

CONTRACT FOR TOWN MANAGER SERVICES

by and between

TOWN OF ANDOVER, MASSACHUSETTS

and

ANDREW P. FLANAGAN

CONTRACT FOR TOWN MANAGER SERVICES

TOWN OF ANDOVER, MASSACHUSETTS

This Agreement, pursuant to G. L.c. 41, § 108N and Acts of 1956, c. 571, as amended, is made and entered into by and between the Town of Andover, Commonwealth of Massachusetts, a municipal corporation, acting by and through its Select Board (hereinafter called "the Board"), who act hereunder in their representative capacity only and without any personal liability to themselves, as party of the first part, and Andrew P. Flanagan, hereinafter the "Town Manager", as party of the second part, both of whom understand as follows:

WITNESSETH:

WHEREAS, The Town of Andover, Massachusetts, through its Select Board duly authorized, seeks to provide for the services of a competent and professional Town Manager for the general purposes of successfully performing the functions of that office pursuant to requirements of the Town Charter (Acts of 1956, c. 571, as amended) and other laws of the Commonwealth of Massachusetts and otherwise satisfactorily achieve the legislative and policy objectives of the Board and Town Meeting as specified by those bodies and as may be modified from time to time by their official acts; and

WHEREAS, Andrew P. Flanagan seeks to be appointed and employed as the Town Manager of Andover and execute the duties and responsibilities of that office and otherwise perform to the reasonable satisfaction of the Board.

NOW, THEREFORE, IT IS VOTED AND AGREED BY THE SELECT BOARD OF THE TOWN OF ANDOVER that Andrew P. Flanagan be appointed to and employed in the position of Town Manager of the Town of Andover in accordance with the provisions of the Town Charter.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the

parties agree as follows:

1. PRIOR CONTRACT

The parties agree that, effective commencing on July 1, 2020, this Agreement shall replace and shall supersede in all respects all provisions of the contract that was entered into between them on September 9, 2015 regarding the appointment and employment of the Town Manager, as amended on December 12, 2016 (“the Prior Contract”). Until July 1, 2020, all provisions of the Prior Contract, as amended, shall remain in full force and effect. The parties further agree that while the Prior Contract, as amended, remains in full force and effect the Board may, in its sole discretion, determine that the Town Manager’s performance review for the period covered by the Prior Contract warrants a one-time payment, the amount of such payment, if any, also being committed to the Board’s sole discretion.

2. COMPENSATION.

The parties agree that the annual salary of the Town Manager is defined in Section 10 of this Agreement. Each twelve-month period from July 1 to June 30 of the following year during the term of this Agreement shall be the “contract year”. Adjustments to the Town Manager's compensation are defined in Section 12 and modifications to compensation will be reviewed and considered annually by the Board, on the basis of an annual performance review of the Town Manager in accordance with the provisions of this Agreement.

3. DUTIES OF TOWN MANAGER

The Town Manager shall devote his full attention to the faithful performance of the powers and duties set forth in the Town Charter, §10, as such may be amended from time to time, and of such additional duties as may be assigned to him from time to time by the Board which shall be consistent with the position of Town Manager. The parties acknowledge and agree that the Town Manager position is exempt from the overtime requirements of the Fair Labor Standards Act.

4. PERFORMANCE EVALUATION.

A. Annually, the Board and the Town Manager shall jointly define the goals and performance objectives which they determine are necessary for the proper operation of the Town and attainment of the Board’s policy objectives, and shall further jointly establish a relative priority

among the various goals and objectives. The goals and performance objectives shall be such as are reasonably attainable within the time limits specified, within the annual operating and capital budgets and appropriations established by the Town, and subject to existing circumstances and external conditions affecting the Town.

B. The Board shall annually review and evaluate the Town Manager's performance. Such review shall take into account the Town Manager's accomplishment of the goals and objectives described in Section 4 A, above, and shall be based on specific criteria developed by the Board from time to time in consultation with the Town Manager. Such review and evaluation shall take place within a reasonable period following the end of the contract year on June 30.

5. FRINGE BENEFITS.

The following fringe benefits shall apply to the Town Manager:

A. Vacation/ Personal Days. The Town Manager shall earn two and one quarter (2.25) days of paid leave per month during each contract year while this Agreement is in effect, up to a total of twenty-seven (27) such days for each contract year. Such days may be used during the contract year in advance of being earned. The Town Manager agrees to notify the Board prior to using such days. As used herein, "paid leave" shall include vacation days and personal days. The Town Manager may carry over a maximum of ten (10) earned, unused paid leave days from one contract year to the next. There shall be no payment to the Town Manager for any paid leave days which have been earned but not used at the end of the contract year. Upon termination of this Agreement for any reason, the Town Manager shall be paid in one lump sum for the unused paid leave days which have been earned during the contract year in which the termination occurs, which total shall be calculated by including days which have been carried over from the prior contract year and then subtracting days used during the contract year.

B. Bereavement. In the event of a death in the Town Manager's immediate family he shall be entitled to up to five (5) days of leave without loss of pay for the purpose of making necessary arrangements for and to attend funeral or memorial services or to handle estate matters. Such leave shall not be charged to paid leave or sick leave. As used herein, "immediate family" shall include parents, siblings, grandparents, spouse, children in fact or in law, and any person who

permanently resides with the Town Manager.

C. Sick Days. The Town Manager shall earn one (1) sick day for each month of employment while this Agreement is in effect, up to a maximum of sixty (60) such days during the term of this Agreement. Such sick days may be used in advance of being earned. The Town Manager agrees to notify the Board regarding the use of such days. There shall be no payment to the Town Manager for any sick days which have been earned but not used as of the date of termination or expiration of this Agreement.

D. Health Insurance. The Town shall offer group health insurance to the Town Manager on the same terms and with respect to the same plans as are offered to other department heads whose employment with the Town commenced before July 1, 2017, subject to changes in such terms and plans as may be put into effect from time to time.

E. Disability Insurance. The Town Manager does not belong to or have access to the employee Sick Leave Bank. The Town agrees to reimburse the Town Manager for his purchase of long-term disability insurance, up to a maximum of two thousand dollars (\$2,000) for each contract year while this Agreement is in effect.

F. Life Insurance. The Town agrees to reimburse the Town Manager for his purchase of life insurance, up to a maximum of one thousand dollars (\$1,000) for each contract year while this Agreement is in effect.

G. Automobile Allowance. The parties recognize that the Town Manager's faithful performance of his duties will require the extensive use of an automobile. The Town agrees to pay to the Town Manager a monthly allowance of five hundred dollars (\$500) for all expenses and costs regarding use of a vehicle in his capacity as Town Manager. The Town Manager agrees that this payment is in lieu of the Town providing him with a Town-owned and -registered vehicle and that he shall use his personal vehicle for the conduct of his usual daily functions as Town Manager. This payment shall not apply to travel-related expenses such as tolls and parking fees, which are covered by the provision in Section 7 pertaining to reasonable expenses.

6. RETIREMENT PLANS.

The Town authorizes the Town Manager to participate in and contribute to any qualified

Internal Revenue Code Section 457(b) or Section 401(a) deferred compensation plan(s) offered by the Town to its employees. During each contract year the Town shall contribute twelve thousand dollars (\$12,000) to the Town Manager's participation in such plan(s) in two equal payments during the contract year. The first payment totaling six thousand dollars (\$6,000) shall be made on or before September 1 of each contract year, provided that the Town Manager is employed under this Agreement as of that date. The second payment totaling six thousand dollars (\$6,000) shall be made on or before March 1 of each contract year, provided that the Town Manager is employed under this Agreement as of that date. At the commencement of each contract year the Town Manager shall provide the Town with his designation in writing of the specific plan(s) for such contribution and, if the Town Manager designates more than one such plan, the allocation of the total amount to each plan.

7. PROFESSIONAL DEVELOPMENT.

Subject to approval of the Board, the Town shall pay for the cost and expenses for the Town Manager's personal professional development. Expenses associated with such professional development cannot exceed four thousand dollars \$4,000.00 in a calendar year without prior written authorization of the Board acting in its sole discretion.

Subject to the foregoing paragraph, the Town agrees to the following provisions. The Town shall pay the Town Manager's registration fee(s) and related expenses for the ICMA Annual Conference, the MMMA Annual Conference, and the MMMA Annual Spring and Fall Conferences. In addition, the Town shall pay the Town Manager's fee(s) and expenses to and from short courses, institutes, and seminars that are for the good of the Town, including the cost of the ICMA "credentialing" program. The Town agrees to pay for the professional dues and subscriptions for the Town Manager's membership in the ICMA, in the American Society for Public Administration, in the MMMA, and in any other professional organizations reasonably deemed necessary and desirable for the good of the Town. The Town Manager shall be reimbursed for any reasonable expenses incurred in the performance of his duties, or as an official representing the Town, including his attendance at civic events.

8. INDEMNIFICATION.

The Town shall indemnify, hold harmless, and defend the Town Manager against any claim, liability, demand, judgment, or other legal action, groundless or otherwise; arising out of, or relating to, the Town Manager's performance of his duties and responsibilities, to the full extent authorized by G.L. c. 258, § 9 or other applicable law. The Town agrees that its obligation to indemnify as set forth in the immediately preceding sentence shall apply to all such claims, liabilities, demands, judgments, or other legal actions, groundless or otherwise, whether such are brought during the Town Manager's employment or after his employment has terminated, provided that such arise out of the Town Manager's performance of his duties and responsibilities during his employment pursuant to this Agreement. The Town further agrees that with respect to all such claims, liabilities, demands, judgments, and other legal actions it shall make available to the Town Manager during and after his employment such insurance coverage as it then has in place for other present and former Town officials with respect to the performance of their duties and responsibilities. The Town Manager shall furnish notice in writing of any such claims, liabilities, demands, judgments, and other legal actions to the Town's insurer, except as to such claims, liabilities, demands, judgments, and other legal actions which are brought to the Town's attention after termination of the Town Manager's employment under this Agreement. The Town Manager agrees to cooperate with the Town and with its insurers in defending all such claims, liabilities, demands, judgments or other legal actions, including but not limited to providing timely notification to the Town of all such claims, liabilities, demands, judgments or other legal actions of which he becomes aware. The Town Manager further authorizes the Town to resolve or settle any such claim, liability, demand, judgment or other legal action in its discretion.

9. DURATION AND TERMINATION OF AGREEMENT.

A. The term of this Agreement shall be for five (5) years, commencing July 1, 2020 and ending June 30, 2025. This Agreement, subject to such modifications as provided for herein and subject to the provisions regarding termination of this Agreement herein and in the Town Charter, as such may be amended from time to time, shall remain in full force and effect throughout the duration of the appointment (July 1, 2020 to June 30, 2025) of Andrew P. Flanagan as the Town Manager.

B. The Town Manager's appointment and employment under this Agreement may be terminated by the Board at any time with or without cause. In the event of such involuntary termination the Town shall pay to the Town Manager a severance amount equal to six (6) months of salary, such salary to be that which is in effect at the time of termination. The Town Manager agrees that the foregoing severance amount shall be in full satisfaction of all rights and claims which he has arising out of or connected to such termination. The Town Manager expressly waives and releases all procedural and substantive rights which he would otherwise have under the Town Charter, §8, as it may be amended from time to time, including but not limited to any and all rights to salary as set forth in §8. The Town Manager further expressly waives and releases any and all claims and causes of action which he would otherwise have or may have against the Town, the Board, and any of their officials, officers, employees, and agents arising out of or in connection with such termination. The provisions of this Section 9 B shall not apply to termination for "just cause", as defined in Section 9 C, below, nor shall they apply to the Town Manager's voluntary termination of employment.

C. As used in this Section 9 C, "just cause" shall mean the Town Manager's commission of a crime, violation of G.L. c. 268A, §§ 1, et seq., embezzlement, fraud, conduct involving moral turpitude, or willful or reckless failure to perform his duties as Town Manager. Termination of the Town Manager's appointment and employment hereunder for "just cause" and his removal from the position shall comply with the procedures set forth in the Town Charter, §8, subject to any changes in such procedures and requirements as they may be amended from time to time. The preliminary resolution referred to in §8 shall be filed and served by the Board thirty (30) calendar days before the proposed removal shall take effect, and the Town Manager shall submit any reply and request for hearing within three (3) calendar days of his receipt of the preliminary resolution. If requested, a hearing shall take place twenty (20) calendar days after the date such request is made, unless both parties agree to another date. The Board in its sole discretion may suspend the Town Manager from duty pending termination/removal in accordance with, and under the conditions set forth in, the Town Charter, §8, as such may be amended from time to time.

D. Should the Board decide not to renew this Agreement at the end of any five (5) year

period as defined above, the Board shall provide the Town Manager with a written notice of its intent not to renew at least ninety (90) calendar days prior to the expiration date of this Agreement. If the Board intends to renew this Agreement, it shall notify the Town Manager of its intent in writing at least ninety (90) calendar days prior to the expiration date of this Agreement, and the parties shall commence negotiation of a mutually acceptable successor agreement.

E. The Town Manager may terminate his employment or otherwise cancel this Agreement with the Town of Andover upon ninety (90 days) written notice to the Board, a copy of said resignation and notice of cancellation to be placed on file with the Town Clerk. Upon such termination, or death of the Town Manager, accumulated, unused paid leave for the contract year then in effect shall be paid in one lump sum, in accordance with Section 5 A, above.

10. COMPENSATION.

A. The Town Manager's annual base salary commencing July 1, 2020 shall be two hundred fourteen thousand dollars (\$214,000). In addition, the Town Manager may be eligible during the term of this Agreement for a bonus, the awarding of any such bonus(es), the criteria, and the amount to be in the Board's sole discretion. Such eligibility shall be conditioned on the Town Manager being employed for the entire contract year in question, unless otherwise mutually agreed to in writing by the parties. The Town Manager may also be eligible during the term of this Agreement for a cost of living and/or merit increase, the awarding of any such increase(s), the criteria, and the amount to be in the Board's sole discretion.

B. The parties agree that during each contract year of this Agreement the Town Manager shall contribute one percent (1%) of his annual base salary (the amount of which is set forth in Section 10 A, above, subject to any merit increase pursuant to such section) to the Town. Such contribution shall be allocated proportionately to each bi-weekly pay period during such contract year. Such contribution shall be referred to as the "Unfunded Liability Offset", or "ULO", and the Town Manager shall provide such documentation to the Town as is required to authorize such deduction from his base salary. The parties further agree that the Town Manager may elect to terminate in writing such contribution as described in this Section 10 B at such time as a majority of the Town's other employees are no longer eligible for such contribution.

11. RESIDENCY

It is a condition of this Agreement and the Town Manager's appointment and continuing employment hereunder that he maintain residency in the Town, in accordance with the Town Charter, §6.

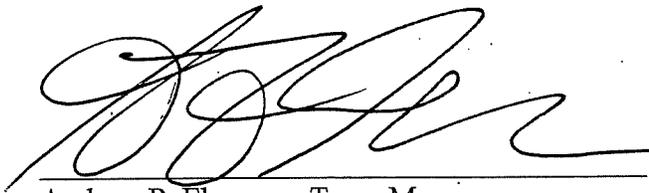
12. GENERAL PROVISIONS.

A. This Agreement may be amended in writing at any time by mutual consent of the parties except as otherwise provided for herein.

B. If any portion of this Agreement is in conflict with any provision of the Town Charter, the requirements of the Charter shall govern.

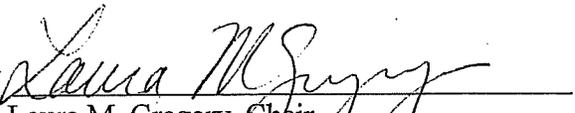
C. Should any section, paragraph, sentence, clause, phrase or word of this Agreement be declared invalid by a proper authority, such declaration shall not affect the remaining portions of this Agreement.

D. This Agreement shall take effect as of July 1, 2020.



Andrew P. Flanagan, Town Manager

THE TOWN OF ANDOVER, BY ITS SELECT BOARD



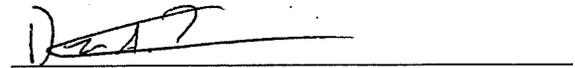
Laura M. Gregory, Chair



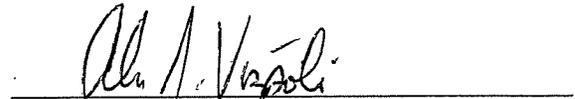
Ann W. Gilbert, Vice-Chair

A TRUE COPY ATTEST

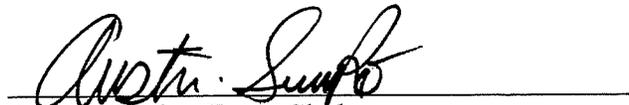
Entered this 13th day of January, 2020
by the Select Board on a vote of
5 to 0 at a regular meeting
held at the Town Offices, Andover, MA.



Daniel A. Koh, Clerk



Alexander J. Wispoli



Austin Simko, Town Clerk



Christian C. Huntress