

**TOWN OF WHITMAN, MASSACHUSETTS
CONTRACT OF EMPLOYMENT FOR
THE TOWN ACCOUNTANT**

THIS AGREEMENT, entered into as of the 27th day of June, 2019 by and between the Town of Whitman, Massachusetts, a municipal corporation, acting by and through its Board of Selectmen, hereinafter referred to as “the Board”, who act hereunder in their representative capacity only and without any personal liability to themselves, hereinafter referred to as “the Employer” or “the Town” and Kenneth Lytle of Whitman, Massachusetts, hereinafter referred to as “the Employee” or “Lytle”.

WITNESSETH:

WHEREAS, the Board has appointed Lytle as Town Accountant under M.G.L. c. 41, §55; and,

WHEREAS Lytle has accepted full time employment as the Town Accountant for the Town of Whitman, represents that he is qualified and capable of performing the duties and responsibilities of said position, and will use his best efforts, skills, abilities and training to carry out his duties and responsibilities; and,

WHEREAS, M.G.L. c. 41, §108N authorizes the Town, acting by and through its Board of Selectmen to establish an employment contract for its Town Accountant; and,

WHEREAS, it is the desire of the Town to provide certain benefits, establish certain conditions of employment and to set the working conditions for Lytle; and,

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

1. DUTIES

- 1.1 Lytle shall be responsible for all Duties and Functions as set forth in the attached Job Description, attached hereto as Exhibit "A" and incorporated herein by reference, as if fully stated.)

2. TERM

- 2.1 The term of his Lytle’s appointment and this Agreement shall be effective commencing July 1, 2019 and ending June 30, 2022.
- 2.2 Lytle agrees to remain in the exclusive employ of the Town for the term of this Agreement, being from July 1, 2019, until June 30, 2022, and not to accept other employment or to become employed by any other employer until said termination date, unless said termination date is affected as below provided.

- 2.3 Nothing in this Agreement shall prevent, limit, or otherwise interfere with the right of Employee to resign at any time from his position with the Town, subject only to the provisions set forth in Section 11.3 of this Agreement.
- 2.4 Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the Board to terminate the services of Employee at any time, subject only to the provisions set forth in Section 11 of this Agreement.
- 2.5 Lytle's appointment shall expire on June 30, 2022. On or before July 1, 2022 the Board of Selectmen will decide whether or not to reappoint Lytle for an additional term of years. In the event that the Board votes to reappointment him, Lytle shall remain employed by the Town following the expiration of this Agreement until such time as a successor agreement is reached, or Lytle's employment is terminated.

3. HOURS OF WORK

- 3.1 Lytle's work week is anticipated to include thirty-one (31) business hours concurrent with the regular hours of the Town Hall, together with whatever additional weekday, evening, weekend or holiday hours that are necessary from time to-time in order to properly perform the duties and responsibilities of the position, including, but not limited to, attendance at Selectmen's meetings, Town Meetings, and other meetings at which his attendance would be beneficial to the orderly conduct of the Town's business and operations.
- 3.2 It is acknowledged that the position of Town Accountant is that of an Executive/Administrative nature as that term is used in the Fair Labor Standards Act, its rules and regulations. There shall be no paid overtime or additional compensation for said additional time so long as the position and its duties remains an Executive/Administrative position.

4. SALARY

- 4.1 All salary and fringe benefits provided in this Agreement and obligations of the Parties are subject to annual appropriation by Town Meeting. The Board of Selectmen agrees to request as part of the annual budget process funds sufficient to meet the obligations under this Agreement.
- 4.2. Subject to the terms and conditions of this Agreement, and while engaged in and performing the duties of Town Accountant, the Town agrees to pay Lytle for his services rendered as set forth below. As used in this provision and elsewhere in this Agreement, the annual term for purposes of compensation and other benefit eligibility shall be July 1 through June 30, of each year that this Agreement is in effect.

- 4.2.1 From the date of execution of this Agreement through June 30, 2020, Lytle shall be paid an annual salary of Sixty Eight Thousand One Hundred Twenty-Five Dollars and No Cents (\$68,125.00).
- 4.2.2 Thereafter, Lytle shall be eligible to be considered for a merit-based pay increase on July 1, 2020, and again on July 1, 2021. Said increases shall be based on the results of the performance evaluations set forth in Paragraph 10, below, and subject to funding by Town Meeting.
- 4.3 Salary paid under the provisions of this Agreement shall be payable in installments on the same basis and in the same manner as other employees of the Town of Whitman, subject to such withholdings for income taxes, public retirement and other deductions as are authorized by the Parties or required by law.
- 4.4 Lytle's per diem rate is calculated at the rate of 1/260th of his annual salary.

5. VACATION, SICK, HOLIDAY, BEREAVEMENT AND OTHER LEAVE

- 5.1 Effective July 1, 2019, and each July 1 thereafter, Lytle shall earn vacation time at the rate of 1.25 days per month worked for a total of fifteen (15) days per year, subject to the below provisions:
 - 5.1.1 Vacation days shall be used by the end of each fiscal year in which they are earned, except as otherwise specifically provided herein. Lytle may, with the approval of a majority of the Board of Selectmen at a duly held meeting, carry over up to five (5) days of accrued vacation from one fiscal year to the next fiscal year. Any vacation so carried forward shall be used during the next fiscal year, and if not used by the end of that fiscal year, it shall be forfeited.
 - 5.1.2 Unused vacation days remaining as of June 30 of any year, except to the extent such days may be carried over per the provisions of Section 5.1.1, above, shall be surrendered and shall have no cash redemption value.
 - 5.1.3 In the event that this Agreement is terminated prior to the conclusion of a fiscal year, all accrued and unused vacation time will be paid to Lytle calculated at his then current per diem rate.
- 5.2 Lytle shall be provided with fifteen (15) sick days per year to be used for his own personal injury or illness. Unused sick days may accrue in a personal sick leave bank with said days to be carried over from fiscal year to fiscal year to be used for the sole purpose of providing Lytle with sufficient sick days to bridge the time to the effective date of any short or long-term disability policy that may be in effect. Long-term disability insurance shall be provided for any illness or disability that renders him incapacitated from performing the essential functions of his job. There

shall be no right to payment of unused sick days upon separation of employment or contract termination.

5.3 Lytle shall be granted three (3) paid days per fiscal year for personal reasons. Unused personal leave days remaining as of June 30 of any year shall expire and have no cash redemption value. Personal days may not be carried over from one fiscal year to the next fiscal year. There shall be no right to payment of unused personal days upon separation of employment or contract termination.

5.4 Lytle shall be provided with time off with pay for all federal and state holidays which are provided to other Town Hall Department Heads.

5.5 Lytle shall be provided with up to five (5) days of paid bereavement leave for the death of a member of his immediate family and up to two (2) days for the death of another relative (i.e., grandparents, aunts, uncles or cousins). For purposes of this provision, the term immediate family shall include parent, spouse, sibling, children. Additional bereavement leave may, when necessary, be granted by the Board of Selectmen.

6. HEALTH INSURANCE AND OTHER BENEFITS

6.1 Lytle may participate in such health insurance plans provided to employees of the Town of Whitman to the same extent as any other employee of the Town.

6.2 Lytle may participate in such dental insurance plans provided to employees of the Town to the same extent as any other employee of the Town.

6.3 Lytle may participate in such disability insurance plans provided to employees of the Town to the same extent as any other employee of the Town.

6.4 Lytle may participate in such deferred compensation plans provided to employees of the Town to the same extent as any other employee of the Town.

7. GENERAL EXPENSES

7.1 The Town recognizes that certain expenses of a non-personal and generally job-affiliated nature may be incurred by Lytle and hereby agrees to reimburse or to pay said general expenses, which are pre-approved by the Board and incurred in the course of Lytle's employment with the Town, according to normal Town procedures. The Board may require appropriate verification and/or documentation of such expenses prior to approving any such reimbursement.

8. PROFESSIONAL DEVELOPMENT

8.1 Lytle is encouraged to participate in conferences, programs, seminars, and courses to develop his skills and abilities as a Town Accountant. The Town shall provide a reasonable amount of time for these activities, including attendance and/or

presentations at professional meetings, without loss of vacation or other leave, and will reimburse or pay for Lytle to attend such courses and/or seminars, subject to the availability of funding and with the prior written approval of the Town Administrator. The Town Accountant is expected to keep the Board fully apprised in advance of his planned activities in this regard on a monthly basis through communication with the Town Administrator. Such participation shall not interfere with Lytle's performance of his duties as Town Accountant.

- 8.2 The Town agrees to pay an appropriate amount for the professional dues and subscriptions for Lytle's participation in state and local associations and organizations necessary and desirable for continued professional growth and advancement and for the good of the Town. This provision is subject to prior approval of the Board of Selectmen and the availability of funding.

9. PERFORMANCE EVALUATION

- 9.1 There shall be an annual performance evaluation of Lytle by the Town Administrator, to be held no later than April 1st of each contract year. The purpose of the evaluation is to review Lytle's performance, determine if any improvements or additional training is necessary, determine if changes are needed to the job description and develop mutually agreed upon goals.
- 9.2 The Town Administrator shall provide Lytle with a written summary of the evaluation. The Town Administrator shall provide an adequate opportunity for Lytle to discuss his evaluation, and attach any written comments, before the review is made a part of Lytle's personnel record. A copy of this review shall be provided to the Board of Selectmen upon completion for consideration during deliberations related to salary increases under Section 4.2.2. If Lytle disputes any portion of an evaluation, he shall be permitted to memorialize this dispute in a separate document which shall be attached to and incorporated into the evaluation.

10. INDEMNIFICATION

- 10.1 To the extent allowed under M.G.L. c. 258, the Town shall defend, save harmless and indemnify Lytle 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 duties as Town Accountant. The Town shall not be required to indemnify Lytle for any claims arising out of conduct determined by a court of competent jurisdiction to be outside the scope of Lytle's duties or to be the result of gross negligence or willful, criminal, or malicious misconduct. The Town may compromise and settle any claim or suit for which Lytle is indemnified, and pay the amount of any settlement or judgment rendered thereon. The Town shall obtain Lytle's consent to settle any such claim, and such consent shall not be unreasonably withheld by Lytle. The Town also shall not indemnify Lytle for any costs associated with any claims or actions brought under

Section 11 of this contract. This provision shall survive the termination of this contract.

11. TERMINATION, SUSPENSION, AND SEVERANCE PAY

- 11.1 It is agreed that Lytle may be discharged or disciplined by the Board of Selectmen only for good cause, upon proper notice and only after a hearing at which he shall have the right to be represented by counsel of his choosing, at his own expense. Lytle shall have the option of choosing whether or not such hearing shall be closed to the public or be held as an open or public hearing. The term "proper notice" as it appears in this section means that written notice of the hearing must be given to the Employee at least (10) business days prior to the date of the hearing and must set forth the following: (i) the date, time and location of the hearing; (ii) the reason for the hearing in sufficient detail to allow response; and (iii) the range of discipline considered. The Board may place Lytle on paid administrative leave pending such hearing.
- 11.2 In the event that Lytle is terminated by the Board without good cause as set forth in section 11.1, above, then, the Board agrees to pay Lytle a lump sum cash payment equal to three (3) months aggregate salary plus pay for any unused vacation time; provided, however, that in the event Lytle is terminated for good cause as set forth in section 11.1, then, the Town shall have no obligation to pay the aggregate severance sum, referenced herein.
- 11.3 In the event Lytle voluntarily resigns his position with the Town before the expiration of his appointment and this Agreement, Lytle shall give the Board ninety (90) calendar days written notice in advance of the effective resignation date, unless the parties otherwise agree in writing. Lytle shall be entitled to receive pay for any unused vacation time.
- 11.4 If Lytle dies during the term of this Agreement, the employment relationship created by this Agreement will terminate and the Town shall pay Lytle's estate all amounts due for accrued vacation leave and such other amounts due pursuant to this Agreement, as of the date of death.

12. OTHER TERMS AND CONDITIONS OF EMPLOYMENT

- 12.1 Additional Terms and Conditions: The Board, in consultation with Lytle, shall fix any other terms and conditions of employment, as it may determine from time-to-time, relating to Lytle's job performance, provided such terms and conditions are not inconsistent with, or in conflict with, the provisions of this Agreement, the Town by-laws, or any other law.
- 12.2 **Drug and Alcohol Policy:** Lytle shall be subject to the Town of Whitman's Drug and Alcohol Testing Policy as may be in effect and as may be amended from time

to time. A copy of the policy is appended hereto. (See Exhibit "B" attached hereto and incorporated herein by reference.)

- 12.3 Warranty of Credentials: The Employee warrants the validity of the credentials and experience represented to the Town in pursuit of this position and any material misrepresentations made therein may constitute grounds for immediate termination of this Agreement and the Employee's employment.
- 12.4 State Ethics Laws: The Employee is expected to familiarize himself with all applicable ethics laws of the Commonwealth of Massachusetts and is expected to comply in all respects with such laws during the term of this Agreement and in connection with the performance of his job duties and responsibilities.
- 12.5 Salary Deductions: This Agreement shall be deemed to have been entered into subject to all provisions of the laws of the Commonwealth of Massachusetts and shall conform to regulations governing deductions from the above-stated compensation with reference to withholding tax and retirement provisions, and any other deductions authorized by the Employee and agreed upon by the parties or required by law.

13. NOTICES

- 13.1 Any and all notices required or permitted to be given under this Agreement will be sufficient if furnished in writing, sent by registered mail to Lytle's last known address, in the case of Employee, or to the Town's principal office in Whitman, Massachusetts, in the case of the Town.

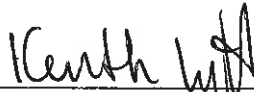
14. GENERAL PROVISIONS

- 14.1 Lytle recognizes his obligation to maintain any certification or licenses required by the Town, the Commonwealth of Massachusetts or other regulatory agencies and will assure his compliance during the term of this Agreement.
- 14.2 The text herein shall constitute the entire Agreement between the parties. If any provision, or 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.
- 14.3 This Agreement may be amended at any time by mutual written consent of the parties, except as otherwise provided herein.
- 14.4 Lytle understands and agrees that all compensation and benefits provided under this Agreement are subject to appropriation from year to year by the Town Meeting. In the event that the Town Meeting does not vote to fund the monetary provisions, said provisions shall be unenforceable and this Agreement shall be reopened for further negotiations.

- 14.5 This Agreement supersedes all previous contracts and agreements, which are rendered null and void upon the effective date of this contract.
- 14.6 This Agreement shall be construed and governed by the laws of the Commonwealth of Massachusetts.
- 14.7 This Agreement shall be executed in two counterparts, each of which shall be deemed to be an original, and both of which, taken together, shall be deemed one and the same instrument.

IN WITNESS THEREOF, the Town of Whitman has caused this Agreement to be executed in its corporate name by its Board of Selectmen, and Kenneth Lytle has set his hand and seal, as of the day and year first written above.

Dr. Carl F. Kowalski, Chair



Kenneth Lytle



Daniel L. Salvucci, Vice Chair



Brian J. Bezanson, Clerk



Randy Lamattina, Member

Justin Evans, Member