

EMPLOYMENT AGREEMENT

BETWEEN

TOWN OF WINCHENDON

AND

JUSTIN SULTZBACH

TOWN MANAGER

THIS AGREEMENT, pursuant to Chapter 41, Section 108N of the Massachusetts General Laws, made and entered into this 21st day of February 2023, by and between the Town of Winchendon, Commonwealth of Massachusetts, a municipal corporation, hereinafter called the "Town," acting by and through its Board of Selectmen, hereinafter called "Board", and Justin Sultzbach, hereinafter called "Town Manager", as follows:

WITNESSETH:

WHEREAS, Mr. Sultzbach is currently employed by the Town in the position of Town Manager;

WHEREAS, in accordance with Chapter 41, Section 108N of the General Laws, the Town and Mr. Sultzbach are parties to an employment agreement for the period of May 17, 2021 through June 30, 2024 (hereinafter "2021 Agreement");

WHEREAS, it is the desire of the parties to modify certain provisions of their 2021 Agreement and extend its term;

WHEREAS, this Agreement shall supersede the parties' 2021 Agreement in all respects; and the parties' 2021 Agreement shall be considered null and void on the effective date of this Agreement;

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

Section I, Functions and Duties of the Town Manager.

The Town hereby re-appoints Justin Sultzbach as Town Manager of said Town, and the Town Manager accepts said re-appointment. The term of the appointment shall run concurrently with the term of this Agreement. The Town Manager shall be the Chief Administrative Officer of the Town. The Town Manager shall perform the duties specified in the Town Charter and such other duties as the Board shall from time to time legally assign to him.

Section II, Term.

This Agreement shall become effective March 27, 2023, and shall be in full force and effect until March 26, 2026. The Agreement and appointment shall be for a term of three (3) years, subject to Sections III and XIII of this Agreement, and shall be binding on the Town in each year of its duration.

Section III, Termination and Severance Pay.

- A. The Board may terminate the Town Manager in accordance with Section 4-4 of the Town Charter, which is incorporated herein by reference.
- B. In the event the Town Manager is terminated by the Town prior to the expiration of the term of this Agreement, the Town agrees that it shall pay to the Town Manager a lump sum cash payment equal to six (6) months aggregate salary, which amount shall be paid to the Town Manager on or before the

effective date of termination of his employment; provided, however, that in the event the Town Manager is terminated for gross misconduct in office, the Town shall have no obligation to pay the aggregate severance sum provided for in this paragraph.

- C. In the event the Town Manager voluntarily terminates his or her position with the Town before the expiration of the term of this Agreement, the Town Manager shall give the Town sixty (60) day's written notice in advance, unless the parties agree otherwise. A copy of the resignation shall be filed with the Town Clerk.
- D. Subsection B of this Section shall survive any termination of this Agreement.

Section IV, Salary.

- A. Effective March 27, 2023, the Town agrees to pay the Town Manager for services rendered under this Agreement, an annual base salary of \$162,500, subject to applicable withholdings and deductions, payable in installments at the same time as other employees of the Town are paid.
- B. Effective March 27, 2024, the Town agrees to pay the Town Manager for services rendered under this Agreement, an annual base salary of \$170,000, with an additional 2.5% cost of living adjustment, subject to applicable withholdings and deductions, payable in installments at the same time as other employees of the Town are paid.
- C. Beginning March 27, 2025, the Town Manager shall be eligible for cost-of-living adjustments and merit increases based upon a successful performance evaluation as described in Section V of this Agreement. The awarding of such increases, the criteria and the amount, shall be at the Board's sole discretion.
- D. If the Town Manager continues in office after the expiration of this Agreement, and there is no successor agreement, he shall continue to receive the latest salary under this Section until such time as his salary shall be otherwise provided for by the Board. This Subsection shall survive the termination of this Agreement.

Section V, Town Manager Evaluation.

- A. The Board shall review and evaluate the Town Manager every year in February. Said review and evaluation shall be based on the goals and objectives developed jointly by the Board and the Town Manager. Further, the Chairman of the Board shall provide the Town Manager with a summary written statement of the evaluation findings of the Board and shall provide an adequate opportunity for the Town Manager to discuss his evaluation in an Open Session with the Board. The individual evaluation of Board Members and the summary evaluation shall be part of the Town Manager's personnel file, subject to Section 22(e) of chapter 30A of the Massachusetts General Laws.
- B. Annually the Board and the Town Manager shall define the goals and objectives which they determine necessary for the proper operation of the Town and the attainment of the Board's policy objectives, and shall further establish a general priority among those various goals and objectives, said goals and objectives to be reduced to writing. The goals shall generally be attainable within the time limits specified and within the annual operating and capital budgets and appropriations provided by the Town and the events that have occurred during the year.

Section VI, Hours of Work.

The Town Manager will devote full time and attention to the business of the Town and will not engage in any other business during office hours, except with the approval of the Board.

It is recognized that the Town Manager must devote a great deal of time outside the normal office hours to the business of the Town, and to that end the Town Manager will be allowed to take reasonable compensatory time off as he or she shall deem appropriate during said normal office hours.

Section VII, Health Insurance, Vacation, Holidays, Sick Leave, Funeral Leave, Jury Duty and Disability Insurance.

- A. The Town shall provide the Town Manager a health insurance policy, similar to other Town employees. The Town Manager, at their discretion, may opt out of said health insurance policy in exchange for an annual one-time payment of \$2,000 for an individual plan or \$4,000 for a family plan. This payment will be made once annually on July 1st of the fiscal year.
- B. The Town Manager shall be entitled to five (5) weeks paid vacation per contract year. A week shall be defined as five (5) working days. Unused vacation days may be carried over from one year to another but shall not exceed twenty (20) days.
- C. The Town Manager shall be granted fifteen (15) sick days per fiscal year. Unused sick days may be accumulated from year to year. Upon the execution of this Agreement, the Town Manager shall also be credited by the Town with fifteen (15) days sick leave in his sick leave account.
- D. Any unused vacation or sick leave remaining at the expiration of this Agreement shall carry over and be credited to the Town Manager if this Agreement is extended.
- E. The Town Manager shall receive the following holidays:

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| New Year's Day | Veteran's Day |
| Memorial Day | Thanksgiving Day |
| Independence Day | Washington's Birthday |
| Labor Day | Patriot's Day |
| Columbus Day | Martin Luther King Day |
| Christmas Day | Juneteenth |

Whenever any of the holidays listed above fall on Saturday, the preceding workday shall be observed as the holiday; whenever any of the holidays listed above falls on Sunday, the following Monday shall be observed as the holiday.

- F. Upon the death of the Town Manager's spouse or his or her children, the Town Manager will be granted leave of five (5) working days without loss of pay. Upon the death of the Town Manager's mother, mother-in-law, father-in-law, sister, brother, sister-in-law, brother-in-law, grandparents or grandchildren, the Town Manager will be granted leave of three (3) working days without loss of pay.
- G. The Town Manager shall receive three (3) days of personal leave each contract year.
- H. In the event that the Town Manager serves as a juror in a Federal Court or in a state Court, he shall receive from the Town the difference between his or her salary and the compensation he received for such jury services, exclusive of any travel or other allowance; provided however, he shall receive his full pay for his first three days of service in a state court.
- I. Should the Town Manager attend the International City Management Association's (I.C.M.A.) Conference or other professional conferences, time spent at such conferences shall not be deducted from his vacation leave and shall be considered as professional development leave.

J. Vacation, sick and personal time will be issued on July 1st of each year for the upcoming fiscal year.

Section VIII, Professional Development.

- A. The Town agrees to pay for the registration, travel and subsistence expenses of the Town Manager for short courses, institutes and seminars that are necessary for his or her professional development subject to the necessary appropriation of funds within the annual budget of the Town Manager/Board of Selectmen and subject to the approval of the Board of Selectmen.
- B. The Town shall pay the Town Manager's registration fee(s), travel and subsistence expenses to and from the I.C.M.A. Annual Conference, Massachusetts Municipal Association's Annual January Conference, and the Massachusetts Municipal Managers' Association Annual Spring Conference.

Section IX, Dues and Subscriptions.

The Town agrees to pay for the professional dues and subscriptions of the Town Manager necessary for his membership in the following professional organizations:

- A. International City Management Association (I.C.M.A.); Massachusetts Municipal Managers' Association;
- B. And any other professional organizations deemed necessary and desirable for his continued professional participation, growth and advancement and for the good of the Town subject to the necessary appropriation of funds within the annual budget of the Town Manager/Board of Selectmen and subject to the approval of the Board of Selectmen.

Section X, Expenses.

- A. The Town Manager shall be reimbursed for any expenses incurred in the performance of his duties, or as an official representative of the Town, including attendance by him at civic or social events.
- B. The Town Manager shall be provided allowances for a vehicle and cell phone, combined total allowance of \$4,300 annually, payable in monthly payments.
- C. The Town Manager shall be provided a life insurance allowance of \$600 annually, payable in monthly payments.
- D. If the Town Manager leaves the employment of the Town and thereafter serves as a witness on behalf of the Town, he shall be paid for each day of preparation and attendance at the trial on a per diem basis, based on his salary at the time of his separation from employment from the Town.

Section XI, Indemnification.

To the extent allowed under G.L. c. 258, the Town shall defend, save harmless and indemnify the Town Manager 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 Manager, even if said claim has been made following his termination from employment, provided that the Town Manager acted within the scope of his duties. The Town shall pay the amount of any settlement or judgment rendered thereon. The Town may compromise and settle any such claim or suit and will pay the amount of any settlement or judgment rendered thereon without recourse to the Town Manager.

The Town shall reimburse the Town Manager for any attorneys' fees and costs incurred by the Town Manager in connection with such claims or suits involving the Town in his professional capacity.

This section shall not apply to any disciplinary action or proceeding being brought by the Board against the Town Manager.

This indemnification shall also apply to the Town Manager after he leaves the employment of the Town.

This section shall survive the termination of this Agreement.

Section XII, Bonding

The Town shall bear the full cost of any fidelity or other bonds required of the Town Manager.

Section XIII, Non-Renewal of Agreements.

If the Board decides not to renew this Agreement at its expiration, the Board shall give the Town Manager written notice at least six (6) months in advance of its intent not to renew this Agreement and/or the Town's Manager's appointment. If the Board fails to give such written notice, this Agreement and its terms and conditions shall be extended for an additional one year period.

If the Board does not give a notice of non-renewal, and the parties fail to negotiate a successor contract by the scheduled termination date of this Agreement, this Agreement and its terms and conditions shall be extended for an additional one year period.

Section XIV, Other Terms and Conditions of Employment.

- A. All provisions of law of the Commonwealth of Massachusetts relating to retirement, health insurance and other fringe benefits shall apply to the Town Manager as they generally apply to other employees of the Town, in addition to said benefits enumerated herein specifically for the benefit of the Town Manager, except as otherwise provided in this Agreement.
- B. All other general provisions of the Town's By-Laws relating to fringe benefits shall also apply to the Town Manager as they apply to other employees of the Town, in addition to the benefits enumerated specifically for the benefit of the Town Manager, except as otherwise provided in this Agreement.
- C. This Agreement shall prevail over any conflicting personnel provisions of the Town By-Laws or Rules and Regulations.

Section XV, No Reduction in Benefits.

The Town shall not at any time during the term of the Agreement reduce the salary, compensation or other benefits of the Town Manager, except to the degree such a reduction is across the board for all other employees of the Town.

Section XVI, Notices.

Notices pursuant to this Agreement shall be given by deposit in the custody of the United States Postal Service, postage prepaid, addressed as follows:

1. TOWN: Chairman of Board of Selectmen
Town of Winchendon
109 Front St.
Winchendon, MA 01475
2. TOWN MANAGER: Justin Sultzbach
142 Sanders Avenue
Lowell, MA 01851

Alternatively, notices required pursuant to this Agreement may be personally served. Notice shall be deemed as given as of the date of personal service or as of the date of deposit of such written notice in the course of transmission in the United States Postal Service.

Section XVII, General Provisions

- A. The text herein shall constitute the entire Agreement between the parties.
- B. This Agreement shall be binding upon and inure to the benefit of the heirs at law and executors of the Town Manager.
- C. If any provision, or any 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.
- D. For the purposes of the Fair Labor Standards Act, the Town Manager shall be an "exempt employee."
- E. The terms of this Agreement shall be subject to annual appropriation by Town Meeting.

IN WITNESS WHEREOF, the Town of Winchendon, Massachusetts, has caused this Agreement to be signed and executed in its behalf by its Board of Selectmen and duly attested by its Town Clerk, and the Town Manager has signed and executed this Agreement, both in duplicate.

TOWN OF WINCHENDON

Acting by and through

It's Board of Selectmen

Audrey LaBrie

Audrey LaBrie, Chairman

Board of Selectmen

DATE: 2/27/2023

TOWN MANAGER

Justin Sultzbach

DATE: 2-27-23

Attest to Signature:

Wendy A. Stevens

Wendy Stevens, Town Clerk

DATE: 3-23-23

Approved as to Legal Form:

KP Law
KP Law, Town Counsel

DATE: February 21st, 2023

I Certify there is an appropriation in Account 011a31-511010 to fund this contract.

Katie Medina

Katie Medina, Town Accountant

DATE: 3-27-23