

EMPLOYMENT AGREEMENT

This Agreement, dated effective _____, 2016 (this "Agreement"), is made and entered into by and between the Town of Cape Elizabeth, Maine, a body corporate and politic, with a mailing address of P.O. Box 6260, 320 Ocean House Road, Cape Elizabeth, Maine 04107 (the "Town") and Michael K. McGovern, an individual with a mailing address of 22 High View Road, Cape Elizabeth, Maine 04107 ("McGovern").

RECITALS

- A. McGovern has been employed by the Town in the capacity of Town Manager, providing exemplary service, for over three (3) decades;
- B. McGovern has submitted, and the Town has accepted, his resignation as Town Manager and as to any other positions he holds for the Town, its boards and its committees, effective December 31, 2016; and
- C. The Town feels it prudent to retain the consulting services of McGovern for a period of six (6) months after his effective resignation date to assist any newly appointed Manager, Acting Manager or Assistant Manager during that period, and McGovern is willing to do so, upon the terms and conditions set forth herein.

NOW THEREFORE, for valuable consideration, the receipt of sufficiency by each party being hereby acknowledged, the parties agree as follows:

1. Services. The Town hereby employs McGovern to be available upon request by the new Town Manager or Acting Manager, or absent a new Town Manager or Acting Manager, the Assistant Manager, to assist and consult with such party as to issues generally within the scope of a town manager's responsibilities in a community such as the Town. It is anticipated there will be a new Town Manager or Acting Town Manager in place during the term of this Agreement and McGovern's services are primarily to allow for a smooth transition given McGovern's extensive knowledge and expertise as Town Manager. McGovern shall not have defined office hours but shall be generally available upon request during normal work hours of a town manager for the term hereof. The parties understand that this employment agreement shall prevent McGovern from commencing other full time employment or undertaking non-employment activities which could materially interfere with his performance hereunder. He will not have decision making authority and his services shall be advisory only.

2. Confidentiality. If in the course of McGovern's service he is provided or becomes aware of confidential information, including information expressly made confidential by Maine law, McGovern shall not disclose such information to others not entitled to receive such information.

3. Non-Delegation. The services required of McGovern are not to be delegated by McGovern to any other party.

4. Reports. It is not contemplated that McGovern will be required to submit any written reports, but will assist as needed with compiling and producing such reports.

5. Compensation. In light of McGovern's commitment to provide the above services for the term hereof, and the number of hours which may be expended by McGovern in fulfilling his obligations hereunder, he shall be compensated based upon eighty Percent (80%) of his last salary as Town Manager and provided a continuation of his health insurance benefits upon the same terms as his last year as Town Manager, however, he shall not be provided: vacation or sick time (or payment in lieu thereof), mileage (unless expressly requested to travel on Town business), a motor vehicle, a mobile phone allowance or any other benefits. He will be reimbursed for reasonable and necessary expenditures which have been pre-approved by the Manager or Acting Manager. McGovern shall receive a payment from the Town as a contribution to his defined contribution/deferred compensation plans based on his 2016 percentage of his salary for six (6) months in 2017. Upon McGovern's retirement as Town Manager he will receive his sick leave and accumulated vacation payment as compensation under current Personal Code provisions. This Agreement shall not abridge any of McGovern's rights arising from his employment through December 31, 2016.

6. Taxes. The parties agree that for the term of this Agreement, McGovern shall be an employee for tax purposes. McGovern shall be responsible for all income taxes arising from his compensation and other amounts paid under this Agreement.

7. Term. This Agreement shall be effective as of January 1, 2017 and shall continue in full force and effect until June 30, 2017, unless terminated in accordance with the terms herein.

8. Termination. The Town may terminate this Agreement for "Cause," after giving McGovern written notice of the reason for termination. Cause means: (a) McGovern has materially breached any provision of this Agreement and the breach continues for ten (10) days following receipt of written notice from the Town; (b) McGovern has committed fraud, misappropriation or embezzlement in connection with the Town's business; or (c) McGovern has been convicted of a felony.

9. Liability. With regard to the services to be performed by McGovern pursuant to the terms of this Agreement, McGovern shall not be liable to the Town, or to anyone who may claim any right due to any relationship with the Town, for any acts or omissions in the performance of services on the part of McGovern, except when said acts or omissions of McGovern are due to willful misconduct. The Town shall hold McGovern free and harmless from any obligations, costs, claims, judgments, attorneys' fees, and attachments arising from or growing out of the services rendered to the Town pursuant to the terms of this Agreement or in any way connected with the rendering of services, except when the same shall arise due to the willful misconduct of McGovern and McGovern is adjudged to be guilty of willful misconduct by a court of competent jurisdiction.

10. Governing Law. This Agreement shall be governed by and construed in accordance with the internal laws (and not the laws of conflicts) of the State of Maine. Venue for any dispute arising from this Agreement shall be in the state and federal courts located in Maine.

11. Complete Agreement. This Agreement constitutes the complete agreement and sets forth the entire understanding and agreement of the parties as to the subject matter of this Agreement and supersedes all prior discussions and understandings in respect to the subject of this Agreement, whether written or oral.

12. Notices. Any notice required to be given under this Agreement, and any invoice, payment or communication associated with the performance of this Agreement shall be deemed made, if delivered either to the address given above in preamble of the Agreement or to such other address as hereafter be specified in writing by the parties.

13. Modification. No modification, termination or attempted waiver of this Agreement, or any provision thereof, shall be valid unless agreed to by both parties.

14. Arbitration. If a dispute arises concerning this Agreement and the parties to the dispute do not resolve it through informal means, the parties shall submit their dispute to mediation in accordance with the Commercial Mediation Rules of the American Arbitration Association if they can agree to do so, otherwise to formal arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association; provided that if the parties begin in mediation, any party to the dispute may require arbitration at any time upon written notice in accordance with the Commercial Arbitration Rules.

IN WITNESS WHEREOF, this Agreement is executed as of the date set forth above.

TOWN OF CAPE ELIZABETH

By: Molly MacAuslan
Its: Town Council Chair

Michael K. McGovern