

STATE OF NORTH CAROLINA

TOWN MANAGER EMPLOYMENT AGREEMENT

COUNTY OF CARTERET

This Agreement entered into this ____ day of _____, 2019, between Matthew R. Zapp, 430 Dogeye Road, Benson, NC 27504, herein "Manager"; and the Town of Emerald Isle, a municipal corporation, 7500 Emerald Drive, Emerald Isle, North Carolina, herein "Employer";

W I T N E S S E T H:

WHEREAS, a vacancy occurred in the position of Manager for the Town of Emerald Isle, and Matthew R. Zapp, currently manager of the Town of Benson, NC, applied for and has been selected as the new manager for the Town of Emerald Isle, NC, due to his considerable expertise and experience in municipal government;

WHEREAS, the Town of Emerald Isle operates under the Manager form of government pursuant to N.C.G.S. 160A-102;

WHEREAS, as a result of the selection of Matthew R. Zapp, the Town Board and Manager now desire to set forth the terms, covenants and conditions relating to the employment of Matthew R. Zapp as Town Manager;

NOW, THEREFORE, in consideration of the mutual promises and agreements set forth herein, Manager and Employer have agreed as follows:

1. Employment. Employer hereby employs, engages and hires Matthew R. Zapp as Town Manager pursuant to N.C.G.S. 160A-147, subject to the terms and conditions set forth herein regarding salary, benefits, severance pay, paid up vacation, and other

benefits due Manager during both his employment or upon his termination. Manager does hereby accept employment as Manager of the Town of Emerald Isle subject to the general supervision, advice and direction of the Mayor and Commissioners of the Town of Emerald Isle in accordance with N.C.G.S. 160A-148.

2. Duties of Manager. The Manager shall be the Chief Administrator of the Town of Emerald Isle and shall be responsible to the Town Council for administering all municipal affairs placed in his charge by the Mayor and Commissioners, and shall have the following powers and duties as set forth in N.C.G.S. 160A-148:

(1) He shall appoint, suspend or remove all Town officers and employees not elected by the people, and whose appointment or removal is not otherwise provided for by law, except the Town Attorney, in accordance with such general personnel rules, regulations, policies or Ordinances as the Council may adopt;

(2) He shall direct and supervise the administration of all departments, offices, and agencies of the Town, subject to the general direction and control of the Council, except as otherwise provided by law;

(3) He shall attend all meetings of the Council and recommend any measures that he deems expedient;

(4) He shall see that all laws of the State, the Town Charter, and the Ordinances, Resolutions and Regulations of the Council are faithfully executed within the Town;

(5) He shall prepare and submit the annual budget and capital program to the Council;

(6) He shall annually submit to the Council and make available to the public a complete report on the finances and administrative activities of the Town as of the end of the fiscal year;

(7) He shall make any other reports that the Council may require concerning the operation of Town Departments, offices, and agencies subject to his direction and control;

(8) He shall perform any other duties that may be required or authorized by the Council.

3. Professional Obligations. Matthew R. Zapp is a member of the International City/County Management Association (ICMA) and is professionally obligated to adhere to the ICMA Code of Ethics.

4. Manager's Discharge of Duties. The Manager agrees that he will at all times faithfully, industrially, loyally, and to the best of his ability, experience and talents, perform all of the duties that may be required of and from the Manager pursuant to the express and implied terms hereof as Manager, to the reasonable satisfaction of the employer. The Manager shall be considered a full-time employee with the obligation to devote a minimum of 40 hours weekly in carrying out the duties of Manager, and the Manager

shall be considered an exempt employee in an executive position under both the Federal and State Laws and Regulations regarding overtime compensation and wages.

5. TERM. Even though under North Carolina law the Manager is deemed employed at the pleasure of the Town Council pursuant to N.C.G.S. 160A-147, Employer and Manager desire to provide for continuity in Town Government. Nothing in this agreement shall prevent, limit, or otherwise interfere with the right of the Board of Commissioners to terminate the services of the Town Manager at any time and for any reason. Likewise, nothing in this agreement shall prevent, limit or otherwise interfere with the right of the Town Manager to resign at any time from his position with the Town of Emerald Isle.

6. Compensation and Manager Benefits. Employer shall pay to the Manager a base salary of \$143,252.00 for the first year from the initial date of employment through a date 12 months thereafter, plus other general and special benefits enumerated herein, payable on the regular pay periods of Employer during the term of this agreement and any renewals thereof while this agreement continues in full force and effect. Annually beginning the second year of this Agreement in executive session at the June Meeting or at a time and date in close proximity

thereto in accordance with the NC Open Meeting Law Provisions, the Board shall conduct an annual review with the Manager and may increase his salary and benefits as they determine to be in the best interest of the Manager and Town.

In addition to the base salary, Town shall provide Manager with a personal automobile allowance at the rate of \$500.00 per month, for in County travel, and for out of county travel at the rate per mile established for town staff and employees. Manager's benefits shall include medical and hospitalization coverage under the terms of the Town's Employee Group Policy, a 5% salary contribution to the Town's 401 (k) account, with no required employee match, a cell phone stipend of \$150 monthly, in addition to other benefits generally available for all other Town Employees. There shall also be paid a one-time moving allowance for reasonable and documented moving expenses, travel, lodging and temporary housing expenses not to exceed \$7500.00.

Manager shall further receive 12 hours per month or 144 hours per year up front (or the equivalent number of hours) to be used in the discretion of the Manager which is equivalent to that of a 5 year-employee, as paid vacation annually, as well as the allowable sick days for his position under the Town's Personnel Policy and administrative regulations. The Town will accept transfer of all sick leave of Manager as certified by his current employer (Town of Benson).

As an executive exempt under the Federal and State overtime pay provisions, Manager shall not be entitled to overtime but subject to the Manager's work demands, shall with the prior approval of the Mayor or Council's administrative committee, be allowed to take comp time for meetings, trips and Town business beyond the 40 hour week so long as a period of comp time away from work is not so extensive as to interfere with Manager's employment duties and administration of Town Government.

7. Travel and Professional Expenses. Manager shall be reimbursed for all necessary expenses incurred by Manager while traveling pursuant to Employer's directions and in pursuit of the Employer's business out of county at the employee and staff rate as established by the Board, and Manager shall submit a voucher monthly to the Employer for reimbursement. Additionally, Employer shall pay all professional association membership dues and Manager's expenses relating to city manager schools, conferences and similar job related educational and professional programs. The Town agrees to budget and pay for professional dues and subscriptions for the Town Manager which are necessary for his continuation and full participation in national, regional, state and local associations and organizations that enhance his professional development and benefit the Town of Emerald Isle. These organizations include but are not limited to the International City/County Management Association (ICMA) and the North Carolina City/County Management Association (NCCCMA).

Town agrees to budget for and pay for travel and subsistence expenses of the Manager for professional and official travel, meetings, and occasions to continue his professional development and to adequately pursue necessary official functions for the Town. These include but are not limited to ICMA conferences, North Carolina City/County Management Association (NCCCMA) conferences, and the North Carolina League of Municipalities (NCLM) conferences. Town agrees to budget and pay for travel and subsistence expenses of the Manager, up to \$1000 annually, for short courses, institutes, or seminars that are necessary for his professional development and for the benefit of the Town of Emerald Isle.

8. Manager Evaluations. The Mayor and the Town Council shall meet with the Manager not less than annually and as often as required, to review the Manager's job performance, and shall during the months of May and June of each calendar year, attempt to negotiate the base salary for the ensuing Town fiscal year. In the event the parties are able to agree as to the terms of compensation, then the same shall be reduced to a written memorandum, approved, and then executed by the Mayor and Manager, and shall then constitute the base salary for the next fiscal year.

9. Outside Activities. The Town Manager shall not engage in any teaching, consulting, counseling, or other non-town related business without the prior approval of the Board of Commissioners.

10. Bonding. The Town shall bear the full cost of bonding o[n any fidelity or other bonds required of the Town Manager under any law or ordinance.

11. No Reduction in Benefits. The Town of Emerald Isle shall not at any time during the term of this Agreement reduce the salary, compensation,, or other financial benefits of the Town manager, except to the degree that such a reduction occurs across the board for all employees of the Town.

12. Termination. Even though under North Carolina law the Manager serves at the pleasure of the Town Council, any termination will be subject to the following additional terms and provisions:

A. In the event Employer discharges Manager for intoxication, illegal drug possession and/or illegal drug addiction, the Employer shall only be liable to pay to the Manager for accumulated vacation leave.

B. In the event Employer discharges Manager for incompetence, insubordination and any serious violation of any substantial rule or regulation that may be established from time to time for the operation of the Employer's business, or for failure of the Manager to perform any agreement, duty or

obligation of the Manager under this Agreement, which discharge shall be considered "for cause", Employer shall only be liable to pay to the Manager his salary through his last date of employment, plus accumulated vacation leave.

C. In the event the Manager is unable to perform his duties or should be prevented from performing his duties and services contracted for herein because of extended illness or disability not arising out of the Manager's misconduct, then the Employer may terminate the Manager but shall be obligated to pay to Manager one hundred, twenty (120) days of wages beyond the effective date of termination in addition to compensation for accumulated vacation.

D. In the event the Employer is terminated other than "for just cause" or Manager's disability or illness, or the Manager resigns in lieu of termination other than for just cause, the Employer shall be required to pay to the Manager a lump sum cash payment equal to 6 months aggregate salary and benefits, with the severance period increasing to 7 months after one year's service, 8 months after 2 years of service, and 9 months upon completion of 3 years of service.

E. The Manager will give to the Employer a minimum of 60 days written notice of any intended resignation, and in the event the Manager fails to give a minimum of 60 days written notice or as agreed between the parties (Town Board of Commissioners

and Mayor), then the Manager shall forfeit all accumulated vacation and sick leave.

13. Duty of Loyalty Owed Employer by Manager. Manager and the Mayor and Town Council will at all times endeavor to foster and maintain good communications and relations between the Manager, Mayor and Council. Manager pledges to the Employer that he will not seek other employment while employed in good standing as Manager unless the Manager shall first notify the Council and Mayor that Manager is actively interviewing, applying for and seeking other employment.

14. Modification of Contract. Any waiver, modification or amendment to this agreement or any term or condition herein contained shall not be valid unless in writing and duly executed by the parties herewith, and no evidence of any waiver or modification shall be offered or received in evidence of any proceeding or litigation between the parties hereto arising out of or affecting this agreement or the rights or obligations of the parties hereunder, unless the same is in writing and duly executed. The provisions of this paragraph may not be waived.

15. Severability. All agreements and covenants contained herein are severable, and in the event any of the terms and provisions are held to be invalid by any competent Court, this contract shall be interpreted as if such invalid agreements or covenants were not contained herein.

16. Applicable Law. This agreement and the performance hereunder and all suits and special proceedings shall be interpreted in accordance with the laws of the State of North Carolina to the exclusion of the laws of any other forum. The terms and provisions of this contract are special so that the parties stipulate and agree that the terms and provisions may be specifically performed by any Court having jurisdiction over the parties and the subject matter of this action in the State of North Carolina.

17. Required Residence. The Manager shall establish and maintain a primary residence in Carteret County located physically within 15 miles of the Town Administrative Offices within 90 days of employment.

IN WITNESS WHEREOF, Employer and Manager have executed this Agreement at Emerald Isle, North Carolina, on the _____ day , 2019.

TOWN OF EMERALD ISLE

By: _____

(SEAL)

Eddie Barber, Mayor

Attest: _____
Rhonda Ferebee, Town Clerk

By: _____

(SEAL)

Matthew R.ZAPP, Manager

STATE OF NORTH CAROLINA

COUNTY OF CARTERET

On this _____ day of _____, 2019, personally appeared before me, the undersigned Notary Public for the County and State aforesaid, _____, who being by me duly sworn, says that she knows the common seal of the Town of Emerald Isle, and is acquainted with _____, who is Mayor of the Board of Commissioners of the Town of Emerald Isle, and that she, the said _____, is the Town Clerk to the Board of Commissioners for the Town of Emerald Isle, and saw the Mayor sign the foregoing instrument, and that she, the said _____, signed her name in attestation of the execution of said instrument in the presence of the Mayor of the Board of Commissioners of the Town of Emerald Isle,

Witness my hand and seal this the _____ day of _____, 2019.

Notary Public

My Commission Expires _____

STATE OF _____

I, _____, a Notary Public for the County and State aforesaid, certify that Matthew R. Zapp, personally appeared before me this day and acknowledged the execution of the foregoing instrument.

Witness my hand and official stamp or seal, this the _____ day of _____, 2019.

Notary Public

My Commission expires: _____