

**EMPLOYMENT AGREEMENT
BETWEEN
TOWN OF KINGSTON
AND
TOWN ADMINISTRATOR**

THIS AGREEMENT, pursuant to Chapter 41, Section 108N of the Massachusetts General Laws, made and entered into this 8th day of December, 2020 by and between the (Town) of Kingston, Commonwealth of Massachusetts, a municipal corporation, hereinafter called the "Town," acting by and through its (Board of Selectmen) hereinafter called ("Board") and Keith Hickey hereinafter called ("Town Administrator"), as follows:

WITNESSETH:

WHEREAS, the Town desires to employ the services of Keith Hickey as Town Administrator of the Town of Kingston;

WHEREAS, the Board, under Chapter 41, Section 108N of the General Laws may through contract with the Town Administrator to provide certain benefits, establish the conditions of employment, and set the salary for such services;

WHEREAS, it is the desire of the Board to obtain the services of the Town Administrator, and to provide inducement for him or her to remain in such employment; and

WHEREAS, Keith Hickey, agrees to accept employment as Town Administrator of said Town.

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

Section I, Functions and Duties of the Town Administrator.

The Town hereby offers to employ Keith Hickey as Town Administrator of said Town pursuant to G.L. c. 41, § 23A, and the Town Administrator accepts said offer of employment. The Town Administrator shall be the Chief Administrative Officer of the Town. The Town Administrator shall perform the functions and duties of said position as specified in the Town By-Laws, votes of Town Meeting, general or special laws and the job description and/or position profile as agreed upon and signed by both the Town and the Town Administrator, and such other duties as the Board shall from time to time legally assign to him or her.

The Town Administrator has direct supervisory responsibility for all non-elected department heads under the jurisdiction of the Board of Selectmen, clerical staff, and part-time positions. Responsible for coordinating the work and administrative activities of those employees not reporting directly to the Board of Selectmen. Evaluates department heads; recommends disciplinary actions to Board of Selectmen. Recruits, screens and recommends personnel to Board of Selectmen for appointment.

Section II, Term.

The term of this Agreement shall be from February 1, 2021, through January 31, 2024, unless sooner terminated in accordance with the provisions hereof. The Town Administrator agrees to remain in the exclusive employ of the Town during the term of this Agreement, and neither to accept other employment nor to become employed by any other employer during said term unless authorized by the terms of this agreement, or by a vote of a majority of the Board of Selectmen. Absent an affirmative vote by at least three (3) members of the Board of Selectmen to extend this agreement or re-appoint the Town Administrator, employment shall terminate on January 31, 2021.

The term "employment" shall not be construed to include occasional writing, teaching, or consulting performed during Town Administrator's time off as long as the same does not interfere with the obligations the Town Administrator has to the Town, nor is adverse to the interests of the Town, provided however, that the Town Administrator shall notify the Board in writing prior to engaging in such activities. The Town Administrator may teach no more than one course per semester, so long as such teaching duties are performed on evenings or on Saturday, and so long as such teaching duties do not interfere with the performance of his duties as Town Administrator.

Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the Board of Selectmen to terminate the services of the Town Administrator anytime, subject only to the provisions as set forth in this Agreement, and the Kingston Town By-laws. This Agreement shall become effective February 1, 2021, and shall be in full force and effect until January 31, 2024.

Section III, Termination and Severance Pay.

A. The Board may place the Town Administrator on paid administrative leave to investigate charges against the Town Administrator or otherwise evaluate contemplated disciplinary action by notifying the Town Administrator in writing of its decision at any time during the term of the Agreement. Said decision to place the Town Administrator on paid administrative leave shall not be construed as discipline or be subject to the hearing requirements specified herein.

B. The Board may suspend, discharge, or otherwise discipline the Town Administrator for just cause during the term of this Agreement. For the purposes of this Agreement, just cause shall include, but not be limited to the following: incapacity, namely the inability to perform services for a period of six (6) months or longer; inefficiency, namely the inability to complete assignments in a timely manner on a routine basis in accordance with principals of reasonable care; neglect, namely failure to perform the duties of the position in a reasonably competent manner; insubordination, conduct unbecoming, misconduct, or for other good cause shown.

C. The Board will provide that at least forty-eight (48) hours' written notice prior to the meeting at which the vote to discipline is to be considered by the Board, providing the Town Administrator written notice of the intended vote and a written statement of

reasons and causes for calling for such a vote. If Town Administrator so requests, he shall be given a hearing before the Board at such meeting, which shall be public or private at the discretion of the Town Administrator, and at which the Town Administrator may be fully represented by counsel, present evidence, and call witnesses to testify on his behalf, and examine them.

D. In the event the Town Administrator is terminated by the Town, except for just cause, or is requested to resign by the Board, prior to the expiration of the term of this Agreement, the Town agrees that it shall pay to the Town Administrator a lump sum cash payment equal to six (6) months aggregate salary, which amount shall be paid to the Town Administrator on or before the effective date of termination of his or her employment (“Severance Benefits”). The Town Administrator’s acceptance of these Severance Benefits shall constitute a full and complete release of any other rights, claims, or causes of action whether in law, equity or otherwise, that the Town Administrator may have against the Town, including all of its employees, elected or appointed officials, officers, agents, representatives and attorneys of such entities. This paragraph shall survive the termination of this agreement.

E. In the event the Town Administrator voluntarily terminates his or her position with the Town before the expiration of the term of this Agreement, the Town Administrator shall give the Town one (1) month’s written notice in advance, unless the parties agree otherwise. A copy of the resignation shall be filed with the Town Clerk. The Town Administrator is not entitled to Severance Benefits upon his voluntary termination of this Agreement pursuant to this paragraph.

Section IV, Salary.

A. The Town agrees to pay the Town Administrator for services rendered under this Agreement, an annual base salary as set forth in the salary schedule below, subject to applicable withholdings and deductions, payable in installments at the same time as other employees of the Town are paid. The Town Administrator agrees to receive this compensation via direct deposit.

Period	Annual Base Salary
02/01/2021 – 06/30/2022	\$150,000.00
07/01/2022 – 06/30/2023	\$152,250.00
07/01/2023 – 01/31/2024	\$154,533.75

B. In addition to the above salary, the Town Administrator may receive up to \$3,000 bonus each year at the Board’s discretion, said bonus not to be applied to base salary, if the Board of Selectmen, in its sole discretion, determines that his performance exceeds expectations as documented through the performance evaluation process set forth in Section V of this Agreement. Said bonus payment is payable in the first pay period in July based on the evaluation in April of each year, beginning in 2022.

C. If the Town Administrator continues in office after the expiration of this Agreement, and there is no successor agreement, he or she shall continue to receive the latest salary under this Section and the same benefits under this Agreement until such time as his or her salary and benefits shall be otherwise provided for by the Town. This Subsection shall survive the termination of this Agreement.

D. Retirement Contribution. The Town shall contribute an amount equal to two percent (2%) of Town Administrator's annual base salary per contract year to the Town Administrator's deferred compensation or individual retirement account (IRA), payable in equal installment.

Section V, Town Administrator Evaluation.

A. The Town Administrator's performance shall be reviewed and evaluated on an annual basis in April of each year, by the Board. All reviews and evaluations shall be in accordance with specific measurable criteria developed jointly by the Board and the Town Administrator, and mutually agreed to in writing by March 31st of the preceding year. Prior to conducting a public performance review of the Town Administrator, each member of the Board of Selectmen shall complete an individual evaluation form, based on the criteria agreed to the prior year, and meet 1:1 with the Town Administrator to discuss his performance. The Town's appointed Labor Counsel will compile all individual evaluation forms into one document that reflects the consensus of the assessments of the Board of Selectmen. The consensus documents will then be placed on a Board of Selectmen's agenda and discussed in open session. Members of the Board will be able to review the consensus document prior to the meeting, but may not see the other board members' individual evaluation forms until after the public discussion. Individual evaluation forms will become part of the Town Administrator's personnel file, and will be exempt from the public record to the extent possible under the law. The consensus document, along with any addendums thereto made by the Board during the open session discussion, will stand as the public record of the Town Administrator's annual evaluation.

B. In effecting the provisions of this Section, the Board and the Town Administrator, mutually agree to abide by the provisions of applicable law, including the open meeting law and public records law. Individual evaluations shall remain in the Town Administrator's personnel file.

C. Annual goals and objectives for the Town Administrator shall be mutually agreed upon by the Board and the Town Administrator, and shall serve as the basis for evaluating performance for the 12-month period following their formal adoption and documentation. Town Administrator performance goals and objectives should be measurable and aligned with the attainment of the Board's policy objectives for the coming year. The Town Administrator will not be penalized if factors beyond his or her control, such as lack of necessary appropriations, render a specified goal or objective unattainable. The opportunity for a performance-based bonus, as defined in Section IV (B), shall be based upon exceeding expectations for annual goals and objectives, as measured by the evaluation process described in Section V (A).

Section VI, Hours of Work.

A. The Town Administrator will devote full time and attention to the business of the Town and will not engage in any other business during office hours, except with the approval of the Board.

B. It is recognized that the Town Administrator must devote a great deal of time outside the normal office hours to the business of the Town, and to that end the Town Administrator will be allowed to take reasonable compensatory time off as he or she shall deem appropriate during said normal office hours.

Section VII, Health Insurance, Vacation, Holidays, Sick Leave, Funeral Leave, Jury Duty and Disability Insurance.

A. The Town Administrator shall be granted the opportunity to enroll in the Town sponsored health insurance plan, at an employer/employee contribution rate commensurate with that of all other Town employees.

B. The Town Administrator shall be granted four (4) weeks paid vacation per contract year. A week shall be defined as five (5) working days. Unused vacation days may be carried over from one year to another but shall not exceed ten (10) days; additional carry-over may be allowed at the sole discretion of the Board of Selectmen. Vacation time may not be taken in intervals of more than 2 weeks absent approval of the Board of Selectmen.

C. The Town Administrator shall be granted fifteen (15) sick days per fiscal year. Unused sick days may be accumulated from year to year. Upon the execution of this Agreement, the Town Administrator shall also be credited by the Town with fifteen (15) days sick leave in his or her sick leave account. Upon separation of service, there shall be no buyback of sick leave.

D. Any unused vacation or sick leave remaining at the expiration of this Agreement shall carry over and be credited to the Town Administrator if this Agreement is extended.

E. The Town Administrator shall receive the following holidays:

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|-----------------------------|----------------------------------|
| New Year's Day | Labor Day |
| Martin Luther King, Jr. Day | Columbus Day |
| Presidents' Day | Veterans Day |
| Patriots' Day | Thanksgiving Day |
| Memorial Day | Day after Thanksgiving |
| Juneteenth | ½ a day the day before Christmas |
| Independence Day | Christmas Day |

Whenever any of the holidays listed above fall on Saturday, the preceding Friday shall be observed as the holiday; whenever any of the holidays listed above falls on Sunday, the following Monday shall be observed as the holiday.

F. Upon the death of the Town Administrator's spouse or his or her children, the Town Administrator will be granted leave of five (5) working days without loss of pay. Upon the death of the Town Administrator's mother, father, mother-in-law, father-in-law, sister, brother, sister-in-law, brother-in-law, grandparents or grandchildren, the Town Administrator will be granted leave of three (3) working days without loss of pay.

G. The Town Administrator shall be granted three (3) days personal leave each contract year.

H. In the event that the Town Administrator serves as a juror in a federal court or in the Courts of the Commonwealth, he shall receive from the Town the difference between his or her salary and the compensation he received for such jury services, exclusive of any travel or other allowance; provided, however, he or she shall receive his or her full pay for his or her first three (3) days of service for the Commonwealth of Massachusetts.

I. Should the Town Administrator attend the International City Management Association's (I.C.M.A.) Annual Conference or other professional conferences, time spent at such conferences shall not be deducted from his or her vacation leave and shall be considered as professional development leave.

Section VIII, Professional Development.

A. Subject to appropriation, the Town agrees to pay for the registration, travel, and subsistence expenses of the Town Administrator for short courses, institutes and seminars that are necessary for his or her professional development.

B. Subject to appropriation, the Town shall pay the Town Administrator's registration fees(s), travel and subsistence expenses to and from the I.C.M.A. Annual Conference, Massachusetts Municipal Association Annual January Conference, and the Massachusetts Municipal Administrators' Association Annual Spring Conference.

Section IX, Dues and Subscriptions.

Subject to appropriation, the Town agrees to pay for the professional dues and subscriptions of the Town Administrator necessary for his or her membership in the following professional organizations:

International City Management Association (I.C.M.A.); Massachusetts Municipal Administrators' Association; and any other professional organizations deemed necessary and desirable for his or her continued professional participation, growth and advancement and for the good of the Town.

Section X, Expenses.

A. Subject to compliance with G.L. c. 268A, the Town Administrator shall be reimbursed for any expenses incurred in the performance of his or her duties, or as an official representative of the Town, including attendance by him or her at civic or social events.

B. The Town Administrator shall be reimbursed for the use of a personal vehicle in the performance of his or her official duties, based on the Internal Revenue Service's published standard mileage rate. The Town Administrator is responsible for tracking and submitting a monthly mileage report in a format that complies with IRS guidelines for an accountable reimbursement plan. The Town Administrator's daily commute to and from Kingston Town House does not qualify for mileage reimbursement.

C. If the Town Administrator leaves the employment of the Town and serves as a witness in depositions, trials, or administrative proceedings, he or she shall be paid for each day of preparation and attendance at the trial on a per diem basis based on his or her salary at the time of his or her separation from employment from the Town.

This Section shall survive the termination of this Agreement

Section XI, Indemnification.

A. To the extent allowed under G.L. c. 258, the Town shall defend, save harmless and indemnify the Town Administrator against any tort, professional liability, claim or demand, or other legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of his or her duties as Town Administrator, even if said claim has been made following his or her termination from employment, provided that the Town Administrator acted within the scope of his or her duties. The Town shall pay the amount of any settlement or judgment rendered thereon. The Town may compromise and settle any such claim or suit and will pay the amount of any settlement or judgment rendered thereon without recourse to the Town Administrator.

B. The Town shall reimburse the Town Administrator for any attorneys' fees and costs incurred by the Town Administrator in connection with such claims or suits involving the Town Administrator in his or her professional capacity.

C. This indemnification shall also apply to the Town Administrator after he or she leaves the employment of the Town.

D. This section does not apply to any disciplinary action or proceeding being brought by the Town against the Town Administrator.

E. This section shall survive the termination of this Agreement.

Section XII, Bonding.

The Town shall bear the full cost of any fidelity or other bonds required of the Town Administrator.

Section XIII, Non-Renewal of Agreement.

If the Board decides not to renew this Agreement at its termination, the Board shall give the Town Administrator written notice at least six (6) months in advance of its intent not

to renew this Agreement. If the Board fails to give such written notice, this Agreement and its terms and conditions shall be extended for an additional one-year period.

If the Board does not give a notice of non-renewal, and the parties fail to negotiate a successor contract by the scheduled termination date of this Agreement, this Agreement and its terms and conditions shall be extended for an additional one-year period.

It is expressly understood that a decision not to renew this Agreement shall not be construed as a dismissal or require a hearing.

Section XIV, Other Terms and Conditions of Employment.

A. All provisions of law of the Commonwealth of Massachusetts relating to retirement, health insurance and other fringe benefits shall apply to the Town Administrator as they generally apply to other employees of the Town, in addition to said benefits enumerated herein specifically for the benefit of the Town Administrator, except as otherwise provided in this Agreement.

B. All other general provisions of the Town's By-Laws relating to fringe benefits shall also apply to the Town Administrator as they apply to other employees of the Town, in addition to the benefits enumerated specifically for the benefit of the Town Administrator, except as otherwise provided in this Agreement.

C. This Agreement shall prevail over any conflicting personnel provisions of the Town By-Laws or Rules and Regulations.

Section XV, No Reduction in Benefits.

The Town shall not at any time during the term of the Agreement reduce the salary, compensation or other benefits of the Town Administrator, except to the degree such a reduction is across the board for all other employees of the Town.

Section XVI, 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. TOWN: Chairman of Board of Selectmen
Town of Kingston
26 Evergreen Street
Kingston, MA 02364

2. TOWN ADMINISTRATOR: Mr. Keith R. Hickey
37 Daffodil Drive
Loudon, NH 03307

Alternatively, notices required pursuant to this Agreement may be personally served. Notice shall be deemed as given as of the date of personal service or as of the date of

deposit of such written notice in the course of transmission in the United States Postal Service.

Section XVII, General Provisions.

- A. The text herein shall constitute the entire Agreement between the parties.
- B. This Agreement shall be binding upon and inure to the benefit of the heirs at law and executors of the Town Administrator.
- 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 be deemed severable, shall not be affected, and shall remain in full force and effect.
- D. For the purposes of the Fair Labor Standards Act, the Town Administrator shall be an “exempt employee”.
- 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.
- F. This Employment Agreement is the result of negotiation and compromise by and among the parties and no party shall be prejudiced as having been the drafter of the Employment Agreement.

Signature Page Follows

IN WITNESS WHEREOF, the Town of Kingston, Massachusetts, has caused this Agreement to be signed and executed in its behalf by its Board of Selectmen and duly attested by its Town Clerk, and the Town Administrator has signed and executed this Agreement, both in duplicate.

TOWN OF KINGSTON
Board of Selectmen

TOWN ADMINISTRATOR

Jessica M. Kramer

Keith R. Hickey

Kimberley A. Emberg

DATE: 10/8/20

Sheila Vaughn

Richard J. Arruda

Donald J. Alcombright

DATE: _____

Attest to Signature

Approved as to Legal Form

Town Clerk

Town Counsel

DATE: 12-8-20

DATE: 12/4/20

I certify there is an appropriation in Account 01122-51114 to fund this contract.

Town Accountant

DATE: 12-8-20