

EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT ("Agreement"), made this 5th day of November 2018, by and between Township of Long Beach ("Employer"), whose address is 6805 Long Beach Boulevard, Brant Beach, New Jersey 08008, and Kyle Ominski ("Employee").

RECITALS

WHEREAS, Employee was previously as the Business Administrator for the Township of Long Beach; and

WHEREAS, Employee was also previously hired and designated by Employer as a clerk and remains a clerk for a significant portion of Employee's duties; and

WHEREAS, Employer and Employee entered into a certain Employment Agreement relating to the Employee's duties as Business Administrator in 2016 and which expires on December 31, 2018; and

WHEREAS, the Employer has added additional titles and duties to the Employee, including, but not limited to, the administration of the municipal transportation system; and

WHEREAS, in consideration for the continued employment of Employee by Employer as the Business Administrator, and the mutual benefits derived therefrom, Employer and Employee have agreed to enter into a written employment agreement ("Employment Agreement") that shall memorialize the Business Administrator's duties and compensation package going forward.

NOW, THEREFORE, in consideration of the foregoing Recitals, which are expressly incorporated and made material terms of this Agreement by reference thereto, and intending to be legally bound, the parties agree as follows.

1. **Employment.** Employer employs the Employee and Employee accepts employment pursuant to the terms and conditions of this Agreement, as well as the statutes of New Jersey and the ordinances and policies of the Township of Long Beach in effect now and as modified by statute, ordinance, or policy in the future.
2. **Term.** This Agreement sets forth the terms and conditions of Employee's employment with Employer during the period January 1, 2019, to December 31, 2021. In the event that neither termination procedures nor a new agreement is executed by December 31, 2021, this Agreement shall continue in force and effect from year to year thereafter until a new agreement is reached.
3. **Compensation.** For the services rendered by Employee to Employer and in accordance with the ordinance lawfully adopted by Employer that sets forth the agreed upon salary range for the positions of clerk and Business Administrator of the Township of Long Beach, Employer shall pay the Employee an annual salary of twenty-five thousand dollars for the Employee's employment as the Business Administrator and performance of the additional duties, including, but not limited to administration of the municipal transportation system. Employee shall continue to receive the annual base salary one-hundred and fifteen-thousand dollars for his civil service designation and duties as clerk for a total annual salary of one-hundred and forty-thousand dollars. Employee shall be paid upon the same schedule, in the same manner, and shall

5. **Holidays.** Employee shall be entitled to the paid holidays adopted by Employer and set forth in the Township of Long Beach Employee Handbooks and Employment Policies and Procedures Manual.
6. **Personal Days:** The Employee shall be entitled to annual paid personal days adopted by Employer and set forth in the Township of Long Beach Employee Handbooks and Employment Policies and Procedures Manual, except that notice of and authorization of personal days shall be provided by the Mayor.
7. **Sick Days:** The Employee shall be entitled to annual sick days adopted by Employer and set forth in the Township of Long Beach Employee Handbooks and Employment Policies and Procedures Manual.
8. **Disability.** Employer shall contribute to the New Jersey State Disability Fund on behalf of the Employee.
9. **Vacation Days.** Employee shall be entitled to annual vacation days adopted by Employer and set forth in the Township of Long Beach Employee Handbooks and Employment Policies and Procedures Manual.
10. **Health Benefits.** Health benefits for the Employee and his family shall be provided by the Employer during the term of this Agreement as set forth in the Township of Long Beach Employee Handbooks and Employment Policies and Procedures Manual.
11. **Exempt Employee.** The Business Administrator for the Township of Long Beach is a management position, and, therefore, Employee cannot always rely on a standard set of hours of employment to effectively meet the responsibilities of the position. Both Employer and Employee understand this premise and agree that Employee is an "exempt employee" pursuant to the "Fair Labor Standard Act" for the purposes of overtime and comp time. Accordingly, the Township and Employee agree there shall be no "compensation time" or overtime for work performed by Employee and the total compensation due Employee is set forth in and shall be in accordance with the terms of this Agreement. Employee shall devote the time and effort that is necessary for Employee to fully and faithfully perform the duties and responsibilities of Business Administrator. Employee agrees to perform and shall at all times perform his duties faithfully, industriously, and to the best of his ability, experience, and talent all of the duties and responsibilities that may be required of him. In accordance herewith, Employee shall be required to refrain from performing and perform as follows.
 - A. Employee shall not be engaged by and/or be in the employ of any other person or entity during her employment unless Employee receives advance written approval by the Mayor.
 - B. Employee shall, as required by Township, attend various Township functions including, but not limited to, the following.
 - i. Normal weekly hours as set by the Employee's Department Head, except that same shall not exceed seventy (70) biweekly hours and shall be required pursuant to the applicable flex time schedule.
 - ii. All meeting of the Board of Commissioners.
 - iii. Special sessions held by the Board of Commissioners.

various pieces of equipment (*i.e.*, cellular phone, pager, PDA, laptop *etc.*), such equipment shall be used only for the purposes of Employer related business and the determination of "related business" shall rest solely with the Mayor. Employee shall be responsible for the care and security of any such devices and shall reimburse Employer for any loss or damages while in Employee's control. Any travel undertaken on behalf of Employer shall be in accordance with the travel policy of the Employer in effect at that time and shall be with the prior approval of the Mayor. Employer shall, as it deems necessary, at the discretion of the Mayor, provide for the opportunity for the Employee to attend various courses, conferences, and seminars to advance the Employee's knowledge and expertise. Said attendance shall not be charged against any personal or vacation time off so long as it has been approved in advance by the Mayor.

13. **Termination.** Employee may terminate this Agreement upon ninety (90) calendar day's written notice to the Board of Commissioners. Employer may terminate this Agreement with a majority vote of the Board of Commissioners and upon ninety (90) calendar day's written notice, except that Employee may be terminated for cause immediately in accordance with the laws of the State of New Jersey, the Township of Long Beach Code, and all Employee Handbooks and Employment Policies and Procedures Manuals. In the event that Employee resigns his employment pursuant to the terms herein, Employee shall be paid his compensation pursuant to the terms of this Agreement until Employee's last day of employment. If Employee is terminated without cause, Employee shall receive a six (6) month severance payment. Termination of the Employee pursuant to this Agreement shall only affect the Employee's position and title as Business Administrator for the Township.

14. **Notices.** Any notice required or desired to be given under this Agreement shall be deemed given if in writing sent by certified mail to his residence in the case of the Employee or its principal office in the case of the Employer.

15. **Assignment.** Employee acknowledged that the services to be rendered by him are unique and personal. Accordingly, Employee may not assign any of his rights or delegate any of his duties or obligations under this Agreement. The rights and obligations of Employer under this Agreement shall inure to the benefit of and shall be binding upon the successors and assigns of Employer.

16. **Miscellaneous.**

A. **Governing Law.** This Agreement is made under and shall be construed according to the laws of the State of New Jersey. Any dispute shall be venued in the Superior Court of New Jersey, Ocean County.

B. **Modification.** All additions or modifications to this Agreement must be made in writing and must be executed by both parties.

C. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement. The counterparts may be executed and delivered by facsimile or other electronic signature by any of the parties to any other party and the receiving party may rely on the receipt of such document so executed and delivered by facsimile or other electronic means as if the original had been received.

D. **Authorization.** The parties represent and warrant that they have the authority to

and agreements between the parties, whether oral or written. The parties agree that they have not relied on any representation, assertion, guarantee, warranty, collateral contract, or other assurance, except those set forth in this Agreement. The parties waive all rights and remedies, at law or in equity, arising or which may arise as the result of a party's reliance on such representation, assertion, or any other assurance.

- H. Construction. The parties acknowledge that each participated in the negotiation and drafting of this Agreement with the assistance of counsel or after having been advised to retain counsel and waive the defense of *contra proferentem*, i.e., any part thereof may be ambiguous and therefore construed against any Party as the drafter.
- I. Force Majeure. Neither party is liable for any default or delay in the performance of any of its obligations under this Agreement (other than failure to make payments when due) if such default or delay is caused, directly or indirectly, by forces beyond such party's reasonable control, including, without limitation, fire, flood, acts of God, labor disputes, accidents, acts of war or terrorism, interruptions of transportation or communications, supply shortages or the failure of any third party to perform any commitment relative to the production or delivery of any equipment or material required for such party to perform its obligations hereunder.
- J. Headings. The headings herein are for convenience only and are not part of this Agreement.
- K. Severability. All rights and restrictions contained in this Agreement may be exercised and shall be applicable and binding only to the extent that they do not violate any applicable laws and are intended to be limited to the extent necessary so that they will not render this Agreement illegal, invalid, or unenforceable. If any provision or portion of any provision of this Agreement shall be held to be illegal, invalid, or unenforceable by a court of competent jurisdiction, the remaining provisions or portions thereof shall remain in full force and effect.
- L. Effective Date. The effective date of this Agreement shall be the date upon which the last party executes this Agreement.

IN WITNESS WHEREOF, the parties, intending to be legally bound hereby, have signed this Agreement on the date set next to their signatures below.

WITNESSES:

Marcella G. Valle
11-1-18

Dated:

Marcella G. Valle
11/1/18

TOWNSHIP OF LONG BEACH

By:

[Signature]

EMPLOYEE

By:

[Signature]