

RELEASE AND VOLUNTARY RESIGNATION AGREEMENT

This Release and Voluntary Resignation Agreement (“Agreement”) outlines the terms of the Cliff Marchant’s (“Marchant”, “you” or “your”) voluntary resignation from employment with the Town of Ogunquit (“Town”).

WHEREAS Cliff Marchant was employed as Director of Administrative Services for the Town of Ogunquit since May 2, 2010.

WHEREAS Marchant has notified the Town of his intent to resign voluntarily from employment with the Town for personal reasons effective March 12, 2017.

WHEREAS the Town will accept Marchant’s resignation effective March 12, 2017.

WHEREAS Marchant and the Town agree to release each other of claims against each other pursuant to the terms of this Agreement.

IT IS HEREBY MUTUALLY AGREED:

- A. You, Cliff Marchant, will resign from employment with the Town effective March 12, 2017 (“Resignation Date”). Your resignation is irrevocable.
- B. In consideration of this Agreement, and the releases contained herein, you will receive the following benefits:
1. You will receive a weekly salary at your current rate of pay, which will be paid in installments in accordance with current payroll practices until your Resignation Date. The Town will withhold all applicable deductions from this amount including, but not limited to, deductions for taxes and your health insurance.
 2. Your health insurance and other benefits shall continue through the Resignation Date, and the Town shall continue to cover the employer contributions for benefits through the Resignation Date.
- C. You have 21 days from the date you receive this Agreement to sign this Agreement. After you sign and return this Agreement, payment will be made on the next regular pay day following the expiration of the 7 day revocation period described in Section G.3 of this agreement, if you do not revoke this Agreement.
- D. For the purposes of this Agreement, “applicable deductions” shall include, but shall not be limited to any federal, state, or local taxes required to be withheld from amounts paid to you pursuant to this Agreement or otherwise due from the Town, and any other amounts that the Town may be legally required to deduct or you have voluntarily elected to have deducted from your earnings.

E. In exchange for and in consideration of the payments and benefits described in paragraph B, above, which payments and benefits you acknowledge you would not otherwise be entitled to receive, you knowingly and voluntarily waive, release and discharge the Town from all rights, claims, complaints, causes of action, demands, and actions of every kind and nature whatsoever, both known and unknown, which you have ever had, or may now have against the Town, or any of its officers, select board members, agents, employees, representatives, insurers, employee benefit plans, successors and assigns, (“persons associated with the Town”), including any claims arising out of or connected to your employment relationship or the resignation of your employment with the Town. You agree that you have executed this Agreement on your own behalf, and on behalf of any heirs, agents, representatives, successors and assigns that you may have now or in the future.

F. You agree that this release includes, but is not limited to, claims which arise under Maine statutes (including Title 30-A), the Age Discrimination in Employment Act of 1967, as amended, Title VII of the Civil Rights Act of 1964, as amended, The Employee Retirement Income Security Act of 1974, The Rehabilitation Act of 1973, The Americans with Disabilities Act, as amended, The Equal Pay Act, Executive Order 11246, The Vietnam-Era Veterans Readjustment Assistance Act, The Immigration and Nationality Act, The Uniformed Services Employment and Reemployment Rights Act, the National Labor Relations Act, the Fair Labor Standards Act, the Maine Human Rights Act, the federal and state Family Medical leave Act, the Town of Ogunquit Charter, Personnel Rules, Ordinances and other Town policies, and any other federal, Maine, or local law dealing with discrimination on the basis of gender, race, color, national origin, religion, disability, age, sexual orientation, gender identify, gender expression, or any other protected classification. You agree that this release includes matters based on theories of breach of express or implied contract, tort, whether negligent or intentional, breach of good faith and fair dealing, promissory estoppel, wage claims, wrongful or retaliatory discharge, harassment, fraud, omission or misrepresentation, whether based on statute, common law, public policy, or otherwise.

G. The following information relates to any claims that you may wish to pursue under the Age Discrimination in Employment Act of 1967, as amended by the Older Workers Benefit Protection Act.

1. You recognize that among the claims you are giving up are claims and benefits which you may have under the Age Discrimination in Employment Act (the “ADEA”), a federal law. You hereby release any claims you have against the Town under the ADEA, known or unknown, arising from your employment relationship or the resignation of your employment relationship with the Town. This provision does not prevent you from filing an age discrimination charge with the Equal Employment Opportunity Commission or the appropriate state agency.
2. You agree that the payments and benefits offered to you under this Agreement are more valuable than any payments or benefits that you would otherwise be entitled to receive. You understand that you are

required to sign this Agreement in order to obtain the benefits and payments described in paragraph B, above, and that said benefits constitute consideration for this Agreement.

3. You have seven (7) days from the date that you sign this Agreement to revoke and cancel this Agreement. This Agreement will have no effect until the end of the revocation period.
4. The Town hereby advises you to consult an attorney before signing this Agreement. Because this is a legally binding document, you should thoroughly and carefully review its terms and understand the effect of the Agreement before signing it. You acknowledge that, pursuant to paragraph N you have been given the opportunity to consider this Agreement for twenty-one (21) days before signing it.

H. You agree not to file a lawsuit against the Town or those associated with the Town based on any claim arising from matters within the scope of the releases in paragraphs E, F, G and H, above. This does not prevent you from filing an administrative complaint or charge with the Maine Human Rights Commission or Equal Employment Opportunity Commission or filing a claim to challenge the validity of this Agreement. The consideration provided for in this Agreement shall be the sole monetary or other relief provided for the claims that you are releasing, and you understand that even if you file such an administrative complaint with the EEOC or the Maine Human Rights Commission, you are giving up any claim for damages, reinstatement or any other monetary relief.

I. You also agree that you will keep confidential all information of the Town which is confidential under Maine law.

J. You agree that within 3 days of your execution of this Agreement, you will return all tools, equipment, documents, papers, materials, Town records, credit cards, keys, ID badge, and other property of or relating to the Town in your possession and that you will not keep copies of any confidential documents belonging to the Town after your Resignation Date.

K. You agree that in the future you will not, and will not direct others, to disparage the Town or persons associated with the Town. The Acting Town Manager and the Select Board agree that in the future they will not, and will not direct others, to disparage you. If the Town receives a request for a reference from a prospective future employer, it will only provide your dates of employment and salary.

L. You agree that you have not relied upon any representations, promises or agreements of any kind made to you in connection with your decision to enter this Agreement except for those set forth herein. You also understand that no Town representative has authorization to make any representation contrary to or inconsistent with the terms of this

Agreement. This Agreement contains the entire Agreement between you and the Town and fully supersedes and replaces any and all prior and contemporaneous Agreements, representations, promises or understandings of any kind between you and the Town.

M. You state and admit that the Town has taken no action interfering with any right you have to file any charge, suit, claim or other process with any federal, state or local judicial or administrative agency regarding your employment or your resignation. You agree that you will not re-apply for employment with the Town.

N. You acknowledge that you had twenty-one (21) days from receipt of this Agreement in which to consider whether to accept its terms by signing and returning it to Mark O'Brien at 23 School Street, Ogunquit, Maine 03907. You agree that you have signed this Agreement freely and voluntarily and that you have not been threatened or coerced. You acknowledge that to the extent that you have signed this Agreement prior to the end of the twenty-one (21) day period allowed to you, you have done so for your own personal reasons, that your decision to do so is knowing and voluntary and is not induced by fraud, misrepresentation, or a threat to withdraw or alter the offer prior to the expiration of the twenty-one (21) day period.

O. You also understand that for a period of seven (7) days following your submission of this Agreement to the Town, you have the right to revoke this Agreement for any reason or no reason at all. To revoke this Agreement you must submit a written revocation signed by you to Mark O'Brien at 23 School Street, Ogunquit, Maine 03907, on or before the end of that seven (7) day period. If you timely revoke this Agreement, then it will be null and void and you will not receive the benefits outlined herein. If you do not revoke this Agreement, it will become effective, enforceable and irrevocable on the eighth day after it is submitted to the Town and you will receive the payments or benefits described herein.

P. You agree that this Agreement shall be governed by the laws of the State of Maine. The provisions of this Agreement are severable. If any portion of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable or to conflict with any federal, state, or local law, such portion or portions of this Agreement are hereby declared to be of no force or effect in such jurisdiction, and this Agreement shall otherwise remain in full force and effect and be construed as if such portion had not been included. In the event that any provision of this Agreement is held to be unenforceable for being unduly broad as written, such provision shall be deemed amended to narrow its application to the extent necessary to make the provision enforceable according to applicable law and shall be enforced as amended.

Q. You agree that if any dispute involving this Agreement (including, but not limited to, the validity of this Agreement), or any other aspect of your employment relationship with the Town arises, then at its sole option, the Town may require that the dispute be determined through binding arbitration in Ogunquit, Maine before a single arbitrator selected jointly by the parties. The arbitration shall be conducted in accordance with the American Arbitration Association's Employment Arbitration rules and Mediation Procedures, amended and effective July 1, 2006 (the "AAA Arbitration Rules"). If the parties cannot agree on an arbitrator during a 30 day period after the dispute begins, the arbitrator shall be selected in accordance with the AAA Arbitration Rules.

You also agree to waive your right to a jury trial if the Town does not exercise its sole option to arbitrate the dispute. You agree that if the dispute is not arbitrated, any action involving this Agreement shall be brought in state or federal court in Maine.

YOU HAVE CAREFULLY READ THIS AGREEMENT AND KNOW AND UNDERSTAND ITS CONTENTS. YOU EXECUTE IT AS YOUR OWN FREE ACT AND DEED. YOU ACKNOWLEDGE THAT YOU HAVE BEEN ADVISED TO CONSULT WITH AN ATTORNEY PRIOR TO SIGNING THIS AGREEMENT AND THAT YOU FULLY UNDERSTAND THE TERMS AND CONDITIONS OF THIS AGREEMENT TO BE A FULL AND FINAL RELEASE OF ALL CLAIMS WITH FINAL AND BINDING EFFECT.

[Signature page to follow.]

Dated: January 3, 2017

Cliff Marchant


Signature

The Town of Ogunquit

By: Barbara Dailey
Its: Chair of the Select Board

ACKNOWLEDGEMENT

I, Cliff Marchant acknowledge that I first received this Release and Resignation Agreement January 3, 2017.


Clifford Marchant