

**FIRST AMENDMENT TO LONDONDERRY TOWN MANAGER'S EMPLOYMENT
AGREEMENT**

This First Amendment to the Londonderry Town Manager's Employment Agreement ("Agreement") is entered as of July 20, 2023, by and between the **Town of Londonderry**, a municipal corporation with an address of 268B Mammoth Road, Londonderry, New Hampshire (the "Town"), and **Michael Malaguti**, an individual who resides at [REDACTED] ("Malaguti") (collectively, the "Parties").

WHEREAS, the Town desires to continue to employ Malaguti as Londonderry Town Manager to exercise all of the duties and responsibilities afforded the Town Manager pursuant to RSA Chapter 37 and the Town of Londonderry Charter; and

WHEREAS, Malaguti desires to be employed as Londonderry Town Manager;

WHEREAS, the Parties wish to amend certain provisions of the Londonderry Town Manager's Employment Agreement ("Employment Agreement") that was entered into as of April 11, 2022 and incorporate the amendments into a single document entitled First Amendment to Londonderry Town Manager's Employment Agreement (collectively, "the Agreement")

NOW THEREFORE, in consideration of the mutual promises hereinafter contained, the Parties mutually agree as follows:

1. Term of Employment.

The term of this Agreement began as of April 11, 2022 and unless terminated earlier pursuant to section 4 below, shall continue for a period of three (3) years until April 11, 2025. On or before January 15, 2025, the Londonderry Town Council ("Council") shall advise Malaguti if it desires to extend the Agreement, and if so, shall extend an offer to secure Malaguti's retention as Town Manager, and Malaguti shall have until February 25, 2025 to accept the Town's offer.

2. Duties.

The Town shall employ Malaguti as Londonderry Town Manager ("Town Manager"), and in that capacity to perform the duties and functions specified in relevant New Hampshire statutes, including RSA Chapter 37, and the Londonderry Town Charter ("Charter"), and to perform other legally permissible duties and functions as assigned by the Council or as necessary for the Town. Malaguti shall perform the duties and functions in compliance with state law, the Town's Ordinances, and the policies and regulations established by the Council. Malaguti is expected to provide timely and candid information to the Council regarding its statutory and Charter obligations, and open and candid feedback regarding the impact of the Council's decisions on the efficient operation of the Town.

Although Malaguti is an attorney, the performance and discharge of his responsibilities as Town Manager shall not be considered the practice of law, and the Town shall not be considered his client.

3. Salary and Benefits.

a. Salary. Malaguti shall receive an annual salary of One Hundred Thirty-Seven Thousand and One Hundred and Fifty Dollars (\$137,150.00), payable in the same increments as other management employees of the Town. Malaguti's salary payments are subject to deductions required by law or as authorized by Malaguti. This annual salary is effective as of April 11, 2023.

b. Insurance. Malaguti shall be entitled to receive the following insurance coverage: (i) the same health insurance options available to the members of the Londonderry Executive Employees Association (LEEA) pursuant to the then-current collective bargaining agreement; (ii) dental insurance through Northeast Delta Dental, Option III, Coverage A - 100%, Coverage B - 80%, Coverage C - 50%, with \$25/\$75 deductible and \$1,000 maximum per year or equal coverage offered shall be single, two-person, or family membership, at no cost to Malaguti other than the deductible; (iii) life insurance in the amount of \$100,000, with benefits for accidental death and dismemberment equal to a maximum of \$100,000, at no cost to Malaguti; (iv) effective August 1, 2023, short-term disability insurance covering non-work related accidents and illness to commence after the 15-day waiting period has been satisfied with a maximum benefit period of twenty-six (26) weeks at sixty-six and two-thirds percent (66 2/3%) of Malaguti's base weekly earnings at the time he became disabled to a maximum of \$1,750.00, at no cost to Malaguti; and (v) effective August 1, 2023, long-term disability insurance covering non-work related accidents and illness to commence after the 180-day elimination period has been satisfied at sixty-six and two-thirds percent (66 2/3%) of Malaguti's base monthly earnings at the time of disability to a maximum benefit of \$7,500.00, at no cost to Malaguti. Between the effective date of this Agreement and August 1, 2023, the short-term disability insurance coverage and the long-term disability insurance coverage then available to Malaguti shall remain in effect.

In any year of this Agreement that Malaguti, on or before June 1, provides written notification to the Town's Personnel Director that he declines health insurance as described in (i) of this section 3b for the Town's succeeding fiscal year, the Town will pay the Town Manager the amount of Five Thousand Dollars (\$5,000.00).

c. Retirement. The Town agrees to execute all necessary agreements for Malaguti's participation in a 457 plan of his choosing. In addition to the base salary paid to Malaguti, the Town agrees to make the following total, annual contributions into the aforementioned 457 plan on Malaguti's behalf: (1) Year one of this Agreement: Thirteen Thousand Dollars (\$13,000.00); Year two of this Agreement: Sixteen Thousand Dollars (\$16,000.00); Year three of this Agreement: Nineteen Thousand Dollars (\$19,000.00). The Town agrees to transfer ownership to a succeeding employer upon Malaguti's resignation or discharge. Pursuant to RSA 100-A:22, the Council exempts Malaguti from compulsory membership in the New Hampshire Retirement System.

d. Leave. Malaguti shall be entitled to the same holidays provided to all other non-union Town employees. Malaguti shall be entitled to twenty-five (25) days of leave (to be used for vacation or sick leave) while employed as Town Manager. Malaguti shall not accrue leave days from one year to a later year. Malaguti is entitled to two (2) days of family sick leave annually while employed as Town Manager. Malaguti shall not accrue family sick days from one

year to a later year. Upon separation from employment as Town Manager, the Town shall pay Malaguti for any unused vacation and sick days on a pro-rated basis.

4. Termination.

The Town may terminate this Agreement with or without cause in accordance with Section 4.4 of the Town Charter. In the event of termination by the Town without cause, the Town and Malaguti agree that Malaguti shall be entitled to a lump-sum cash payment equal to four (4) month's aggregate salary, plus any unused leave and family sick days pursuant to paragraph 3d above, representing liquidated damages, as any calculation of damages would be difficult to ascertain. The Town further agrees to continue all employee benefits for a period of four (4) months beginning with the next full month after the effective termination date.

In the event of termination by the Town with cause, Malaguti shall not be entitled to receive severance or other compensation under this section. For the purpose of this Agreement, "cause" is defined as: (a) an intentional, reckless, or grossly negligent act or omission related to or in connection with the discharge of Malaguti's official responsibilities; or (b) a finding of probable cause for the commission of a crime by any judicial officer or grand jury.

In the event Malaguti intends to resign his position with the Town before the expiration of the term of this Agreement, he shall provide the Council with advance notice of not less than sixty (60) days. In the event that Malaguti resigns as Town Manager, he shall not be entitled to payment of any severance, compensation or benefits. In the event Malaguti fails to provide the Town with advance notice of his resignation of at least sixty (60) days, Malaguti shall pay to the Town a lump-sum cash payment equal to two (2) months' aggregate salary, representing liquidated damages, as any calculation of damages would be difficult to ascertain.

5. Evaluation.

Malaguti shall provide the Council with a written self-assessment of his performance by February 15th of each year of this Agreement. The Council shall meet with Malaguti by March 15th of each year of this Agreement for the sole purpose of reviewing the annual performance evaluation. The focus of the annual evaluation shall be Malaguti's effective discharge of his duties as Town Manager pursuant to section 4.6 of the Town Charter.

6. Disability.

If Malaguti is permanently disabled or otherwise unable to perform his duties because of sickness, accident, injury, mental incapacity, or health for a period of four (4) successive weeks beyond any sick leave and vacation leave to which he is entitled, or for twenty (20) working days over a thirty (30) day working period, then the Town shall have the option of terminating this Agreement, subject to the severance requirements provided for in section 4 above; provided however, that (a) should the provisions of the Family and Medical Leave Act apply, then those provisions shall control, and (b) the Town shall continue to pay the insurance premiums for short-term and long-term disability coverage as may be in effect during the time of such disability or illness for a period not less than the one hundred eighty (180) day

elimination period for long-term disability coverage and/or until the claim is approved or denied by the insurance carrier.

7. Exclusive Employment and Hours of Work.

Malaguti agrees to remain in the exclusive employment of the Town so long as this Agreement shall remain in effect and shall neither accept other employment nor become employed by any other employer without prior approval of the Council. Malaguti recognizes that he must devote a great deal of time outside the normal office hours to the business of the Town to successfully serve as Town Manager. Malaguti shall be expected to devote the time necessary to accomplish his duties and goals and, as a salaried employee, shall receive no compensation in addition to that specified in paragraph 3.

8. Personnel Policy Not to Apply.

It is understood and agreed by the Town and Malaguti that the Town's Personnel Policy does not apply to the relationship between the Town and Malaguti contemplated hereby, and this Agreement exclusively sets forth Malaguti's rights and remedies to the maximum extent allowed.

9. Indemnification.

The Town shall defend, save harmless and indemnify Malaguti against any tort, professional liability claims or demands or other legal action, whether groundless or otherwise, arising out of his performance of duties as Town Manager, unless such claim is asserted or joined by the Town, or brought by a prosecutorial or regulatory agency and the claim alleges criminal conduct, intentional, wanton or willful misconduct, or that the Town is a victim of the conduct alleged in the claim. The Town will compromise and settle any such claims or suit and pay the amount of any settlement or judgment, including insurance deductibles as provided for in the applicable liability policy of the Town.

10. Residency Requirement.

The Town approves Malaguti's residency outside of Londonderry for the duration of this Agreement under Section 4.2 of the Town Charter.

11. Entire Agreement and Amendment.

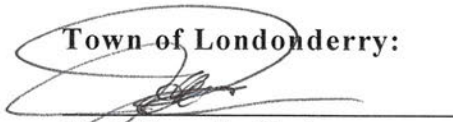
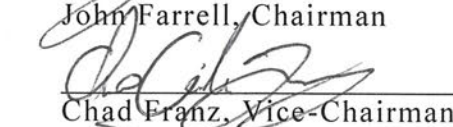
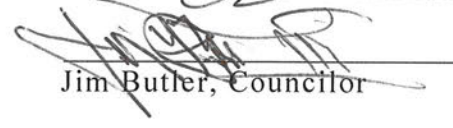
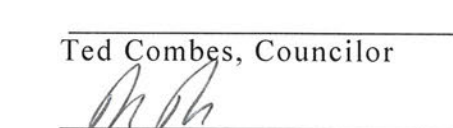
This Agreement is the entire agreement between the parties and supersedes and replaces any other agreement, written or oral, relating to Malaguti's employment as Town Manager, including the terms and conditions of Malaguti's original employment as Assistant Town Solicitor and the terms of Malaguti's original Londonderry Town Manager's Employment Agreement. This Agreement may be amended only by mutual written agreement of the Parties.

12. Jurisdiction and Venue.

The exclusive jurisdiction and venue for enforcement of, or any claim related to, this Agreement shall be the Rockingham County Superior Court.

WHEREFORE, the Parties have signed this First Amendment to Londonderry Town Manager's Employment Agreement, effective as of July 27, 2023.

SIGNATURES:

Town of Londonderry:	
 _____ John Farrell, Chairman	<u>8/14/23</u> Date
 _____ Chad Franz, Vice-Chairman	<u>8/14/23</u> Date
 _____ Jim Butler, Councilor	<u>8-14-23</u> Date
_____ Ted Combes, Councilor	_____ Date
 _____ Ron Dunn, Councilor	<u>8/14/23</u> Date

Michael Malaguti:	
 _____ Michael Malaguti	<u>8/16/23</u> Date