



OFFICE OF THE SELECT BOARD
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Peter Carlson, Chair
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Colleen Roy, Clerk
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July 30, 2020

VIA HAND DELIVERY

Timothy McInerney
21 Courtland Way
Grafton, MA 01519

Re: Separation Agreement and Release

Dear Mr. McInerney:

This letter summarizes the terms of your separation from employment with the Town of Grafton (the "Town"). The purpose of this Separation Agreement and Release (the "Agreement") is to establish an amicable arrangement for ending your employment relationship, to release the Town from any claims and to permit you to receive severance pay and related benefits. With these understandings and in exchange for the promises by you and the Town as set forth below, you and the Town agree as follows.

1. Employment Status and Final Payments:

(a) Your separation from employment with the Town will be effective as of July 31, 2020 (the "Separation Date"). As of the Separation Date, your salary will cease, and any entitlement you have or might have under a Town-provided benefit plan, program, contract or practice will terminate, except as required by federal or state law, or as otherwise described below.

(b) You acknowledge that as of the Separation Date, you will have a balance of 256 hours of vacation leave, which has a payout value of \$20,664.32. This amount will be paid to you in the first regular payroll after the Separation Date.

(c) You agree that you have no outstanding expense reimbursements.

(d) The Termination Date shall be the date of the “qualifying event” under the Consolidated Omnibus Budget Reconciliation Act of 1985 (“COBRA”) and the Town will present you with information on COBRA under separate cover.

2. **Consideration:** In exchange for, and in consideration of, your full execution of this Agreement, and after the seven-day revocation period set forth herein has expired (without revocation), the Town agrees as follows:

(a) **Severance Pay:** The Town agrees that your separation from employment will be characterized as without cause. As such, you are eligible and will be paid a single lump sum of \$147,500.00, which will be paid to you in the first regular payroll after the Separation Date.

(b) **Life Insurance Reimbursement:** The Town will reimburse you, upon proof of payment consistent with the Town’s normal procedures, for the cost of the 2020 life insurance premium payment described in Section VII(B) of your employment agreement in an amount not to exceed to \$2,000. Any such request for reimbursement must be submitted within thirty (30) days of payment and no later than June 30, 2021.

(c) **Payments:** The payments set forth in this Section 2 shall be subject to all applicable federal, state and/or local withholding and/or payroll taxes.

(d) **Tax Advice:** You acknowledge that neither the Town nor its counsel has advised you regarding the taxability of any monies payable to you under this Agreement. You are advised to consult with your own counsel and/or tax advisor as to the specific tax consequences of any payments made under this Agreement.

3. **Release:** In exchange for the consideration described in Section 2, which is in addition to anything of value to which you are entitled to receive, and other good and valuable consideration described herein, the sufficiency of which is hereby acknowledged, you and your representatives, agents, estate, heirs, successors and assigns, absolutely and unconditionally hereby release, remise, discharge, indemnify and hold harmless the Town Releasees (defined to include the Town, its current Select Board, officers, employees, attorneys and/or agents, all both individually and in their official capacities), from any and all actions or causes of action, suits, claims, grievances, complaints, contracts, liabilities, agreements, promises, torts, debts, damages, controversies, judgments, rights and demands, whether existing or contingent, known or unknown, suspected or unsuspected, including but not limited to those which arise out of your employment with, change in employment status with, and/or separation of employment from, the Town. This release is intended by you to be all encompassing and to act as a full and total release of any claims, whether specifically enumerated herein or not, that you may have or have had against the Town Releasees arising from conduct occurring up to and through the date of this Agreement, including, but not limited to, any claims arising from any federal, state or local law, regulation or constitution dealing with either employment, employment benefits or employment discrimination such as those laws or regulations concerning discrimination on the basis of race, color, creed, religion, age, sex, sex harassment, sexual orientation, pregnancy, gender identity, transgender status, national origin, ancestry, genetic carrier status, handicap or disability, veteran status, any military service or application for military service, or any other category protected under federal or state law; any contract, whether oral or written, express or implied, including

without limitation, any employment agreement or letter offering employment; any tort; any claim for equity or other benefits; any claim under the Town Charter or Town Bylaws; or any other statutory and/or common law claim. You not only release and discharge the Town Releasees from any and all claims as stated above that you could make on your own behalf or on behalf of others, but also those claims that might be made by any other person or organization on your behalf, and you specifically waive any right to recover any damage awards as a member of any class in a case in which any claim(s) against the Town Releasees are made involving any matters.

Without in any way limiting the Release herein, you also specifically release, remise, discharge, indemnify and hold harmless the Town Releasees from any claims for back wages, salary, vacation pay, incentive pay, bonuses, and any and all other forms of compensation, attorney's fees, or other costs or sums that arise or may arise under the Massachusetts Wage Act, including without limitation, M.G.L. c. 149, §§ 105A, 148 and 150, and M.G.L. c. 151.

This Release does not apply to claims for workers' compensation benefits, unemployment insurance benefits or any other claim that cannot lawfully be waived by this Agreement.

This Release does not apply to any claims arising solely after the execution of this Agreement or to any claims arising from a breach of this Agreement.

Notwithstanding the foregoing, nothing in this Agreement shall bar or prohibit you from contacting, filing a charge or complaint with, seeking assistance from or participating in any proceeding before any federal or state administrative agency to the extent permitted by applicable federal, state and/or local law. However, you nevertheless will be prohibited to the fullest extent authorized by law from obtaining monetary damages or other personal relief in any agency proceeding in which you do so participate.

4. Waiver of Rights and Claims Under the Age Discrimination in Employment Act of 1967: Since you are 40 years of age or older, you are being informed that you have or may have specific rights and/or claims under the Age Discrimination in Employment Act of 1967 ("ADEA") and you agree that:

(a) in exchange for the consideration described in Section 2 of this Agreement, which you are not otherwise entitled to receive, you specifically and voluntarily waive such rights and/or claims under the ADEA you might have against the Town Releasees to the extent such rights and/or claims arose prior to the date this Agreement was executed;

(b) you understand that rights or claims under the ADEA which may arise after the date this Agreement is executed are not waived by you;

(c) you are advised to consult with or seek advice from an attorney of your choice or any other person of your choosing prior to executing this Agreement, that you have at least twenty-one (21) days within which to consider the terms of this Agreement, and you acknowledge that you have not been subject to any undue or improper influence interfering with the exercise of your free will in deciding whether to consult with counsel;

(d) you have carefully read and fully understand all of the provisions of this Agreement, and you knowingly and voluntarily agree to all of the terms set forth in this Agreement; and

(e) in entering into this Agreement, you are not relying on any representation, promise or inducement made by the Town or its attorneys with the exception of those promises described in this document.

5. Period for Review and Consideration of Agreement:

(a) You acknowledge that you were informed and understand that you have 21 days to review this Agreement and consider its terms before signing it.

(b) The 21-day review period will not be affected or extended by any revisions, whether material or immaterial, that might be made to this Agreement.

6. Accord and Satisfaction: The payments set forth herein shall be complete and unconditional payment, settlement, accord and/or satisfaction with respect to all obligations and liabilities of the Town Releasees to you, including, without limitation, all claims for back wages, salary, vacation pay, incentive pay, bonuses, severance pay, reimbursement of expenses, any and all other forms of compensation or benefits, attorney's fees, or other costs or sums.

7. Medicare Status and Satisfaction of Any Medicare Reimbursement Obligations:

You represent and warrant that you are not and have not been enrolled in the Medicare program, and have not received Medicare benefits for medical services or items related to, arising from, or in connection with any accident, occurrence, injury, illness, disease, loss, claim, demand, or damages that are subject to this Agreement and releases herein (collectively, the "Released Matters").

You agree to indemnify and hold harmless the Town Releasees from any and all claims, demands, liens, subrogated interests, and causes of action of any nature or character that have been or may in the future be asserted by Medicare and/or persons or entities acting on behalf of Medicare, or any other person or entity, arising from the payment of the Consideration described in Section 2, any payments made by Medicare, or any medical expenses or payments arising from or related to any Released Matters that are subject to this Agreement or the release set forth herein, including but not limited to: (a) all claims and demands for reimbursement of any payments or for damages or double damages based upon any failure to reimburse Medicare; (b) all claims and demands for penalties based upon any failure to report, late reporting, or other noncompliance with or violation of Section 111 of the Medicare, Medicaid, and SCHIP Extension Act of 2007 (P.L. 110-173) ("MMSEA"). This indemnification obligation includes all damages, double damages, fines, penalties, attorneys' fees, costs, interest, expenses, and judgments incurred by or on behalf of the Town Releasees in connection with such claims, demands, subrogated interests, or causes of action.

8. Town Files, Documents and Other Property: You agree that on or before the Separation Date you will return to the Town all Town property and materials, including but not limited to, (if applicable) computers, laptops, smartphones, fax machines, scanners, copiers,

cellular phones, Town credit cards and telephone charge cards, manuals, building keys and passes, courtesy parking passes, diskettes, intangible information stored on diskettes, software programs and data compiled with the use of those programs, software passwords or codes, tangible copies of trade secrets and confidential information, Town-related e-mails and any other documents that are not a public record (whether on Town or personal e-mail accounts), and any and all other information or property previously or currently held or used by you that is or was related to your employment with the Town ("Town Property"). You represent that you have not and will not take by download or otherwise any Town Property. You agree that in the event that you discover any Town Property in your possession, whether in electronic form or otherwise, after the Separation Date, you will immediately return such materials to the Town.

9. No Liability or Wrongdoing: Nothing in this Agreement, nor any of its terms and provisions, nor any of the negotiations or proceedings connected with it, constitutes, will be construed to constitute, will be offered in evidence as, received in evidence as, and/or deemed to be evidence of, an admission of liability or wrongdoing by any and/or all of the Town Releasees, and any such liability or wrongdoing is hereby expressly denied by each of the Town Releasees.

10. Future Conduct:

(a) **Joint Statement:** You and the Select Board have agreed to issue a joint statement regarding this Agreement and your employment with the Town, a copy of which shall be attached to this letter. In response to requests for references, the Town, in accordance with its personnel practices, will only provide information relating to wages and dates of employment; provided you direct your reference request to the then current town administrator. You, therefore, agree to address any such reference request to then current town administrator.

(b) **Nondisparagement:** You agree not to make disparaging, critical or otherwise detrimental comments to any person or entity concerning the Town Releasees; the products, services or programs provided or to be provided by the Town; the business affairs, operation, management or the financial condition of the Town; or the circumstances surrounding your employment and/or separation of employment from the Town.

The current Select Board and its current members, collectively or individually, agree not to make disparaging, critical or otherwise detrimental comments to any person or entity regarding your character or your performance as Town Administrator, in any forum or medium, including, but not limited to social media platforms.

The Parties agree that it shall be a material breach of this Agreement for you or the Select Board or any of its current members to violate this section.

(c) **Confidentiality of this Agreement:** You agree that you shall not disclose, divulge or publish, directly or indirectly, any information regarding the substance, terms or existence of this Agreement and/or any discussion or negotiations relating to this Agreement, to any person or organization other than your spouse, accountants or attorneys when such disclosure is necessary for the accountants or attorneys to render professional services. Prior to any such disclosure that you may make, you shall secure from your spouse, attorney or accountant their agreement to maintain the confidentiality of such matters. Notwithstanding the foregoing, you (and any agent

on your behalf) may disclose to any and all persons, without limitation of any kind, the tax treatment and tax structure of this transaction and all materials of any kind that are provided to you, if any, relating to such tax treatment and tax structure. For this purpose, "tax structure" is limited to any facts relevant to the U.S. federal and state income tax treatment of the transaction and does not include information relating to the identity of the parties.

(d) Disclosures: Nothing herein shall prohibit or bar you from providing truthful testimony in any legal proceeding or in communicating with any governmental agency or representative or from making any truthful disclosure required, authorized or permitted under law; provided, however, that in providing such testimony or making such disclosures or communications, you will use your best efforts to ensure that this Section is complied with to the maximum extent possible.

(e) Non-Disclosure of Confidential Information: You agree that you shall keep confidential all matters entrusted to you as an employee of the Town and shall not rely upon, use or attempt to use, or disclose or attempt to disclose, any confidential information.

11. Representations and Governing Law:

(a) This Agreement sets forth the complete and sole agreement between the parties and supersedes any and all other agreements or understandings, whether oral or written. This Agreement may not be changed, amended, modified, altered or rescinded except upon the express written consent of both the Select Board and you.

(b) If any provision of this Agreement, or part thereof, is held invalid, void or voidable as against public policy or otherwise, the invalidity shall not affect other provisions, or parts thereof, which may be given effect without the invalid provision or part. To this extent, the provisions and parts thereof of this Agreement are declared to be severable. Any waiver of any provision of this Agreement shall not constitute a waiver of any other provision of this Agreement unless expressly so indicated otherwise. The language of all parts of this Agreement shall in all cases be construed according to its fair meaning and not strictly for or against either of the parties.

(c) This Agreement and any claims arising out of this Agreement (or any other claims arising out of the relationship between the parties) shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts and shall in all respects be interpreted, enforced and governed under the internal and domestic laws of Massachusetts, without giving effect to the principles of conflicts of laws of such state. Any claims or legal actions by one party against the other shall be commenced and maintained in a state or federal court located in Massachusetts, and you hereby submit to the jurisdiction and venue of any such court.

(d) You represent that you have not been subject to any retaliation or any other form of adverse action by the Town Releasees for any action taken by you as an employee of the Town or resulting from your exercise of or attempt to exercise any statutory rights recognized under federal, state or local law. In addition, you represent that you have not been subject to any sexual harassment or sexual abuse by any Town Releasee.

(e) You may not assign any of your rights or delegate any of your duties under this Agreement. The rights and benefits of this Agreement shall inure to the benefit of the Town's successors and assigns.

12. Compliance with Section 409A of the IRS Code: This Agreement is intended to comply with the requirements of Section 409A of the Internal Revenue Code of 1986, as amended (the "Code"), and shall be interpreted and construed consistently with such intent. The payments to you pursuant to this Agreement are also intended to be exempt from Section 409A of the Code to the maximum extent possible, under either the separation pay exemption pursuant to Treasury Regulation Section 1.409A-1(b)(9)(iii) or as short-term deferrals pursuant to Treasury Regulation Section 1.409A-1(b)(4). None of the Town Releasees shall be liable to you for any tax, interest, or penalties you may owe as a result of compensation paid to you under this Agreement, and the Town Releasees shall have no obligation to indemnify or otherwise protect you from the obligation to pay any taxes or penalties to which you may be subject under Section 409A. If the terms of this Agreement would subject you to taxes or penalties under Section 409A, the Town and you shall cooperate to amend the terms of this Agreement to avoid such Section 409A penalties to the extent possible, without the Town incurring any additional payment obligation of any kind. To the extent any amounts under this Agreement are payable by reference to your "termination of employment," such term shall be deemed to refer to your "separation from service," within the meaning of Section 409A.

Notwithstanding anything herein to the contrary, the Town shall have no liability to you or to any other person if the payments and benefits provided in this Agreement that are intended to be exempt from or compliant with Section 409A are not so exempt or compliant.

13. Effective Date: After signing this letter, you may revoke this Agreement for a period of seven (7) days following said execution. The revocation must be in writing and must be received within the 7-day revocation period. The Agreement shall not become effective or enforceable and no payments will be made pursuant to this Agreement until this revocation period has expired ("Effective Date"). To exercise your right of revocation, you must ensure receipt of your written revocation by the President of the Town prior to expiration of the 7-day revocation period.

If this letter correctly states the agreement and understanding we have reached, please indicate your acceptance by countersigning the enclosed copy and returning it to me.

Very truly yours,

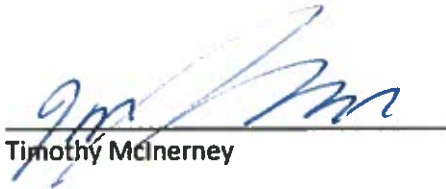
Town of Grafton

By: 

Peter Carlson, Chair
Select Board

I REPRESENT THAT I HAVE READ THE FOREGOING AGREEMENT, THAT I FULLY UNDERSTAND THE TERMS AND CONDITIONS OF SUCH AGREEMENT AND THAT I AM KNOWINGLY AND VOLUNTARILY EXECUTING THE SAME. IN ENTERING INTO THIS AGREEMENT, I DO NOT RELY ON ANY REPRESENTATION, PROMISE OR INDUCEMENT MADE BY THE TOWN OR ITS REPRESENTATIVES WITH THE EXCEPTION OF THE CONSIDERATION DESCRIBED IN THIS DOCUMENT.

Accepted and Agreed to:



Timothy McInerney

Date: 7/30/2020



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Public Statement
Grafton Select Board
July 31, 2020

After some discussion, Town Administrator Timothy McInerney and the Select Board have mutually agreed to part company, effective today, July 31, 2020. The Select Board thanks Mr. McInerney for his years of service and wishes him well in his future endeavors. The parties have entered into a mutually agreeable separation agreement that is based on the previously negotiated severance provision in his employment agreement with the Town. The separation agreement is a public record, and available upon request.

As this is a personnel matter, neither the Board nor its individual members will be commenting further.

CIV/SB
PC