

# Employment Agreement -Town Manager

## Town of Windham, Maine, and Barry A. Tibbetts

### Introduction

This Agreement, made and entered into this 24<sup>th</sup> day of January 2023, by and between the Town of Windham, Maine, a municipal corporation, (hereinafter called "Employer") and Barry A. Tibbetts, (hereinafter called "Employee") an individual who has the education, training and experience in local government management.

### Section 1: Term

The term of this Agreement shall be in full force in effect from the signing date until terminated by the Employer or Employee as provided in Section 9 and 10 of this Agreement.

### Section 2: Duties and Authority

Employer agrees to employ Barry A. Tibbetts as Town Manager to perform the functions and duties and to hold all offices as specified in Town's Charter and to perform other legally permissible and proper duties and functions.

### Section 3: Compensation

- A. Base salary: Employer agrees to pay Employee an annual base salary of \$160,741.80, payable in installments at the same time that the other management employees of the Employer are paid. In the third year (25/26) the contract will option for longevity increase.
- B. The Employer agrees to increase the compensation of the Employee dependent upon the results of the performance evaluation conducted under the provisions of Section 11 of this Agreement. The Employee also will participate in any fixed annual increases at the minimum granted to other town employees, beginning July 1, 2023, based on cost-of-living adjustments.

### Section 4: Health, Disability and Life Insurance Benefits

- A. The Employer agrees to provide and to pay the premium for health insurance for the Employee and his/her dependents equal to that which is provided to all other employees of the Employer.
- B. The Employer agrees to put into force and to make required premium payments for short-term disability coverage for the Employee.
- C. The Employer shall pay the amount of premium due for term life insurance in the amount of one (1) time the Employee's annual base salary, including all increases in the base salary during the life of this agreement. The Employee shall name the beneficiary of the life insurance policy.

### Section 5: Vacation and Sick

- A. Upon commencing employment, the Employee shall be credited with 5 sick days and 20 vacation days. The Employee will then accrue sick and vacation leave annually on the same basis as department heads, with the exception that Employee's earned vacation may not exceed (6) weeks

per year. Any carryforwards would be per the personal policy. No vacation may be taken during the first two months of employment without the permission of the Town Council.

- B. The Employee is entitled to annually convert up to one week of unused sick time and three weeks of vacation time (40hours) to wages at 100% the value of the sick and vacation time. The initial credits for vacation and sick time shall not be convertible.
- C. The Employee is entitled to accrue all unused leave, without limit, and in the event the Employee's employment is terminated, either voluntarily or involuntarily, the Employee shall be compensated for all accrued vacation time, 50% of accrued sick time, and other benefits to date.

#### Section 6: Automobile

The Employer agrees to pay to the Employee, during the term of this Agreement and in addition to other salary and benefits herein provided, the sum of \$6,000 per year, payable monthly, as a vehicle allowance to be used to purchase, lease, or own, operate and maintain a vehicle. The Employee shall not be reimbursed for mileage. The Employee shall be responsible for insurance, maintenance, and other costs of the vehicle.

#### Section 7: Retirement

Employer agrees to execute all necessary agreements provided by ICMA Retirement Corporation (ICMA-RC) or other Section 457 deferred compensation plan and 401(a) plan for Employee's participation in said retirement plan and, in addition to the base salary paid by the Employer to Employee, Employer agrees to pay an amount equal to 17% of Employee's base salary, or maximum dollar amount permissible under Federal and state law, whichever is less, into the designated plan on the Employee's behalf, in equal proportionate amount each pay period. The parties shall fully disclose to each other the financial impact of any amendment to the terms of Employee's retirement benefit.

#### Section 8: General Business Expenses

- A. Employer agrees to budget for and to pay for professional dues and subscriptions of the Employee necessary for continuation and full participation in national, regional, state, and local associations, and organizations necessary and desirable for the Employee's continued professional participation, growth, and advancement, and for the good of the Employer.
- B. Employer agrees to budget for and to pay for travel and subsistence expenses of Employee for professional and official travel meetings, and occasions to adequately continue the professional development of Employee and to pursue necessary official functions for Employer, including but not limited to the ICMA Annual Conference, and such other national, regional, state, and local governmental groups and committees in which Employee serves as a member.
- C. Employer also agrees to budget for and to pay for travel and subsistence expenses of Employee for short courses, institutes, and seminars that are necessary for the Employee's professional development and for the good of the Employer.
- D. Employer recognizes that certain expenses of a non-personal but job-related nature are incurred by Employee and agrees to reimburse or to pay said general expenses. The Finance Director is

authorized to disburse such moneys upon receipt of duly executed expense or petty cash vouchers receipts statements or personal affidavits.

- E. The Employer shall pay the Employee an annual stipend of \$1,500.00 for cellphone, distributed monthly.
- F. The Employer acknowledges the value of having Employee participate and be directly involved in local civic clubs or organizations. Accordingly, Employer 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.
- G. The Employer shall provide Employee at his option with a computer, software, and other necessary mutually agreed upon technology required for the Employee to perform the job and to maintain communication. The Employee has the option to own any such equipment as long as it is not a computer-related security risk for the Employer.

#### Section 9: Termination and Severance

The Employer shall have the right to terminate this Agreement without cause with a 30-day notice. In the event of such termination, Employee shall be paid an aggregate lump-sum payment equal to one (1) month for each year of service, or part thereof, for a maximum of twelve (12) months. Payment shall be made in full at the time of termination. At the same time, Employee shall be compensated for any vacation and sick time accrued to date of termination, calculated at the rate of pay in effect upon termination. In addition, all life insurance, health insurance, and disability coverage, retirement benefits and all other Employer provided benefits shall continue in full force and coverage as provided herein during the severance period.

The Employer also has a right of termination for cause. The Employer's right to terminate this Agreement for cause shall be based upon official removal action under the terms of Town's Charter and personnel policy. In the event the Employee's employment is terminated for cause, the Employer's only obligation to the Employee is to pay all compensation and benefits accrued, but unpaid, at the time of termination.

#### Section 10: Resignation

In the event that the Employee voluntarily resigns his position with the Employer, the Employee shall provide a minimum of 180 days' (6 months) notice unless the parties agree otherwise.

#### Section 11: Performance Evaluation

Employer shall annually review the performance of the Employee subject to a process, form, criteria, and format for the evaluation which shall be mutually agreed upon by the Employer and Employee. The process at a minimum shall include the opportunity for both parties to: (1) prepare a written evaluation, (2) meet and discuss the evaluation, and (3) present a written summary of the evaluation results. The final written evaluation should be completed and delivered to the Employee within 30 days of the evaluation meeting.

#### Section 12: Hours of Work

It is recognized that the Employee must devote a great deal of time outside the normal office hours on business for the Employer, and to that end Employee shall be allowed to establish an appropriate

work schedule. The employment week will be based on 4 days' normal office hours with the 5<sup>th</sup> day being on call flextime.

#### Section 13: Outside Activities

Employment as Town Manager of Windham as provided for by the Agreement shall be Employee's first priority. Other outside activities are permissible provided Employee is using personal time.

#### Section 14: Indemnification

Employer shall defend Employee against any claim or demand or other legal action arising out of an alleged act or omission occurring in the performance of Employee's duties as Town Manager or other official appointment and further Employer shall indemnify Employee in accordance with the 14 M.R.S.A. Section 8112(1) of the Maine Tort Claims Act, including circumstances when the Employer is not liable.

The Employee may request, and the Employer shall not unreasonably refuse to provide independent legal representation at Employer's expense and Employer may not unreasonably withhold approval. Legal representation and indemnity, as described above, provided by Employer for Employee, shall include any claims made during and after the Employee's service to the Employer and extend, until a final determination of the legal action including any appeals brought by either party, regardless of whether the extension occurs during or after the Employee's service to Employer.

#### Section 15: Bonding

Employer shall bear the full cost of any fidelity or other bonds required of the Employee under the Town Charter and any other law or ordinance.

#### Section 16: Other Terms and Conditions of Employment

The Employer, only upon agreement with Employee, shall fix any such other terms and conditions of employment, as it may determine from time to time, relating to the performance of the Employee, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this Agreement, the Town Charter, or any other law.

Except as otherwise provided in this Agreement, the Employee shall be entitled to the highest level of benefits that are enjoyed by other appointed officials, appointed employees, department heads or general employees of the Employer as provided in the Town Charter and regulations or by practice.

#### Section 17: Residency

The Employee shall not be required to be a resident of the Town.

#### Section 18: Notices

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

EMPLOYER: Town of Windham, 8 School Street, Windham, Maine 04062

EMPLOYEE: Barry A. Tibbetts, 12 Berry Road, Scarborough, Maine 04074

Alternatively, notice required pursuant to this Agreement may be personally served in the same manner as is applicable to civil judicial practice. Notice shall be deemed given as of the date of

personal service or as the date of deposit of such written notice in the course of transmission in the United State Postal Service.

#### Section 19: General Provisions

- A. Integration. This Agreement sets forth and establishes the entire understanding between the Employer and the Employee relating to the employment of the Employee by the Employer. Any prior discussions or representations by or between the parties are merged into and rendered null and void by this Agreement. The parties by mutual written agreement may amend any provision of this agreement during the life of the agreement. Such amendments shall be incorporated and made a part of this agreement.
- B. Binding Effect. This Agreement shall be binding on the Employer and the Employee as well as their heirs, assigns, executors, personal representatives and successors in interest.
- C. Effective Date. This Agreement shall become effective on its signing date.
- D. Severability. The invalidity or partial invalidity of any portion of this Agreement will not affect the validity of any other provision. In the event that any provision of this Agreement is held to be invalid, the remaining provisions shall be deemed to be in full force and effect as if they have been executed by both parties subsequent to the expungement or judicial modification of the invalid provision.

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Barry A. Tibbetts, Town Manager

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Mark Morrison, Council Chair

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David Nadeau, Council Vice Chair

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Brett Jones, Parliamentarian

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Nicholas Kalogerakis, Councilor

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Jarrod Maxfield, Councilor

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William Reiner, Councilor

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John Henry, Councilor