

EMPLOYMENT AGREEMENT

THIS AGREEMENT, made this 17th day of May, 2022 by and between the Board of Supervisors of Dinwiddie County, a political subdivision of the Commonwealth of Virginia, hereinafter referred to as “**Employer**” or “**Board of Supervisors**” and W. Kevin Massengill, hereinafter referred to as “**Employee.**”

WITNESSETH:

WHEREAS, Employer desires to employ the services of W. Kevin Massengill as County Administrator of the County of Dinwiddie as provided by §15.2-1540 of the Code of Virginia (1950), as amended; and

WHEREAS, Employer desires to provide certain benefits and conditions of employment for Employee; and

WHEREAS, Employer desires to continue to secure and retain the service of Employee and to provide inducement for him to remain in such employment; and

WHEREAS, Employee desires to continue employment as County Administrator of Dinwiddie County;

NOW THEREFORE, in consideration of the foregoing recitals and the mutual covenants hereinafter contained the parties agree as follows:

Section 1 - Duties

Employee shall be expected to perform the duties found in §15.2-1541 of the Code of Virginia, those found in the County Administrator’s job description as it may be amended from time to time, those found in the Board of Supervisors bylaws and any and all other duties and functions that the Board of Supervisors shall assign. While employed as County Administrator, Employee agrees not to engage in any other employment or business activities, except passive investment of personal funds, without obtaining prior approval from Employer.

Section 2 - Term

- A. This Agreement shall commence on July 1, 2022 (hereinafter referred to as the “Effective Date”) and be for a term of four (4) consecutive years commencing on the Effective Date. The Employment Agreement dated June 16, 2015, as amended, shall remain in place until June 30, 2022.
- B. Notwithstanding Section 2(A), nothing in this Agreement shall prevent, limit, or otherwise interfere with the right of Employer to terminate the services of Employee at any time, subject to the provisions set forth in Section 4 of this Agreement.
- C. Notwithstanding Section 2(A), nothing in this Agreement shall prevent, limit or otherwise interfere with the right of Employee to resign at any time

from this position, subject to the provisions set forth in Section 6 of this Agreement.

Section 3 – Contract Renewal

No less than twelve (12) months prior to the expiration date of this Agreement, Employer shall notify Employee in writing of its intent to renew or not renew the Agreement. If Employer does not notify Employee of its intent no less than twelve (12) months prior to the expiration date of this Agreement, then the terms and conditions contained within this original Agreement (and any amendments effectuated according to Section 18 of this Agreement) shall continue in full force and effect for an additional three (3) consecutive years, just as if the original Agreement itself had carried a seven (7) year term.

No more than one (1) renewal period of three (3) consecutive years, shall occur unless mutually agreed by Employer and Employee documented in writing, and signed and dated by both parties.

If Employer notifies Employee no less than twelve (12) months prior to the expiration date of this Agreement, that it will NOT renew the Agreement, Employee shall be on notice that his employment with the County will end on the expiration date of whichever Agreement is then in effect at the time he receives Employer's notice, unless a new Agreement is entered into between the parties.

Nothing in Section 3 prohibits Employer from terminating Employee's employment subject to the provisions in Section 4(C) of this Agreement, nor is Employee prohibited from resigning his position subject to the provisions in Sections 4(B) and 6 of this Agreement.

Section 4 – Termination and Severance Pay

Employee's employment shall continue until terminated as follows:

- A. By death or permanent disability of Employee; or
- B. By resignation of Employee, which requires that Employee shall give the County not less than sixty (60) calendar days prior written notice of termination; or
- C. By action of the Board of Supervisors, in which case Employee shall have no right of appeal.
 - 1. In the event Employee is terminated without cause during the initial four (4) year term, or during any renewal period, or in the event this Agreement is not renewed in accordance with Section 3, while Employee is willing and able to successfully perform his duties under this Agreement, then Employer agrees to pay Employee severance pay in an amount equal to the aggregate of six (6) months salary, plus an amount equal to the Employer's contribution to health insurance, retirement system contribution and monthly deferred compensation for the same six (6) month period, and plus

all paid leave accrued in accordance with the County's Personnel Policies in effect at the time. Such payment shall be made in lump sum, and paid at the first practical payroll date following such termination. If Employee is terminated in accordance with Section 4(C)(2)(e), Employee shall be entitled to all accrued sick leave. Except for the severance pay and benefits set forth in this paragraph, Employee shall not be entitled to any other compensation or benefits provided in this Agreement after the date of his termination other than those required by federal or state law. The lump sum severance payment shall be subject to required federal and state withholding taxes and shall be allocated to the six (6) month period following the termination as provided for in the Virginia Unemployment Compensation Act.

2. In the event that the Employee is terminated with cause as provided below, the Employer shall have no obligation to pay any severance amount, nor shall Employee have any right to receive any severance pay:
 - a. Conviction of any criminal offense or illegal act (excluding minor traffic misdemeanors) under the laws of Virginia, the laws of the United States or other of its several states; or
 - b. Conviction of any crime or illegal act involving moral turpitude; or
 - c. Deliberate misconduct such as misappropriation of funds or property of the County, accepting bribes or kick-backs in connection with any transaction or contract on behalf of the County, fraud, misrepresentation, acts of dishonesty, or acts that violate accepted moral standards of the community; or
 - d. Willful misfeasance or malfeasance in office; or
 - e. Inability to perform responsibilities of the office of County Administrator on a daily basis due to a mental or physical impairment.

Section 5 – Leave without Pay

If Employee should be indicted for any crime, whether or not enumerated above in Section 4(C)(2)(a-e), Employee may be placed on leave without pay until the indictment is dropped, dismissed, or removed from an active court docket by motion of the appropriate prosecuting attorney, until Employee is found guilty, or until Employee is found not guilty.

Section 6 – Resignation

In the event Employee resigns his position, Employee shall give Employer no less than sixty (60) calendar days written notice prior to his resignation. Employee understands and agrees that he shall not be eligible for and will not receive any severance pay as stipulated in Section 4(C) if he voluntarily resigns

as County Administrator. Employee also understands and agrees that he will forfeit any accumulated sick leave, vacation time, or other paid leave accrued in accordance with County Personnel Policies in effect at the time he resigns if he fails to give the required sixty (60) day written notice.

Section 7 – Salary

Employer agrees to pay Employee for his services rendered pursuant to this Agreement an annual salary of One hundred and fifty three thousand dollars (\$153,000) payable in the same number of installments as other County employees receive a salary. Employer agrees to increase Employee's salary in such an amount as it may determine, but at a minimum equal to the average annual increase given to other County employees, on the basis of Employee's satisfactory annual performance evaluation.

Employer agrees to provide Employee a monthly five hundred dollars (\$500.00) as deferred compensation. Employee may elect to contribute additional amounts to his account subject to state and federal regulations.

Section 8 – Performance Evaluation

- A. Annually, the Board of Supervisors and Employee shall define such goals and objectives as they mutually deem necessary for the proper operation of the County and for the effective execution of the duties of County Administrator.
- B. The Board of Supervisors shall review and evaluate the performance of Employee at least once a year. The review and evaluation shall be held in accordance with specific criteria developed jointly by Employer and Employee as provided in paragraph A in this section. As a part of the evaluation of Employee, Employer shall consider Employee's performance in working toward the attainment of the annual goals, objectives and priorities keeping in mind the external constraints, which may inhibit the achievement of these goals.

Section 9 – Hours of Work

Employee is expected to devote whatever time is necessary to the business of the County, including hours outside normal office hours. Employee is not to receive any additional compensation for hours worked beyond forty (40) hours in a workweek or for any work performed during weekends or holidays. Employee may request and, if Employer approves, may take time off from his normal duties to compensate for any extraordinary time spent on County business. Employee shall maintain a weekly report of days worked and will record on this report any leave time he takes during the calendar week.

Section 10 – Vacation and Sick Leave

- A. Employee shall accrue vacation and sick leave at the same rate as

other County employees with the same years of service.

- B. In the event that Employee resigns his employment with proper notice as stipulated in Section 6 of this Agreement, Employee shall be compensated according to the Personnel Policies of the County for the annual paid leave that he had accrued. In the event of Employee's involuntary termination, payment for any leave accrued but unused by Employee by date of his termination shall be governed by Section 4 of this Agreement.

Section 11 – Benefits

- A. Employer agrees to provide Employee with the same benefits on the same terms as it provides benefits to other County Employees as such benefits may change from time to time.
- B. Employer shall not reduce the salary or benefits of Employee except to the extent that other employees of the County may have their salaries or benefits reduced or as otherwise provided in this Agreement.
- C. Employer agrees to pay the entire cost of health care insurance for Employee and all members of Employee's immediate family.

Section 12 – Vehicle Allowance

In order for employee to travel throughout the County and surrounding areas, in furtherance of his assigned duties as County Administrator, Employer agrees to provide Employee a monthly Five Hundred Dollar (\$500.00) Vehicle Allowance. Employer and Employee agree that payment of the Vehicle Allowance shall relieve the County of any responsibility to provide a vehicle, fuel or maintenance for a vehicle, for Employee's use on County business.

Furthermore, in consideration for the Vehicle Allowance, Employee agrees that he shall not seek reimbursement for any vehicle costs associated with his employment with the County. Employee also agrees that he shall be solely responsible for all local, state and/or federal taxes arising from receipt of the Vehicle Allowance.

Lastly, Employee understands and agrees that the Vehicle Allowance provided by the County shall terminate on the same date as his employment with the County terminates, regardless of whether such termination is voluntary or involuntary.

Section 13 – Dues and Subscriptions

Employer agrees to pay for professional dues and subscriptions necessary for Employee's participation in national, state, local associations and organizations; provided such expenses are reasonable and advance the good of the County.

Section 14 – Professional Meetings

Employer recognizes the importance to the County of Employee's attendance and participation in meetings of state, regional, and national professional organizations and hereby agrees to allocate monies for reasonable travel expenses and reasonable subsistence of Employee for attendance at such meetings. Employee shall notify the Chairman of the Board of Supervisors for any travel requiring Employee to be absent from his office for any period lasting longer than twenty-four (24) consecutive hours. If the cost of attendance at any meeting is anticipated to exceed \$600, or attendance will require Employee to be absent from his office for any period lasting longer than ninety-six (96) consecutive hours, Employee shall request permission to attend in advance of the travel.

Section 15 – Indemnification

Employee shall be covered under the County's risk management policies and be indemnified to the same degree and extent as all other employees and officials of the County.

Section 16 – Bonding

Employer shall bear the full cost of any fidelity or other bonds required of Employee under any law or ordinance.

Section 17 – Other Terms and Conditions of Employment

- A. All provisions of County ordinances, resolutions, rules, and regulations of Employer pertaining to holidays, employee benefits, working conditions, and rules of conduct as they now exist or hereafter may be amended that do not conflict with an express provision of this Agreement shall apply to Employee as they would to other County employees.
- B. Employer, in consultation with and agreement by Employee, shall mutually agree to any such other terms and conditions of employment, as they may determine from time to time are beneficial and desirable, provided that such terms and conditions are not inconsistent with or in conflict with any law or ordinance.

Section 18 – Modifications

This Agreement may only be modified or amended by a written document signed and dated by both Employer and Employee.

Section 19 – General Provisions

- A. The text contained herein shall constitute the entire Agreement between the parties.

- B. This Agreement is subject to the laws, rules, and regulations contained within the *Code of Virginia*, as amended from time to time, and in the event there is any conflict between this Agreement and the *Code*, the *Code of Virginia*, shall prevail.
- C. If any provision or any portion thereof, contained in this Agreement is held unconstitutional, invalid, or unenforceable, the remainder of this Agreement, or portion thereof, shall not be affected and shall remain in full force and effect.
- D. Any actions to enforce the terms of this Agreement shall be brought in Circuit Court of the County of Dinwiddie.
- E. The laws of Virginia and its rules of evidence shall govern any action brought to enforce this Agreement.
- F. This Agreement supersedes, overrides and otherwise replaces that certain Employee Agreement dated June 16, 2015 by and between Employer and Employee and any and all other previous employment agreements, contracts, understandings or other meeting of the minds, whether written or oral, between Employer and Employee.

IN WITNESS WHEREOF, the Board of Supervisors of Dinwiddie County 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, on the date below.

BY: _____
 Harrison A. Moody
 Chairman, Board of Supervisors

Date: _____

BY: _____
 W. Kevin Massengill

Date: _____

Approved as to Form:

BY: _____
 Tyler C. Southall
 County Attorney

Date: _____

BE IT RESOLVED that the Board of Supervisors hereby approves the attached Employment Agreement with W. Kevin Massengill, County Administrator, and authorizes and directs the Chair to execute the attached contract with such changes, substantive or otherwise, as the Chair may approve.