

Employment Agreement: City Manager

On this 28 day of October, 2019, now come the undersigned parties, the City of Portsmouth, New Hampshire, acting by and through its City Council (hereinafter "the City" or "the City Council"), and Karen Sawyer Conard (hereinafter "the Employee"), and enter into the following Employment Agreement.

WHEREAS, the City desires to employ the Employee as City Manager of the City of Portsmouth as provided by its Charter.

WHEREAS, the City desires to provide certain benefits, establish certain conditions of employment, and set working conditions of the Employee.

WHEREAS, the City desires to: (1) secure the services of the Employee and provide inducement for her to remain in such employment; and (2) to make possible full work productivity by assuring the Employee's morale and peace of mind with respect to future security.

WHEREAS, the Employee desires to maintain employment as the City Manager of the City.

NOW, THEREFORE, in consideration of the promises and mutual covenants and agreements set forth herein, and for other good and valuable consideration, the receipt of which is acknowledged, the parties agree as follows:

Section 1. Term.

- A. The City agrees to employ the Employee and the Employee agrees to accept employment in the position of City Manager for a three-year term commencing on January 4, 2020 and ending on January 3, 2023. From December 16, 2019 to January 3, 2020, the Employee will serve as Acting City Manager, with all the duties and obligations of City Manager, and entitled to all the benefits defined herein. The City Council and the Employee acknowledge that this is a full-time, year-round position including extensive obligations in the evenings and on week-ends. The Employee agrees to devote all of her professional efforts to the successful fulfillment of her responsibilities to the City Council and the City.
- B. The Employee shall notify the City Council after March 15, 2022 that this Employment Agreement is scheduled to terminate on January 3, 2023. After receipt of such notice, if the City Council does not thereafter notify the Employee prior to June 30, 2022 of its intent to negotiate a new agreement, this Employment Agreement will automatically expire under its terms and conditions on January 3, 2023, and the Employee will not be entitled to the Severance Benefits provided for in Section 10 below. If the City notifies the Employee of its intent to negotiate a successor agreement, the negotiations shall commence within thirty (30) days of the date of that notification. The terms of this Employment Agreement will remain in effect while the parties are engaged in good faith negotiations for a successor agreement. In the event the parties begin good faith negotiations toward a successor agreement, but are unable to negotiate a successor agreement prior to January 3, 2023, this Employment Agreement shall terminate on January 3, 2023, and the Employee shall be entitled to the Severance Benefits provided for in Section 10 below.

Section 2. Duties and Authority.

The Employee will be expected to perform the functions and duties of City Manager as specified in the City Charter, City Ordinances and New Hampshire's General Statutes, and to perform such other legally permissible and proper duties and functions as may be reasonably requested by the City.

Section 3. Compensation.

- A. Base Salary: The City agrees to pay the Employee an annual base salary of \$165,000, subject to ordinary and regular withholdings required by law and/or agreed to by the Employee, payable in installments at the same time that the other City Hall management-level employees.

- B. Effective July 1, 2020 and July 1, 2021, a COLA adjustment percentage increase to the Employee's base salary shall be computed which shall not be less than 2% nor more than 5%. The COLA Adjustment percentage shall be determined by taking the 10-year rolling average of the CPI-U for the Boston-Cambridge-Newton, MA-NH, all items index as computed by the Bureau of Labor Statistics of the US Department of Labor for the most recent 10 calendar years preceding the July 1 adjustment. BLS's calendar year for this index is November through November, it is not published on a December to December basis. The reference base is 1982-1983 equals 100 until BLS updates the reference base at which time the parties agree to adopt the official reference base as used by BLS.

Section 4. Health, Life, Dental and Disability Insurance Benefits.

The Employee's health insurance, life insurance, dental insurance and disability insurance benefits shall be the same as those set forth in the collective bargaining agreement currently in place between the City and the City of Portsmouth Professional Management Association. A summary of these benefits is attached as **Exhibit 1**.

Section 5. Vacation, Sick Leave, Personal Days and Paid Holidays.

Upon commencing employment, the Employee shall be credited with fifteen (15) accrued sick leave days and twenty (20) accrued vacation days. The Employee may only take up to 10 vacation days in the first six (6) months of her employment. In addition, beginning the first day of her employment, the Employee shall accrue sick leave and vacation leave on a monthly basis, in the same manner as other City Hall management-level employees. In year three (3) of the contract (beginning December 16th, 2021), the Employee will begin to accrue vacation at a rate of twenty-five (25) days/year.

Maximum accrued vacation shall not exceed fifty (50) days, measured at the end of the calendar year. In the event the Employee has accumulated more than fifty (50) days of unused vacation at the end of any calendar year, the Employee shall be paid no more than ten (10) accumulated days in excess of fifty (50), such payment to be made in the first payroll in February in the following calendar year.

The Employee shall be entitled to the same paid holidays and personal days which other City Hall management-level employees receive.

Section 6. Vehicle.

During the term of this Agreement, the City agrees to provide the Employee a vehicle stipend of four-hundred and fifty dollars (\$450) per month.

Section 7. Retirement.

The Employee has voluntarily made an irrevocable election not to participate in the New Hampshire Retirement System. On the basis of this election, the City agrees to execute and keep in force all necessary agreements provided by the International City/County Management Association ("ICMA") Retirement Corporation Section 457 deferred compensation plan for the Employee's participation. In order to provide a retirement, benefit comparable to what the Employee would be entitled to under the New Hampshire Retirement System, the Employee will contribute 7% of her gross salary into the deferred compensation plan; and the City will contribute an amount equal to 11% of the Employee's gross salary into the deferred compensation plan on the Employee's behalf, in equal proportionate amounts each pay period. In the event that the New Hampshire Retirement System changes the levels of its annual withholdings and contributions, the parties agree to meet and confer with the intent of amending this Employment Agreement to continue to provide the Employee with a comparable benefit.

Section 8: General Business Expenses.

The City hereby agrees to budget and pay the professional dues and subscriptions of the Employee, necessary for her continuation and full participation in national, regional, state, and local associations and organizations, necessary and desirable for her continued professional participation, growth and advancement, and for the good of the City.

The City will pay for the Employee's initial and ongoing enrollment in the ICMA, with the expectation that the Employee will remain an active member of the ICMA throughout the term of this Employment Agreement. The City also hereby agrees to pay, within budgetary constraints, the necessary expenses of the Employee to continue her professional development and to adequately pursue official functions of the City, including but not limited to the annual conference of ICMA, and other such national, regional and state governmental groups and committees thereof on which Employee serves as a member.

The City recognizes that certain expenses of a non-personal but job related nature are going to be incurred by the Employee, and agrees to reimburse or to pay said general expenses, upon receipt of duly executed expense vouchers, receipts, statements, or personal affidavits. Such expenses may include meals where City business is being discussed or conducted and participation in social events of various organizations when the Employee is representing the City. Such expenditures are subject to annual budget constraints as well as State and City ethics and purchasing policies. The finance director is authorized to disburse such moneys upon receipt of duly executed expense or petty cash vouchers, receipts, statements or personal affidavits.

The City acknowledges the value of having the Employee participate and be directly involved in local civic clubs or organizations. Accordingly, The City shall pay for the reasonable membership fees and/or dues to enable the Employee to become an active member in local civic clubs or organizations.

Section 9: Termination.

- A. In the event the Employee is terminated prior to the expiration of this Agreement by the City for reasons other than "cause" the City agrees to pay the Employee the Severance Benefits outlined in Section 10 below. For purposes of this Agreement, the definition of cause shall be limited to the conviction of a felony or intentional gross misconduct on the part of the Employee in carrying out her duties to the City.

- B. In the event that the City, at any time during the term of this Employment Agreement, reduces the salary or other financial benefits of the Employee in a greater percentage than an applicable across the- board reduction for all employees of the City, or in the event that the City refuses upon written notice to comply with any other provision benefiting the Employee under this Employment Agreement, or in the event that the Employee resigns following a demand by the City that she resign, then, in those events, the Employee may, at her option, within 30 calendar days of the event, be deemed to be terminated and she will be entitled to the Severance Benefits outlined in Section 10 below.
- C. In the event that the City and the Employee begin to negotiate a successor agreement, but fail to reach a successor agreement prior to January 3, 2023 as provided in Section 1B above, this Employment Agreement will terminate on January 3, 2023 and the Employee will be entitled to the Severance Benefits outlined in Section 10 below.

Section 10: Severance.

- A. If the Employee is terminated without cause, the City shall provide the Employee with a payment equal to six (6) months' base salary at the Employee's then current rate of pay. This payment will be paid in a lump sum or as salary continuation, at the Employee's option.
- B. If the Employee is terminated without cause, for a period of six (6) months following termination, the City shall pay the cost to continue health insurance for the Employee and all her covered dependents, after which time, the Employee will be provided access to health insurance continuation pursuant to the provisions of the Consolidated Omnibus Budget Reconciliation Act ("COBRA").
- C. The acceptance by the Employee of the Severance Benefits provided for in his Employment Agreement shall constitute a full and complete release of any other rights, claims, or causes of action whether in law, equity or otherwise, that the Employee may have against the City, including all of its employees, elected or appointed officials, officers, agents, representatives and attorneys.

Section 11: Resignation.

In the event the Employee voluntarily resigns her position with the City, then the Employee shall give the City not less than sixty (60) days written notice in advance, such notice to be directed to the Mayor of the City, with a copy to the City Clerk. If the Employee voluntarily resigns, she shall not be entitled to salary after resignation or to the Severance Benefits provided for in Section 10 above, except that the Employee will be paid for her accrued, but unused vacation.

Section 12: Performance Evaluation.

- A. A subcommittee of the City Council, consisting of those City Council members with more than one year of City Council service, shall review and evaluate the performance of the Employee annually during the month of June, or such other month as may be mutually agreed upon, commencing in 2020. This review and evaluation shall be in accordance with specific criteria developed jointly by the entire City Council and the Employee. These criteria may be added to or deleted from as the City Council may from time to time determine, in consultation with the Employee. At the completion of the review and evaluation, the subcommittee shall consult with the entire City Council to provide the Employee with a summary written statement of the

findings of the subcommittee and to provide adequate opportunity for the Employee to discuss the review and evaluation with the entire City Council.

- B. Annually, commencing prior to July 1, 2020, the City Council and the Employee shall define such performance objectives as they may determine necessary for the proper operation of the City and in attainment of the City Council's policy objectives and shall further establish a relative priority among those various objectives, these objectives to be reduced to writing. The objectives shall generally be attainable within the time limitations as specified and the annual operating and capital budgets and appropriations provided.
- C. In effecting the provisions of this section, the City Council and the Employee mutually agree to abide by the provisions of applicable law.

Section 13. Hours of Work.

It is recognized that the Employee must devote a great deal of time outside normal office hours on business for the City, and to that end, the Employee shall be allowed to establish an appropriate work schedule. The schedule shall be appropriate to the needs of the City and shall allow Employee to faithfully perform her assigned duties and responsibilities.

Section 14. Ethical Commitments.

The Employee will at all times uphold the tenets of the ICMA Code of Ethics, a copy of which is attached as **Exhibit 2**. Specifically, the Employee shall not endorse candidates, make financial contributions, sign or circulate petitions, or participate in fund-raising activities for individuals seeking or holding elected office, nor seek or accept any personal enrichment or profit derived from confidential information or misuse of public time. City shall support the Employee in keeping these commitments by refraining from any order, direction or request that would require the Employee to violate the ICMA Code of Ethics. Specifically, neither the City Council, nor any individual member thereof shall request the Employee to endorse any candidate, make any financial contribution, sign or circulate any petition, or participate in any fund-raising activity for individuals seeking or holding elected office, nor to handle any matter on a basis other than fairness, impartiality and merit.

Section 15. Outside Work.

The Employee shall not engage in any outside work without giving prior notice to and receiving prior approval from the City Council. Even with City Council approval, it is expected that the Employee will not spend more than five (5) hours a week engaged in teaching, consulting, or other non-City connected business.

Section 16. Moving and Relocation Expenses.

The Employee agrees to establish residence within the City within 12 months of the start of her employment, and thereafter to maintain residence within the City during the term of this Employment Agreement.

The Employee will provide evidence of actual moving expenses to the City by securing quotations from three (3) companies and providing receipts. The Employee shall submit these quotes to the City who will reimburse expenses up to a maximum of \$5,000.

Section 17. Indemnification.

Beyond that required under Federal, State or Local law, the City shall defend, save harmless and indemnify the Employee against any obligation to pay money or perform or not perform action, including without limitation, any and all losses, damages, judgments, interests, settlements, penalties, fines, court costs and other reasonable costs and expenses of legal proceedings including attorney's fees, and any other liabilities arising from, related to, or connected with any tort, professional liability claim or demand or any other threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative, arbitratve or investigation, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of Employee's duties as City Manager or resulting from the exercise of judgment or discretion in connection with the performance of these duties, unless the act or omission involved willful or wanton misconduct. The Employee may request and the City shall not unreasonably refuse to provide independent legal representation at the City's expense and the City may not unreasonably withhold approval. Legal representation provided by the City to the Employee shall extend until a final determination of the legal action including any appeals brought by either party.

Any settlement of any claim must be made with prior approval of the City in order for indemnification, as provided in this Section, to be available. The Employee recognizes that City shall have the right to compromise and unless the Employee is a party to the suit which Employee shall have a veto authority over the settlement, settle any claim or suit; unless, said compromise or settlement is of a personal nature to Employee. Further, City agrees to pay all reasonable litigation expenses of Employee throughout the pendency of any litigation to which the Employee is a party, witness or advisor to the City. Such expense payments shall continue beyond Employee's service to the City as long as litigation is pending. Further, City agrees to pay Employee reasonable consulting fees and travel expenses when Employee serves as a witness, advisor or consultant to City regarding pending litigation.

Section 18. Bonding.

The City shall bear the full cost of any fidelity or other bonds required of the Employee under any law or ordinance.

Section 19. Other Terms and Conditions of Employment.

The City Council may fix such other reasonable terms and conditions of employment as it may determine from time to time, provided such terms and conditions are not inconsistent with or in conflict with the provisions of the Agreement, the City Charter, or any other federal or state law.

Section 20. 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:

City: Mayor, City of Portsmouth
1 Junkins Avenue
Portsmouth, New Hampshire 03801

Employee: Karen Sawyer Conard
11 Westwood Road
Salem, NH 03070

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

Section 21. General Provisions.

- A. The text herein shall constitute the entire Agreement between the parties.
- B. The Agreement shall become effective upon execution.
- C. If any provision of this Agreement is found to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable.

IN WITNESS WHEREOF, the City of Portsmouth has caused this Agreement to be signed and executed on this behalf by its Mayor and duly attested by the City Clerk, and the Employee has signed and executed this Agreement on the date first above written.

Dated at Portsmouth, New Hampshire, this 4th day of December.

Keri Barnaby
WITNESS

KSCed
Karen Sawyer Conard

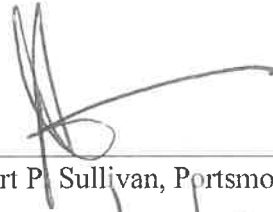
Keri Barnaby
WITNESS

Jack Blalock
Jack Blalock, Mayor
City of Portsmouth, NH

Pursuant to vote of the City Council on
October 28, 2019

CERTIFICATION

I hereby certify that the foregoing Agreement has been approved by the Portsmouth City Council in accordance with the Charter of the City of Portsmouth and the laws of the State of New Hampshire, and that as such the Agreement constitutes a binding legal obligation of the City of Portsmouth, according to its terms.



Robert P. Sullivan, Portsmouth City Attorney

Date

11/12/19