

EMPLOYMENT AGREEMENT  
BETWEEN  
TOWN OF ASHLAND  
AND  
TOWN MANAGER

THIS AGREEMENT, pursuant to Chapter 41, Section 108N of the Massachusetts General Laws, made and entered into this 14<sup>th</sup> day of December 2021 by and between the Town of Ashland, Commonwealth of Massachusetts, a municipal corporation, hereinafter called the "Town" acting by and through its Select Board hereinafter called "Board", and Michael D. Herbert, hereinafter called "Town Manager", as follows:

WITNESSETH:

WHEREAS, the Town desires to employ the services of said Michael D. Herbert as Town Manager of the Town of Ashland,

WHEREAS, the Board, under Chapter 41, Section 108N of the General Laws may contract with the Town Manager for such services;

WHEREAS, it is the desire of the Board to contract for the salary and benefits of said Town Manager,

WHEREAS, it is the desire of the Board to retain the services of the Town Manager, and to provide inducement for him to remain in such employment; and

WHEREAS, Michael D. Herbert, agrees to accept employment as Town Manager of said Town.

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

Section I. Function & Duties of the Town Manager

The Town hereby offers to employ said Michael D. Herbert as Town Manager of said Town, and the Town Manager accepts said offer. 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 December 31, 2021 and shall be in full force and effect until December 31, 2024. The Agreement shall be for a term of three (3) years unless extended by a written agreement of the parties.

Section III. Termination and Severance

- A. The Board may terminate the Town Manager in accordance with section 5-7 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 nine (9) months base salary, which amount shall be paid to the Town Manager on or before the date of termination of his employment; provided, however that in the event the Town Manager is terminated for just cause, the Town shall have no obligation to pay the aggregate severance sum

provided for in this paragraph. For the purposes of this agreement "just cause" shall be interpreted to mean malfeasance. For purposes of this Agreement "malfeasance" is defined as felonious criminal misconduct or such other similar intentional or deliberate acts involving moral turpitude, whether or not such acts are committed in the course of the Town Manager's employment with the Town. Nothing in this paragraph will be construed to abridge or curtail the own Managers Constitutional rights to privacy.

- C. In the event the Town Manager voluntarily terminates his position with the Town before the expiration of the term of this Agreement, the Town Manager and the Town shall promptly agree on a mutually satisfactory termination date; provided however that in the absence of such agreement the termination date shall be six (6) months after written notice of the Town Manager's resignation has been filed with the Town Clerk.
- D. Subsection B of this Section shall survive any termination of this Agreement.

#### Section IV. Salary

- A. The Town agrees to pay the Town Manager for services rendered under this agreement an annual base salary of \$183,000, subject to applicable withholdings and deductions, effective January 1, 2019, payable in installments at the same time as other employees are paid.
- B. Effective January 1, 2020, The Town agrees to pay the Town Manager for services rendered under this Agreement an annual base salary of \$188,490 (a 3% increase) , subject to applicable withholdings and deductions, payable in installments at the same time as other employees are paid.
- C. Effective January 1, 2021 The Town agrees to pay the Town Manager for services rendered under this Agreement an annual base salary of \$194,414 (a 3% increase), to applicable withholdings and deductions, payable in installments at the same time as other employees are paid. ~~\$188,490 (a 0% increase) subject to applicable withholdings and deductions, payable in installments at the same time as other employees are paid.~~
- D. Effective January 1, 2022 The Town agrees to pay the Town Manager for services rendered under this Agreement an annual base salary of \$194,144 (a 3% increase), to applicable withholdings and deductions, payable in installments at the same time as other employees are paid.
- E. Effective January 1, 2023 The Town agrees to pay the Town Manager for services rendered under this Agreement an annual base salary of \$199,969 (a 3% increase), subject to applicable withholdings and deductions, payable in installments at the same time as other employees are paid.
- F. Effective January 1, 2024 The Town agrees to pay the Town Manager for services rendered under this Agreement an annual base salary of \$205,968 (a 3% increase), subject to applicable withholdings and deductions, payable in installments at the same time as other employees are paid.
- G. The Board agrees to annually review the base salary of the Town Manager and make any additional adjustments to base salary or any payments in the nature of a bonus that the Board deems appropriate, based on market conditions, the financial condition of the town, and the Town Manager's performance relative to established goals. Unless otherwise specified by the Board, any

such adjustment to base salary shall be retroactive to the preceding July 1 and shall be taken into account in applying any percentage increase on the subsequent July 1 under the above section.

- H. The Board agrees to establish a pool of at least percent (2%) of the Town Manager's base salary on an annual basis to be available to be used in the event that an increase in base pay or a payment in the nature of a bonus is granted under the above section.
- I. 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 Town. This subsection shall survive the termination of this agreement.

#### Section V. Retention Payment:

The Town Manager understands that turnover has been a chronic problem for the Town of Ashland. In recognition of this, the Town Manager has agreed to set aside a portion of his compensation as a retention payment, to be forfeited if he leaves for a similar position in another community.

- A. Starting on January 14, 2019 and following the completion of each 12 months of continuous employment by Town Manager with the Town from the effective date of this Agreement, the Town will make a lump sum retention payment equal to 10% of the Town Manager's base salary into the deferred compensation plan of the Town Manager's choosing, paid within 14 business days after the completion of the twelfth month. The Town Manager may elect to receive this payment as a cash payment, subject to all applicable withholdings and deductions.
- A. In the event the Town is terminated or resigns prior to the end of the Agreement under Section III for any reason other than that described in Section V(C), the Town Manager shall receive a prorated retention payment at the time of termination or resignation.
- B. If during the term of this Agreement, the Town Manager resigns as provided for in Section III(C) as a direct result of accepting an offer of employment as the Chief Executive Officer or Chief Administrative Officer of another municipality, he shall forfeit any retention payment accrued but not paid.

#### Section VI. Town Manager Evaluation

- A. The Board shall review and evaluate the Town Manager every year from the date of appointment. Said review and evaluation shall be based explicitly on 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 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 23(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.



## Section VII. Hours of Work

- A. 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 written approval of the Board.
- B. It is recognized that the Town Manager must devote a great deal of time outside of normal office hours to attend to the business of the Town, and that, as a result, the Town Manager will have the ability to adjust his normal office hours accordingly as he deems appropriate.

## Section VIII. Other Employment

During the Term of the Agreement the Town Manager may accept speaking, writing, lecturing, teaching or other paid engagements of a professional nature as he sees fit, provided they do not interfere with the performance and discharge of his duties and responsibilities as Town Manager. \*Any such engagements, activities, or work must be approved in advance by the Board through its Chairman, whose approval will not be unreasonably delayed or denied, and shall not be in violation of the Massachusetts Conflict of Interest Law, M.G.L. c.268A.

## Section IX. Employee Benefits

Except as expressly modified below, the Town Manager shall be provided employee benefits based upon the Town's General By-Laws and the regulations, policies, and practices of the Town relating to general employee benefits including holidays, sick leave, leaves of absence, jury duty, military leave, group life and medical insurance, and retirement benefits generally provided to other management employees of the Town, as they now exist or hereafter may be amended at the discretion of the Board, and subject to the terms and conditions of any such employee benefit plan, policy, or practice.

- A. **Health Insurance.** The Town Manager has advised the Town that he shall not seek to participate in the Town's health insurance plan for the duration of this Agreement. The Town Manager shall be eligible to participate in all other benefits at the same rate as other Town employees as provided herein. Should the Town Manager need to participate in the Town's health insurance plan due to unforeseen circumstances, the parties agree to revisit total compensation provided herein.
- B. **Longevity.** The Town Manager shall not be eligible to receive longevity pay as is offered to other management employees of the town.
- C. **Life and Disability Insurance.** The Town will provide to the Town Manager the same disability and life insurance policies as it does to other non-union Town employees. The Town shall reimburse the Town Manager for up to a total of \$6,000 toward the cost of a personal life insurance policy and/or the cost of a personal disability policy.
- D. **Cell Phone.** The Town agrees to provide the Town Manager with a town-issued cell phone for the duration of this agreement.
- E. **Automobile.** The parties recognize that the Town Manager's faithful performance of his duties will require the extensive use of an automobile. In lieu of the Town providing the Town Manager with a Town-owned, -registered, and —insured vehicle, The Town agrees to pay to the Town Manager a monthly allowance of \$650 for all expenses and costs regarding use of a vehicle in his capacity as Town Manager. The Town Manager agrees that he shall use his personal vehicle for the conduct

of usual daily as Town Manager. This payment shall not apply to travel-related expenses such as tolls and parking fees.

- F. **Vacation Leave.** ~~The Town Manager shall be credited with 2 weeks of vacation after signing this agreement.~~ Town Manager shall be entitled to five (5) weeks paid per contract year. A week shall be defined as five (5) working days. At the end of each contract year, the Town Manager may elect to A) Sell back up to 15 earned but unused days vacation leave, B) Carry over up to 15 days vacation leave, or C) A combination of A & B provided that the total number of combined days does not exceed 15 days. The Town Manager shall indicate his preference in writing. Unused vacation days may be carried over from one year to another up to a maximum of twenty (20) days being carried over. Unused vacation time shall be paid in full to the Town Manager upon termination of this Agreement. At no time shall the Town Manager take more than two (2) consecutive weeks of vacation without the express permission of the Select board.
- G. **Sick Leave.** Upon the execution of this Agreement, the Town Manager shall be credited with the balance of sick leave in his sick leave account which may be used during the term of this Agreement. Upon the first day of the first year of this Agreement, sick leave time shall accrue at (1) day per month. The Town Manager shall be entitled to carry over sick leave from one year to the next but in no event shall the amount carried over exceed 90 days. No cash payments will be made in lieu of unused sick time.
- H. **Personal Leave.** The Town Manager shall receive 4 days of personal leave in each contract year.

#### Section X. Professional Development

The Town encourages the Town Manager to engage in and participate in continuing education and municipal associations and conferences. The Town believes that said participation will lend to a more professional manager and will assist the community as a whole. The Town encourages and expects that the Town Manager will bring information to the Town from said trainings and conferences and employ those matters which will benefit the Town and its daily operations and services to its citizens. To that end

- 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 professional development and jointly agreed to by the Board and Town Manager.
- B. The Town shall pay the Town Managers registration fees(s), travel and subsistence expenses to and from the International City Managers Association (ICMA) Annual conference, Massachusetts Municipal Association annual conference, and the Massachusetts Municipal Managers Association Annual Spring and Fall Conference. The Town agrees to pay for the professional dues and subscriptions of the Town Manager for any professional organizations both deemed necessary his membership in the I.C.M.A., Massachusetts Municipal Managers Association, the American Planning Association, Government Finance Officers Association and the Massachusetts Government Finance Officers Association.

#### Section XI. Expenses

Town Manager shall be reimbursed for any expenses incurred in the performance of his or her duties, or as an official representative of the Town, including attendance by him at civic or social events. Any expenses



that the Town Manager submits for such reimbursement must be accompanied by some written documents, invoice, memo and/or evidence of payment supporting the reimbursement request.

### Section XII. Indemnification

The Town shall defend, save harmless and indemnify the Town Manager against any tort, otherwise, liability, claim-or demand, or other legal action, whether groundless or otherwise arising out of an alleged act or omission occurring her duties in the performance of his or from as Town Manager, even if said claim has been made following his termination employment provided that the Town Manager acted within the scope of his or her 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

In connection with those claims or suits involving the Town Manager in his professional capacity and covered under the preceding paragraph, the Town, at its sole option, shall either retain and pay for an attorney to represent the Town Manager (including all fees and costs) or reimburse the Town Manager for any attorney's fees and costs incurred by the Town Manager in connection with the same, providing the Town Manager submits proper invoices and evidence of payment of same.

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

This section shall survive the termination of this agreement.

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

### Section XIII. Non Renewal of Agreement

The Board shall begin negotiations/discussions at least nine (9) months prior to the expiration of this agreement. If the Board decides not to renew this Agreement at its termination, the Board shall give the Town Manager written notice at least nine (9) months in advance of its intent not to renew this Agreement. If the Board does not give notice of non-renewal or the parties fail to negotiate a successor contract by the scheduled termination date of this Agreement, the Town shall pay the Town Manager a severance equal to nine (9) month's base salary payable on or before the expiration of this Agreement.

### Section XIV. 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 that such a reduction is across the board for all other non-union employees of the Town.

### Section XV. 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:

TOWN:	Chairman of the Select board 101 Main Street Ashland, MA 01721
TOWN MANAGER:	Michael Herbert 740 Salem End Road Framingham, MA 01702

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 XVI. 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. This Employment Agreement is the result of negotiation and compromise by and among the parties and no party shall be prejudiced as having been the drafter of the Employment Agreement.

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

TOWN OF ASHLAND

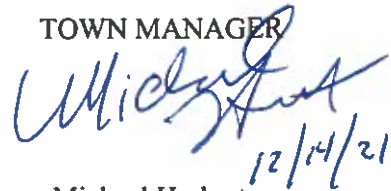
Acting by and through

Its Select Board



Chair, Select Board

TOWN MANAGER



Michael Herbert

12/14/21

DATE:

Attest to Signature:

DATE:

DATE:

12/15/21

Approved as to Legal Form



Town Counsel

**DATE:**

**I certify there is an appropriation in Account 01122 to fund this contract.**

**Town Accountant**

**DATE**