

## EMPLOYMENT AGREEMENT

**THIS AGREEMENT**, made and entered into this 17th day of August, 2016 by and between the CITY OF PORTSMOUTH, a municipal corporation within the County of Rockingham and the State of New Hampshire (hereinafter called the "CITY"), as party of the first part, and JOHN P. BOHENKO, of the City of Portsmouth, County of Rockingham, and State of New Hampshire (hereinafter called "EMPLOYEE"), as party of the second part;

### WITNESSETH:

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

**WHEREAS**, it is the desire of the City Council to provide certain benefits, establish certain conditions of employment, and to set working conditions of said Employee;

**WHEREAS**, it is the desire of the City Council to (1) secure the services of the Employee and to provide inducement for him to remain in such employment, (2) to make possible full work productivity by assuring Employee's morale and peace of mind with respect to future security, and (3) to provide a just means for terminating Employee's services at such time as he may be unable to fully discharge his duties, within the discretion of the City Council, due to disability, or when the City may desire to otherwise terminate his employment; and,

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

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

**Section 1. Duties.** City hereby agrees to employ John P. Bohenko as City Manager of said City. Employee accepts such employment and agrees to perform the functions and duties specified in the City Charter, City Ordinances, and the New Hampshire General Statutes, and to perform such other legally permissible and proper duties, and reasonable functions as the City Council shall from time-to-time assign.

**Section 2. Term.**

A. This Agreement shall remain in effect from until June 30, 2020 except if extended in accordance with paragraph B. below.

B. The Employee shall notify the City Council after July 1, 2019 and before August 15, 2019, that this Agreement is scheduled to terminate on June 30, 2020. After receipt of such notice, if the Council does not thereafter notify the Employee prior to September 15, 2019 of its intent to negotiate a new agreement, this Agreement shall expire under its terms and conditions on June 30, 2020, and Employee shall receive severance benefits as provided under Section 3 of this Agreement. If the City notifies the Employee of its intent to negotiate a new Agreement, the negotiations shall commence within thirty (30) days of the date of that notification. In the event the parties are unable to negotiate an agreement prior to December 2019, this Agreement shall terminate on June 30, 2020, and the Employee shall receive severance benefits as provided for in Section 3 of this Agreement.

C. This Agreement may be terminated and the Employee removed from office by the Council pursuant to Section 5.7 of the City Charter. Unless the Employee is removed after

conviction of a felony or for intentional gross misconduct, the Employee shall receive his salary through June 30, 2020 and severance benefits as provided in Section 3 of this Agreement. Upon termination for conviction of a felony or final determination of intentional gross misconduct, the Employee shall not be entitled to salary or severance benefits after termination other than accrued vacation.

D. In the event the City seeks to terminate the Employee for intentional gross misconduct, the Employee shall be entitled to arbitrate the question under the rules, policies and procedures of the American Arbitration Association (AAA). This arbitration shall be under the following terms and conditions:

- 1] The Employee shall select the arbitrator from among those arbitrators approved by AAA.
- 2] The City shall bear all expenses of arbitration, including the reasonable attorneys fees of the Employee, regardless of the outcome of the arbitration.
- 3] The Employee shall receive all salary and contract benefits during the pendency of the arbitration.
- 4] In the event the arbitrator finds in favor of the Employee, then he shall resume his duties as City Manager.

**Section 3. Termination and Severance Pay.**

A. In the event the Employee is terminated by the City Council, the City agrees to pay the Employee within thirty (30) days of said termination, a cash payment equal to twelve (12) calendar months of compensation, plus one additional month for each full year of service with the City of Portsmouth and, in addition, shall pay in full all unused, accrued vacation time. Unless the

Employee is terminated because of his conviction of a felony or intentional gross misconduct, then the City shall have no obligation to pay the above sums, except vacation.

B. In the event that the City, at any time during the term of this 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 Agreement, or in the event that the Employee resigns following a demand by the Council that he resign, then, in those events, the Employee may, at his option within 30 calendar days of the event, be deemed to be terminated and the severance pay provision as stated in this Agreement shall be applicable.

C. In the event the Employee voluntarily resigns his 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, he shall not be entitled to salary after resignation or to termination or severance benefits except he shall be paid for accrued, but unused vacation.

#### **Section 4. Salary.**

- A. Effective August 16, 2016, the Employee's salary will be \$163,800. Commencing July 1, 2017 employee's salary will be \$172,000 and every July 1<sup>st</sup> thereafter through July 1, 2019, the Employee will receive a COLA adjustment based on the ten (10) year rolling average of the CPI for the Boston/Brockton/Nashua Index.
- B. Retention Bonus. The employee shall be provided a retention bonus of \$5,000 on January 1, 2017; \$5,000 on January 1, 2018; \$5,000 on January 1, 2019; and \$5,000 on January 1, 2020. This retention bonus will be put toward the employee's 457 Retirement Plan.

- C. The Employee shall be provided with such additional or further compensation above his base salary as may be voted by the City Council from time-to-time, based upon its annual performance evaluation and review of the Employee.

**Section 5. Performance Evaluation.**

A. A subcommittee of the City Council, consisting of those Council members with more than one year of 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 1998. 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 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 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 Council.

B. Annually, commencing prior to September 15, 1997, the 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 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 Council and the Employee mutually agree to abide by the provisions of applicable law.

**Section 6. Hours of Work.** It is recognized that the Employee must devote a great deal of time outside normal office hours to business of the City, and to that end, the Employee will be allowed to take reasonable compensatory time off as he shall deem appropriate during said normal office hours.

**Section 7. Automobile.** During the term in which the Employee is engaged in the performance of his duties and responsibilities pursuant to this Agreement, the City agrees to make automobile payments to any automobile leasing company which the Employee may designate in an amount not to exceed four hundred twenty-five dollars (\$425) per month. The City shall also provide for reimbursement for the cost of the registration and insurance on said vehicle along with supplying gasoline. Said vehicle shall be for both personal and business use.

**Section 8. Dues and Subscriptions.** The City hereby agrees to budget and pay the professional dues and subscriptions of the Employee, necessary for his continuation and full participation in national, regional, state, and local associations and organizations, necessary and desirable for his continued professional participation, growth and advancement, and for the good of the City.

**Section 9. Professional Development.** The City hereby agrees to pay, within budgetary constraints, the necessary expenses of Employee to continue his 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. In addition, the employee shall be entitled, during the term of this agreement, a 3 month paid educational sabbatical.

**Section 10. General Expenses - Expense Account.** The City recognizes that certain expenses of a non-personal and generally job-affiliated nature are incurred by Employee, and hereby agrees to reimburse or to pay said general expenses upon receipt of duly executed expense vouchers, receipts, statements, or personal affidavits.

**Section 11. Holidays and Vacation.**

- A. Commencing January 1, 1998, the Employee shall receive thirty (30) work days vacation on an annual basis. Employee shall not accrue more than one-hundred eighty (180) work days vacation.
- B. The Employee may elect payment on June 30 of any year for unused vacation days, not to exceed ten (10) days in any year.
- C. Employee shall be entitled to the same paid holidays which other management employees receive.

**Section 12. Sick Leave.**

The Employee will not receive any preset number of sick days each year, but instead will not have his salary interrupted because of his absence due to illness. There will be no accumulation of sick leave of pay therefore upon termination of this agreement.

**Section 13. Health, Life, Dental and Disability Insurance.**

A. The City agrees to continue in force for Employee and his dependents at no cost to Employee the same health, life, dental and disability insurance afforded to other City management employees. The employee agrees to pay the same co-pay for health insurance premiums as other non-union management employees. Sections 125 and 129 Benefit Plans shall be available to the Employee to the extent they are available to other management employees. In the event that the Employee is involuntarily terminated (which shall not include expiration of the Agreement according to its terms or termination for commission of a felony or intentional gross misconduct),

the City shall continue in force for Employee and his dependents at no cost to the employee, the life, dental and disability insurance afforded other City employees for a maximum period of 365 days after termination unless such coverage has been provided to Employee without cost through new employment. In the event that the Employee is involuntarily terminated (which shall not include expiration of the Agreement according to its terms or termination for conviction of a felony or intentional gross misconduct), the City will continue to provide health insurance coverage to the Employee and his family, and the Employee agrees to pay the same level of co-pay that is in effect on the date of termination for health insurance premium for the maximum period of 365 days after termination unless such coverage has been provided to Employee through other employment.

B. The City shall provide long-term disability insurance coverage to the Employee. This coverage shall provide the Employee with at least two-thirds of the salary which he is receiving.

If the Employee becomes wholly or continuously disabled, the City shall continue full salary of the Employee until either disability coverage becomes applicable or disability coverage is denied by the disability carrier. The Employee shall surrender to the City any worker's compensation, accident, sickness, or other disability benefit received from the City or any of its insurers during this initial period.

**Section 14. Deferred Compensation, Pension and Retirement Health Insurance.**

A. The City shall execute the necessary agreement allowing the Employee to enroll in a 457 Deferred Compensation Plan. Effective November 1, 2012, the City agrees to contribute an amount equal to 16% of the Employee's salary. Payment of this sum is to be pro-rated in accordance with the City's normal salary payment schedule.



B. The City shall execute the necessary agreement allowing the Employee to enroll in the International City Management Association's Retirement Corporation 401(a) Money Purchase Plan. Effective July 1, 2000 the City agrees to contribute an amount equal to and not to exceed twenty (20%) percent of the employee's compensation. The Employee shall be required to match the City's contribution with an amount not to exceed ten (10%) percent of his compensation. The City shall file for immediate vesting in the Plan for Employee. The City shall reimburse the employee up to .55% of the management fee incurred for the plan during the previous calendar year effective January 1, 2016 and every January thereafter.

C. The total contribution shall not exceed any maximum established by law.

D. Upon retirement, Employee shall be entitled to a monthly medical health insurance stipend. Said stipend shall increase annually from date of hire at a rate of 10% for each full year of service with the City to a maximum of 100% of the premium for health insurance carried by Employee on the date of retirement. On July 1 of each year after retirement, the amount of the health insurance stipend will increase at the same percentage level as the medical subsidy offered by the New Hampshire Retirement System (NHRS). The stipend shall be credited towards the purchase of medical insurance offered to other City retirees. If the City is unable to insure Employee, or at the Employee's request, the stipend shall be tendered to Employee in cash on July 1 of each year. At no time shall the stipend exceed Employee's actual cost for carrying health insurance. Employee agrees to cooperate with the City for purposes of establishing the actual cost of Employee's health insurance. Employee's retirement shall be defined as leaving the employment of the City and receiving payments from Employee's 457 or 401(a) Plan.

E. Upon retirement from the City of Portsmouth, the employee will become a contract employee working an average of 15 hours a week for a total maximum hours of 750 for a period

of one year. The employee will work at the direction of the City Manager on special projects or other work as assigned. The City will provide the employee office space, computer and cell phone for use during this engagement period. The employee will be compensated \$150.00 per hour. In the event the City no longer requires the services of the employee, the City shall pay a lump sum based on the number of hours remaining under this agreement.

**Section 15.**

**A. Life Insurance.** The City agrees to purchase, keep in effect, and pay the required premiums on a term life insurance policy equal to the amount of two hundred and fifty thousand dollars (\$250,000). Said policy is to be owned by the Employee. Such policy shall become effective as of October 6, 2006 and the City shall pay all renewal premiums as required. Upon termination of this Agreement, Employee will have the option to continue ownership of this policy at his expense.

**B. Long-term Care Insurance.** The City agrees to purchase and pay the required premium on a long-term care insurance policy in the amount of \$100,000. Said policy to be owned by the employee.

**Section 16. Indemnification.** The City agrees to indemnify and hold harmless the Employee from any and all losses, including reasonable attorneys' fees and other expenses of defense, in connection with any claim, demand, action, or suit, or judgment arising out of any act or omission of the Employee if at the time of the act or omission, the Employee was acting within the scope of his employment and without malice or bad faith and shall maintain this indemnification upon retirement.

**Section 17. Outside Work.** The Employee shall not spend more than ten (10) hours a week in teaching, consulting, or other non-City connected business, without the prior approval of the City Council.

**Section 18. Residence.** The Employee agrees to establish his domicile within the City of Portsmouth in accordance with the City Charter.

**Section 19. Bonding.** The City shall bear the full cost of any fidelity or other bonds required of the Employee under any law or ordinance.

**Section 20. Other Terms and Conditions.** The City Council may fix such other reasonable terms and conditions of employment, as it may determine from time to time, relating to Employee, 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 21. General Provisions.**

A. The text herein shall constitute the entire Agreement between the parties.

B. This Agreement shall be binding upon the City and Employee, and their heirs, successors, and assigns.

C. The Agreement shall become effective upon execution.

**Section 22. Severability.**

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.

**Section 23. Merger.**

The text of this written Agreement and any amendments approved by the City Council and executed by the Mayor and the Employee constitute the entire understanding between the parties with respect to the employment of John P. Bohenko as the City Manager of the City of Portsmouth.

**Section 24. 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) City: Mayor, 1 Junkins Avenue  
Portsmouth, New Hampshire 03801

2) Employee: 500 F.W. Hartford Drive  
Portsmouth, New Hampshire 03801

Alternatively, notices required pursuant to this Agreement may be personally served in the same manner as is applicable to civil judicial practice or may be hand-delivered to the recipient. Notice shall be deemed 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.

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 17th day of August 2016,

*Ann M. Sharpe*  
WITNESS


*John P. Bohenko*  
JOHN P. BOHENKO  
CITY MANAGER

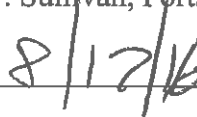
*Ann M. Sharpe*  
WITNESS

*Jack Blalock*  
JACK BLALOCK, MAYOR  
CITY OF PORTSMOUTH, NH  
Pursuant to vote of the City Council on  
August 15, 2016

**CERTIFICATION**

I hereby certify my opinion 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