

**EMPLOYMENT AGREEMENT FOR THE
MONTEREY TOWN ADMINISTRATOR**

THIS AGREEMENT, made and entered into this _____ day of March 2024, pursuant to the provisions of G.L. c. 41, 108N, by and between the Town of Monterey (“Town”), Massachusetts, a municipal corporation, acting by and through its Select Board, who act hereunder in their representative capacity only and without personal liability to themselves (the “Employer” or “Board”), and Roger MacDonald, (“Employee”), (collectively the “Parties”), hereby agree as follows:

WITNESSETH:

WHEREAS, the Board desires to engage the services of the Employee in the position of Town Administrator of the Town of Monterey; and

WHEREAS, the Board, under G.L. c.41, § 108N may contract with the Town Administrator for such services; and

WHEREAS, the Board and Employee desire to establish and memorialize herein certain terms and conditions of employment and provide for certain remuneration for said employee, and:

WHEREAS, the Employee represents his willingness to accept employment by the Board, and that he is capable of performing the duties and responsibilities of said position; and

WHEREAS, Employee desires to accept the Board’s offer for full-time employment as Town Administrator of said Town and to agrees to use his best efforts, knowledge, skills, abilities and training to carry out the duties and responsibilities of said position;

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

Section 1. Duties

Employer hereby agrees to employ Roger MacDonald as Town Administrator of said Town to perform the functions and related duties of said position as specified in the job description, applicable Bylaws, rules and regulations, votes of the Select Board, votes of Town Meeting, general or special laws, all of which as may be amended, rescinded and supplemented from time to time, and to perform such other legally permissible and proper duties and functions as the Board shall from time to time assign and/or are normally within the range of duties and responsibilities performed by a person holding the position of Town Administrator in the Town of Monterey.

Section 2. Term

- A. The term of this Agreement shall commence and become effective on _____ March 2024 and end on _____ March 2026. (two year term, add 6 month probationary period)

- B. Nothing in this Agreement shall prevent, limit, or otherwise interfere with the right of the Select Board to suspend and/or terminate the services of Employee, subject to the provisions set forth in Section 3 of this Agreement.

Section 3. Suspension, Termination, Resignation (nothing in this section about suspension) (add 6 month probationary period?)

- A. The Employer may discipline, suspend, or terminate the Employee only in accordance with the provisions of the Town's Employee Handbook and this Agreement.
- B. The Employer may only terminate this Agreement for cause during the term hereof. For purposes of this Agreement, "cause" shall be defined as:
 - 1. The willful or gross misconduct or dishonesty of the Employee with respect to the Employer;
 - 2. The unexcused, material absence of the Employee;
 - 3. Indictment by a court of competent jurisdiction of fraud, embezzlement, misappropriation or other material dishonesty of the Employee with respect to the Employer;
 - 4. The Employee's indictment, charge by a public authority or conviction or plea of nolo contendere to (A) any felony or (B) a misdemeanor involving moral turpitude, deceit, dishonesty or fraud;
 - 5. The abuse of alcohol or any controlled substance which, in the good faith opinion of the Employer, renders the Employee unfit to serve in the capacity set forth herein, after a demand for the Employee to obtain counseling for said abuse and failure of the Employee to comply with such demand within thirty (30) days after notice to the Employee; provided that Employer shall be obligated to give one of said written demands during the term hereof;
 - 6. Material breach by the Employee of any of the Employee's obligations hereunder, after a written demand for substantial performance is delivered to the Employee by the Board which specifically identifies the manner in which the Board believes that the Employee has not performed his duties and the failure of the Employee to reasonably comply with such demand within thirty (30) days after notice to the Employee; or
 - 7. Failure of the Employee to conform with performance standards established by the Select Board after periodic performance evaluations or to, otherwise, comport with such standards of professional performance as may be reasonably expected from municipal chief administrative officers in similarly situated municipalities in the Commonwealth of Massachusetts.
- C. In the event this Agreement is terminated by the Employer prior to the expiration of the term of this Agreement, the Employer agrees that it shall pay to the Town Administrator a lump sum cash payment equal to all earned and accumulated vacation time ("Vacation Leave Payment"); plus 50% of sick leave ("Sick Leave Payment").
- D. In the event the Employee voluntarily resigns his position with the Town of Monterey before expiration of the aforesaid term of employment, Employee shall first provide the Employer sixty (60) days written advance notice, unless the parties otherwise agree. In the event Employee voluntarily resigns, he shall be eligible only for a lump sum payment of the Vacation and Sick Leave Payments provided in Paragraph C of this Section and other leave buy-back provisions as is then available to all other employees of the Town of Monterey.

- E. The acceptance by the Employee of any payment provided hereunder shall constitute a complete and full release of the Town's obligations under this Agreement and waiver of any and all claims or causes of action the Employee may have against the Employer premised upon or relating to alleged wrongful termination of his employment.

Section 4. Salary

Payment of the salary and fringe benefits provided in this Agreement are subject to an annual appropriation through the budget process. The Employer recognizes, however, that the obligation of the Town to pay salary and fringe benefits to the Employee is an annual contractual obligation.

Subject to the terms and conditions of this Agreement, and while the Employee is engaged in and performing the duties of Town Administrator, the Employer agrees to pay the Employee for services rendered hereunder an annual salary rate of \$80,808.30 for the first six months of this agreement, with a possible pay increase of up to 4% after six months, and additional possible pay increases each July 1st.

The parties hereby agree that, in each year during the term hereof, upon completion of the Employee's annual performance evaluation as provided in Section 5, the Board, acting on behalf of the Town, may increase the Employee's salary in such amount as the Board, in its sole discretion, shall deem appropriate. Any such increase in salary shall take effect as of the start of the next fiscal year (July 1) following the evaluation or at such earlier date as the Board may determine, subject to appropriation.

Employee's salary shall be payable in installments once every two weeks at the same time and in the same manner as salary payments made to other full-time Town employees.

Section 5. Performance Evaluation

The Board shall review and evaluate the performance of the Employee within six (6) months of the commencement of this Agreement, and annually thereafter, in accordance with specific criteria developed jointly by the Board and the Employee.

Within six (6) months of the commencement of this Agreement, and annually thereafter, the Board shall meet with the Employee to define a set of goals, objectives, and expectations which they determine necessary for the proper operation of the Town and attainment of the Board's policy objectives. Said goals and objectives shall be set forth in writing. The Board shall further establish a relative priority among those various goals and objectives.

Section 6. Hours of Work (Should hours be laid out specifically ie 30 office hours a week/40 work hours a week?)

(5 days/week in office) (35 or 40 hour schedule?) Due to the unique nature of this employment, it is understood and agreed that to properly perform the job, the Employee may have to expend additional time beyond that typically constituting a normal workday, and the Employee agrees to devote such time to fulfilling his duties and responsibilities as may be required. Such additional time includes, but is not limited to, time required to represent the Employer at various meetings and events, meetings with the

Board and other Town boards, commissions and departments, and time necessitated by emergency situations. Further, the Employee shall be physically present in Monterey during the term of all declarations of states of emergency by federal or state authorities or by the Board to the extent the Board shall deem appropriate. It is acknowledged that the position of Town Administrator is executive in nature, as that term is defined in the Fair Labor Standards Act, its rules, and regulations. Accordingly, the Employee shall not be entitled to paid overtime or additional compensation for additional time spent performing the duties and responsibilities established hereunder. It is further understood that Employee's work hours, with proper notification to the Board, may be flexible in recognition of the additional time he may spend beyond the normal workday in the conduct of the Town's business.

Section 7. Outside Activities

Employee shall not spend more than ten (10) hours per week engaged in outside employment without the prior approval of the Board.

Section 8. Vacation Leave

The Employee shall be granted fifteen (15) vacation days for each fiscal year. Five (5) days shall accrue and be available to the Employee at the commencement of this Agreement, and thereafter vacation time shall accrue and be available to the Employee at the beginning of each fiscal year (July 1). Employee shall notify the Select Board of his intent to take vacation leave prior to commencement thereof.

Section 9. Other Benefits: Health, Life, and Disability Insurance; Sick Leave

- A. Employer agrees to provide health insurance for Employee and his dependents, if requested, at a premium contribution rate no less than 75%.
- B. Employer agrees to provide, at the Employee's option, a life insurance policy on the basis of the same premium contributions and amounts extended to other employees of the Town. (Is that something offered?)
- C. Employer agrees to provide twelve (12) paid holidays per year: New Year's Day, Martin Luther King Day, President's Day, Patriot's Day, Memorial Day, Juneteenth, Independence Day, Labor Day, Columbus Day, Veteran's Day, Thanksgiving Day and Christmas Day.
- D. Sick Leave: Employee shall accrue fifteen (15) sick days for each fiscal year. Five (5) days shall accrue and be available to the Employee at the commencement of this Agreement, and thereafter vacation time shall accrue and be available to the Employee at the beginning of each fiscal year (July 1). (Should this accrue all at once on July 1 or gradually 1 ¼ each month?)
- E. Personal Leave: Employer agrees to provide three (3) personal days per year to be taken at Employee's discretion. One (1) days shall accrue and be available to the Employee at the commencement of this Agreement, and thereafter personal days shall accrue and be available to the Employee at the beginning of each fiscal year (July 1). (should personal days be offered in addition to sick days or part of sick days?)

- F. Employee shall be provided with a mobile telephone for use with respect to Town business, all costs, and expenses with respect to which shall be paid by the Employer.
- G. Employee shall be eligible for all other benefits offered to full-time employees of the Town, in accordance with the Employee Handbook.

Section 10. Retirement

The Employee is required to join the Berkshire County Retirement System. Contributions to said System are to be made in accordance with the Town's personnel rules and regulations.

Section 11. Dues, Subscriptions and General Expenses

Subject to annual budgetary appropriation, the Employer agrees to budget and pay for the professional dues, subscriptions, and conference expenses of Employee necessary for his continuation and full participation in national, regional, state, and local associations and organizations necessary and desirable for his continuous professional participation, growth, and advancement, and for the good of the Town, subject to notification and approval by the Select Board.

Section 12. Indemnification

The Town agrees to hold harmless, and indemnify Employee against any tort, professional liability, contract or civil rights claim or demand or other legal action, whether groundless or otherwise, arising out of any alleged act or omission occurring during the performance of the Employee's duties as Town Administrator, expressly excluding actions of the Employee which are determined to be grossly negligent, willful, malicious, or outside the scope of the Employee's official duties or employment, in accordance with the provisions of M.G.L. c.258, §§ 2, 6, 9 and 13 and the terms of this Agreement. The Board shall have authority to compromise and settle any such claim or suit where Employee is named in his official capacity and shall pay the amount of any settlement or judgment rendered thereon. Employee hereby grants the Board the authority to compromise and settle any claim or suit, as specified above, wherein Employee is named individually, provided that the Employee shall pay the amount of any settlement or judgment rendered with respect to any such claim or suit. The Town shall provide counsel to represent and defend the Employee with respect to all such claims and demands at no cost to Employee in accordance with M.G.L. c.258, §2; provided however, that counsel shall not provide such representation and defense if, in his or her opinion, such representation and defense would result in a conflict of interest occasioned by differing legal defenses raised by co-defendants or by a determination by the Employer that Employee was acting outside of the scope of his employment. The representation and defense of Employee at no expense shall be subject to Employee, at all times, providing full cooperation and participation with defense counsel.

The indemnification provided herein shall survive any resignation or removal from office. After he may leave office, in the event that Employee is required by subpoena or other court order, or the defense counsel, to give testimony at any trial, hearing, deposition or inquiry, either as a fact-witness or a party, in any matter which arose out of the performance of his official duties and in which he is

appearing solely in his official capacity, the Town shall, subject to the appropriation and availability of funds therefor, indemnify and reimburse Employee for his time spent testifying at trial or at a deposition, or in preparation of a trial or deposition and for trial attendance (to the extent required by the Town's counsel) at a daily rate equal to his daily rate of pay as of his last full day of employment with the Town; provided, however, that any reimbursement for time spent preparing for a deposition or trial shall be limited to one eight-hour day, unless, under exceptional circumstances, the Select Board upon the recommendation of the Town Counsel, approves reimbursement for additional preparation time.

The indemnification and reimbursement provided by this Agreement shall not include any representation or litigation expenses incurred in connection with any proceedings involving the state ethics commission which survive beyond the "preliminary inquiry" stage as that term is defined by the state ethics commission. Any such indemnification and reimbursement shall be subject to a determination made by the Town Counsel that Employee was acting in his official capacity and within the scope of his official powers and duties at the time the events complained of transpired. In no event shall any indemnification or reimbursement be made for any amounts required by any disposition assessed as civil penalties, restitution, or additional damages by the commission or to any legal representation expenses incurred in connection therewith.

Section 13. Bonding

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

Section 14. Other Terms and Conditions of Employment

- A. The Board, after discussion with the Employee, shall fix any such other terms and conditions of employment as it may determine from time to time, relating to the performance, duties, and responsibilities of Employee, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this Agreement, Town Bylaw, or any other law.

Section 15. Notices

Notices pursuant to this Agreement shall be given by deposit in the custody of the United States Postal Service, postage prepaid, addressed as follows:

1. Employer:

Chair, Select Board
435 Main Road
P.O. Box 308
Town Hall
Monterey, MA 01245

2. Employee:

Roger MacDonald

[Address]

Alternatively, notices required pursuant to this Agreement may be served in the same manner as is applicable to civil judicial process. Notice shall be deemed given as of the date of personal service or left at the last and usual place of abode of the Employee or as of date of deposit of such written notice in the course of transmission by the United States Postal Service.

Section 17. General Provisions

- A. The terms set forth herein shall constitute the entire agreement between the Parties except to the extent that other documents are referred to herein, which documents shall be deemed to be incorporated herein by reference.
- B. The Agreement shall be binding upon and inure to the benefit of the heirs at law and executors of Employee.
- C. The Employee shall be entitled to the benefits hereunder at the commencement of this Agreement, unless otherwise specified in this Agreement.
- D. 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 be deemed severable, shall not be affected, and shall remain in full force and effect.
- E. The failure of a party to insist on strict compliance with a term or provision of this Agreement shall not constitute a waiver of any term or provision of this Agreement.

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IN WITNESS WHEREOF, the Town of Monterey, Massachusetts, has caused this Agreement to be signed and executed on its behalf by its Select Board, and the Employee, being fully knowledgeable of the terms set forth herein, have executed the same as a sealed instrument on the dates referenced below.

**SELECT BOARD
MONTEREY, MASSACHUSETTS**

Justin Makuc, Chair

Susan Cooper

Frank Abbott

Date: _____

EMPLOYEE

Roger MacDonald

Date: _____

APPROVED AS TO FORM:

Donna Brewer

Town Counsel