

**TOWN OF TOWNSEND  
CONTRACT OF EMPLOYMENT  
TOWN ADMINISTRATOR**

This Contract of employment (Contract) made this 18<sup>th</sup> day of May 2016 by and between the Town of Townsend and James M. Kreidler, Jr.

**WITNESSETH THAT:**

1. **EMPLOYMENT:** The Town, by and through its Board of Selectmen (the "BOARD" or the "TOWN") hereby appoints, employs and contracts James M. Kreidler, Jr. as Town Administrator of the Town (the "TOWN ADMINISTRATOR"), pursuant to Massachusetts General Law, Chapter 41, Section 108N and Article 4 of the Townsend Charter.
2. **TERM:** The term of this Contract shall be for a three year<sup>1</sup> period ("Term") commencing May 18, 2016 and ending June 30, 2019.
3. **HOURS OF WORK:** The TOWN ADMINISTRATOR agrees to devote that amount of time that is reasonably necessary to faithfully perform the duties of the position of TOWN ADMINISTRATOR. It is recognized that the TOWN ADMINISTRATOR must devote a great deal of time outside of normal office hours to the business of the Town, and to that end, the hours of work for the TOWN ADMINISTRATOR shall not be specified.
4. **COMPENSATION:** The TOWN ADMINISTRATOR and the Board agree that the position of TOWN ADMINISTRATOR is hereby removed from the Town's non-union compensation and classification plan. The Town shall pay the TOWN ADMINISTRATOR during the term of this Contract on the following basis:
  - a) **Effective at the execution of this contract and for fiscal year 2017:**  
Annual base salary of \$122,188.
  - b) **Fiscal Years 2018 and 2019:** Annual base salary shall be based upon performance and shall be determined by negotiation of the parties. If the parties determine through such negotiation that a base raise is due in no event shall the base be increased by anything less than the increase received by any non-union subordinate(s) in the organization
5. **INSURANCE BENEFITS:** The TOWN ADMINISTRATOR shall be entitled to all health, life and dental benefits to which other Town employees are entitled on at least the same terms.

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<sup>1</sup> Initial term is three years and six weeks.

**6. INDEMNIFICATION:**

To the extent permitted by law, the Town shall defend, save harmless and indemnify the TOWN ADMINISTRATOR against any tort, professional liability, claim or demand, or other civil legal action, whether groundless or otherwise arising out of an alleged act or omission occurring in the performance of his duties as TOWN ADMINISTRATOR, even if said claim has been made following his termination from employment, except an intentional violation of the civil rights of any person, provided that the TOWN ADMINISTRATOR acted within the scope of his duties. The Town shall pay the amount of any settlement or judgment rendered thereon. The Town may compromise and settle any claim or suit and will pay the amount of any settlement or judgment rendered thereon without recourse to the TOWN ADMINISTRATOR.

The Town shall have the discretion to determine whether or not to assign counsel or reimburse the TOWN ADMINISTRATOR for his reasonable attorneys' fees and costs in connection with such claims or suits involving the TOWN ADMINISTRATOR in his professional capacity, provided that the TOWN ADMINISTRATOR acted within the scope of his duties. Separate counsel will be assigned to the TOWN ADMINISTRATOR in the case of a conflict of interest between the TOWN and the TOWN ADMINISTRATOR'S interests in any such matter.

The provisions of Section 6 shall not apply to disputes between the TOWN and the TOWN ADMINISTRATOR regarding the termination or other separation of his employment, or concerning any of the terms and provisions of this Agreement.

This section shall survive the termination of this Agreement.

**7. ANNUAL VACATION, SICK, PERSONAL AND BEREAVEMENT LEAVE:**

- a) The Town Administrator shall be entitled to a grant of twenty-five (25) days annual vacation leave for FY17<sup>2</sup>, thirty (30) days in FY18 and thirty-five (35) days in FY19. In recognition of the demands serving as TOWN ADMINISTRATOR the TOWN ADMINISTRATOR may sell back two weeks of accrued but unused vacation time in each fiscal year<sup>3</sup>.
- b) The TOWN ADMINISTRATOR shall be entitled to a grant of four (4) personal days per year, non-cumulative, for the purpose of transacting or attending to personal, business, or household matters.
- c) The TOWN ADMINISTRATOR shall be entitled to a grant of sick leave in the amount of 15 days per year of this contract and any successor contract, in advance for a total of 45 days, cumulative to a maximum of one-hundred-fifty (150) days. Further, this contract acknowledges that sick time has no monetary value, and as such, any sick time remaining at the time of the TOWN ADMINISTRATOR'S

<sup>2</sup> FY16 vacation will be prorated: Grant of 25 days/yr.= 200hrs/yr.=16.7 hrs./month \* 1.5 months remaining in FY16= 25 hrs. of additional vacation grant in FY16.

<sup>3</sup> The Town Administrator reserves the right to have this payment converted to weekly "regular compensation" with all appropriate deductions for retirement purposes, provided the same is consistent with law and approved by the appropriate Retirement Board(s).

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retirement or other separation from employment will be forfeited at no cost to the Town.

- d) The TOWN ADMINISTRATOR shall receive up to three (3) consecutive working days leave with full pay for making arrangements and attending the funeral upon the death of a family member of his immediate family, which shall include the following persons: wife, children, mother, father, brother, sister, mother-in-law, father-in-law, grandparents. All other relatives who do not fall into this category, bereavement time shall be one (1) day.

- 8. HOLIDAYS:** The following days or days observed as such, shall be recognized as paid holidays:

New Years Day	Thanksgiving Day	Memorial Day
Washington's Birthday	Independence Day	Christmas Day
Columbus Day	Veterans Day	Labor Day
Martin Luther King Day	Patriot's Day	

- 9. AUTOMOBILE MILEAGE STIPEND:** In lieu of a Town-owned and maintained vehicle for use by the TOWN ADMINISTRATOR the Town shall provide the TOWN ADMINISTRATOR an auto mileage stipend of \$300.00<sup>4</sup> per month for the TOWN ADMINISTRATOR to use his personal vehicle in all matters related to his employment. The TOWN will, however, reimburse the TOWN ADMINISTRATOR for all business related travel expenses (e.g. tolls, parking).

- 10. RETIREMENT BENEFITS:** The TOWN ADMINISTRATOR shall be eligible to participate in the Town's retirement program in accordance with chapter 32 of the Massachusetts General Laws.

- 11. DUTIES:** The TOWN ADMINISTRATOR shall perform the duties as detailed in section 4 of the Townsend Charter and in the job description for the position of TOWN ADMINISTRATOR attached hereto and to perform other legally permissible and appropriate functions and duties as the BOARD shall from time to time assign. The TOWN ADMINISTRATOR shall be the Chief Administrative Officer of the TOWN, pursuant to the Townsend Charter.

- 12. PROFESSIONAL DEVELOPMENT:** The TOWN agrees that the TOWN ADMINISTRATOR shall be given adequate opportunities to develop his skills and abilities as a public administrator; accordingly, with the prior permission of the TOWN the TOWN ADMINISTRATOR will be allowed to attend professional conferences each year without loss of vacation or other leave, and will be reimbursed by the TOWN for all expenses (including travel expenses) incurred while attending or traveling to the

<sup>4</sup> The Town Administrator reserves the right to have this payment converted to weekly "regular compensation" with all appropriate deductions for retirement purposes, provided the same is consistent with law and approved by the appropriate Retirement Board(s).



aforementioned conferences.

The TOWN also agrees, with the prior approval of the TOWN, to pay for reasonable travel and related expense of the TOWN ADMINISTRATOR for short courses, institutes, and seminars that, in the TOWN ADMINISTRATOR'S reasonable judgment, are necessary for his professional development.

The Town shall reimburse the TOWN ADMINISTRATOR for reasonable expenses incurred in connection with his attendance at professional management development courses and/or seminars, including, but not limited to, tuition for one college level course per semester at a college of the TOWN ADMINISTRATOR'S choice, subject to the prior approval of the TOWN and subject to appropriation.

**13. DUES AND SUBSCRIPTIONS DUES AND SUBSCRIPTIONS:** The TOWN agrees to budget an amount of \$1,500.00 subject to appropriation, and to pay for the professional dues and subscriptions of the TOWN ADMINISTRATOR, subject to the approval of the TOWN, for his continuation and full participation in national, regional, state and local associations and organizations necessary and desirable for his continued professional growth and advancement, and for the good of the TOWN.

**14. RESIGNATION-DISCIPLINE - REMOVAL - TERMINATION:**

The Town may discipline the TOWN ADMINISTRATOR by oral reprimand, written reprimand, suspension or removal. The TOWN ADMINISTRATOR shall not be removed, suspended, reprimanded or otherwise disciplined in any way, except for good cause.

Per Section 7-8 of the Townsend Charter the good cause standard shall include, but not be limited to the following:

"Incapacity other than temporary illness, inefficiency, insubordination and conduct unbecoming the office."

The parties hereby agree, to the extent that doing so would not conflict with the provisions of the Town Charter, that this good cause standard will also include the mandatory application of the seven steps detailed in Attachment A which shall be made a part of this Agreement by reference and that the principle of progressive discipline will apply.

- a) Reprimand or Suspension- The Town may serve an oral or written reprimand upon, or suspend, the TOWN ADMINISTRATOR only for good cause.
- b) Removal- The Town may remove the TOWN ADMINISTRATOR for good cause by a majority<sup>5</sup> vote of the members of the Board after a hearing. The TOWN

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<sup>5</sup> The parties agree if the Board of Selectmen is increased from 3 to 5 members that the quantum of vote shall change to 4/5<sup>ths</sup>.

ADMINISTRATOR shall have the option of choosing whether or not any such hearing shall be closed to the public or held as an open or public hearing. A vote of removal may be appealed by the TOWN ADMINISTRATOR to the American Arbitration Association. If an arbitrator cannot be agreed upon, the parties will both submit the matter to the American Arbitration Association for selection in accordance with its procedures. The cost of any arbitration shall be split equally between the parties.

The parties hereby agree that the decision of the Arbitrator shall be deemed final and binding upon the parties and that the parties may only appeal the arbitrator's decision to the Superior Court of the Commonwealth of Massachusetts on a point of law.

- c) In any disciplinary action brought against him, the TOWN ADMINISTRATOR shall have the right to be represented by counsel at his own expense.
- d) In all phases of disciplinary action the TOWN ADMINISTRATOR shall be given at least ten (10) business days prior written notice, which will include an explanation of the action being contemplated, the good cause therefore, the date(s) and time(s) of all alleged offenses or violations of the contract, and the date and time of the hearing. After any hearing, the TOWN must make a written report of the evidence presented and its findings of fact. No evidence may be relied upon which was not produced, and allowed to be responded to, during the disciplinary process.
- e) Either party as provided below may terminate this Contract.
  - i) Mutual written agreement- signed by the TOWN and the TOWN ADMINISTRATOR, upon such terms and conditions as may be acceptable to both parties at the time of termination.
  - ii) Non-Renewal- Except in the case of a proposed non-renewal for good cause, unless the TOWN provides written notice to the TOWN ADMINISTRATOR of a unanimous vote of its intention to not renew this contract no less than twelve (12) months prior to the end of its initial or any extended terms ("notice period"), this Contract shall automatically be extended on the then applicable terms and conditions for an additional year.
- iii) Except in the case of a proposed non-renewal for good cause, in the event the TOWN ADMINISTRATOR'S contract is not renewed or in the event the TOWN ADMINISTRATOR elects to resign following a formal suggestion by the TOWN that he resign before the expiration of the then applicable term of employment, the TOWN agrees to pay the TOWN ADMINISTRATOR a lump sum severance payment equal to twelve (12) months' salary and benefits.



iv) In the event the TOWN ADMINISTRATOR intends to resign voluntarily before the natural expiration of any term of employment, then the TOWN ADMINISTRATOR shall give the TOWN thirty (30) days written notice in advance, unless the parties otherwise agree in writing. Provided such notice is given or the parties otherwise agree in writing, the TOWN ADMINISTRATOR will be entitled to receive pay for any accrued but unused vacation leave.

v) Upon resignation in good standing or retirement, the TOWN ADMINISTRATOR shall receive severance pay equal to one week for each year of service up to a maximum of twelve (12) weeks to be paid as a lump sum cash payment within thirty (30) days of the date of resignation or retirement.

The Town recognizes its obligation to provide the TOWN ADMINISTRATOR with periodic performance evaluations. Each year, on or before December 31, the BOARD shall review and evaluate the performance of the TOWN ADMINISTRATOR utilizing an evaluation instrument to be developed and approved by the parties, all in conformance with the Public Records and Open Meeting Law. Performance shall be presumed satisfactory if no evaluation is conducted.

**15. RESIDENCY:** The TOWN ADMINISTRATOR need not be a resident of Townsend to hold this position.

**16. GENERAL PROVISIONS:**

- a) The TOWN agrees that it shall not at any time during the term of this Contract reduce the salary, compensation or other benefits of the TOWN ADMINISTRATOR, except to the extent that such reduction is evenly applied across-the-board for all employees of the TOWN.
- b) This writing constitutes the complete agreement of the parties as of the date of execution, and any supplemental or additional agreement or amendment to this Contract shall be effective only if in writing and signed by the TOWN and the TOWN ADMINISTRATOR.
- c) If any provision of this contract or any portion thereof is held unconstitutional, invalid, or unenforceable, the remainder of this Contract shall not be affected and shall remain in full force and effect.
- d) For any clause of this contract which provides that a certain benefit to the TOWN ADMINISTRATOR shall be subject to appropriation, the TOWN understands and acknowledges that it shall be responsible to budget and support any such appropriation at any and all town meetings.
- e) Appropriation. All provisions of this Agreement are subject to annual appropriation by Town Meeting.
- f) Governing Law: This Agreement shall be governed by and construed in

accordance with the Charter of the Town of Townsend and the laws of the Commonwealth of Massachusetts.

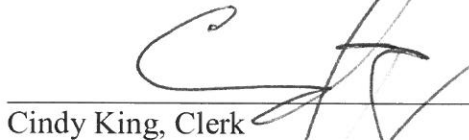
- g) To the extent allowed by law, a failure to appropriate an amount sufficient to fund all of the provisions of this contract shall be deemed to be a breach of contract and shall obligate the TOWN to pay the severance provision detailed in Section 14 e iii) above.

**FOR THE TOWN OF TOWNSEND**

**By: Its Board of Selectmen:**

  
Carolyn Smart, Chair

  
Gordon Clark, Vice-Chair

  
Cindy King, Clerk

**By: Town Administrator**

  
James M. Kreidler, Jr.



## ATTACHMENT A

**1. Reasonable Rule or Order-** Was the BOARD'S rule or managerial order reasonably related to the orderly, efficient and safe operation of the business?

This rule or order must not be arbitrary, capricious or discriminatory and must be related to the BOARD'S stated goals and objectives.

Even if this order is unreasonable, the TOWN ADMINISTRATOR must obey, except in cases when doing so would be unlawful or would jeopardize health or safety.

**2. Notice-** Did the BOARD give any warning as to any possible discipline or consequence that could result from the TOWN ADMINISTRATOR's action or behavior?

While maintaining the contractual right to manage its workforce by establishing the rules and orders necessary, the BOARD is responsible for informing the TOWN ADMINISTRATOR as to their meaning and application.

The BOARD must advise the TOWN ADMINISTRATOR that any act of misconduct or disobedience would result in discipline.

This statement should be clear, unambiguous and inclusive of any possible penalties.

**3. Investigation** Prior to administering discipline, did the BOARD conduct an investigation to determine whether the TOWN ADMINISTRATOR did in fact violate or disobey a rule or order?

The BOARD's investigation must be made BEFORE any disciplinary action is invoked.

The BOARD must bear the full responsibility for collecting any and all facts that are relevant to the final decision.

**4. Fair Investigation** Was this investigation fair and objective?

The BOARD has the obligation to conduct a fair, timely and thorough investigation that respects the TOWN ADMINISTRATOR's right to due process.

Once gathered, all facts must be evaluated with objectivity, and without a rush to judgment.

**5. Proof** Did this investigation uncover any substantial proof or evidence that the

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TOWN ADMINISTRATOR was guilty of violating or disobeying a direct rule or order?

Although there is no requirement of being preponderant, conclusive, or "beyond a reasonable doubt," any proof or evidence must be truly substantial.

While conducting the investigation, the BOARD must actively seek out witnesses and search for evidence.

If an offense cannot be proven, then no penalty could ever be considered justified.

**6. Equal Treatment** Did the BOARD apply all rules, orders and penalties evenhandedly and without discrimination to ALL employees?

If other employees who commit the same offense are treated differently, there may be discrimination or disparate treatment, both of which would automatically violate this standard.

**7. Penalty** Was the degree of discipline administered reasonably related to either the seriousness of the TOWN ADMINISTRATOR's offense or to the record of past service?

A proven offense does not merit a harsh discipline unless the employee has been proven guilty of the same (or other) offenses several times in the past.

Though a TOWN ADMINISTRATOR's past record cannot be used to prove guilt in a current case, it can be used in determining the severity of discipline if guilt is established in the current case.

Should two or more employees be found guilty of the same offense, their respective records will be used to determine their individual discipline. Thus, if employee A has a better record than employees B or C, then the BOARD has a right to give a lighter penalty to employee A without being discriminatory.

The TOWN ADMINISTRATOR's offense may be excused through mitigating circumstances. For example, an employee found asleep on the job may be excused by the mitigating circumstance of being under medication by a qualified physician. Or, an employee with domestic troubles may be proven incompetent rather than negligent, the latter indicating a willful deliberation.

