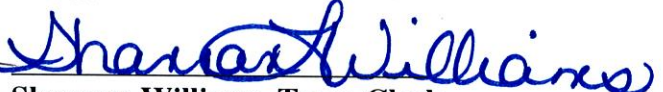
  
Michael Leslie Scott, Town Manager



Town of Smithfield, North Carolina

Attest:

By:   
Mayor, M. Andy Moore

  
Shannan Williams, Town Clerk

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

  
Greg Siler, Finance Officer

Date: May 3, 2016

#### EXHIBIT A

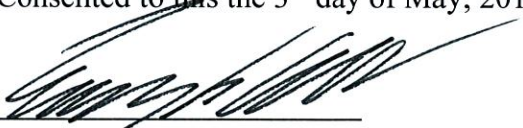
In reference to Section 6 of this Agreement, the following are Council supplemental conditions and expectation for the Town Manager:


1. The Manager shall enroll no later than the fall of 2016, and successfully complete the Municipal Administration Course offered by the NC School of Government.
2. Within thirty (30) days of the Start Date, the Manager shall report to Town Council as to the status of the vacant Police Chief position, and follow through with the Town Council's direction on this matter.
3. At the end of the six (6) month period being with the Start Date, the Manager shall provide the Town Council with an overall organizational assessment with recommendations to address any identified concerns.
4. Both the Manager and the Town Council shall schedule an informal evaluation at the end of the six (6) month period being with the Start Date.
5. Within sixty (60) days of the one year anniversary of the Start Date, the Manager and the Town Council shall conduct a formal performance evaluation.
6. In addition to providing necessary immediate information to the Town Council, the Manager shall provide a mid-month report to the Council between the regularly scheduled monthly meetings.



Employment Agreement between Michael Leslie Scott and the Town on April 23, 2016


Consented to this the 3<sup>rd</sup> day of May, 2016

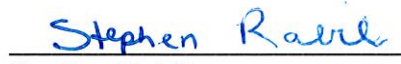
  
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Emery D. Ashley

  
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Travis Scott

  
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Roger Wood

  
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Stephen Rabil

  
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John A. Dunn