



**CITY COUNCIL WORKSHOP MEETING
Monday March 20th, 2023 - 6:00 p.m.
Council Chambers, Franklin City Hall**

**or view only via Zoom: <https://us02web.zoom.us/j/85140505933>
or by phone: 1-312-626-6799, Meeting ID# 851 4050 5933**

SALUTE TO THE FLAG

Agenda Item I.

Charter Review

Agenda Item II.

Council to consider City Manager's contract

Agenda Item III.

Opioid Litigation Update

Nonpublic Session Needed per RSA 91-A:3, II (e):

Consideration or negotiation of pending claims or litigation which has been threatened in writing or filed by or against this board or any subdivision thereof, or by or against any member thereof because of his or her membership therein, until the claim or litigation has been fully adjudicated or otherwise settled.

Agenda Item IV.

Other Business

Adjournment

The City Council of the City of Franklin reserves the right to enter into non-public session when necessary, according to the provisions of RSA 91-A.

This location is accessible to the disabled. Those wishing to attend who are hearing or vision impaired may make their needs known by calling 934-3900 (voice), or through "Relay New Hampshire" 1-800-735-2964 (T.D./TRY)

CITY OF FRANKLIN

AND

JUDITH A. MILNER

EMPLOYMENT AGREEMENT

This Agreement is made and entered into this ____ day of ____, 2023, by and between the City of Franklin, 316 Central Street, State of New Hampshire, a municipal corporation, hereinafter called the “City” and Judith A. Milner, hereinafter called the “Manager.”

WHEREAS, the City desires to employ the services of said Judith A. Milner as the City Manager for the City of Franklin as provided by the City Charter. It is the desire of the City to (1) secure and retain the services of Judith A. Milner and to provide inducement for this individual to remain in such employment, (2) to make possible full work productivity, (3) to assure the Manager’s morale and peace of mind with respect to future security, (4) to act as a deterrent against malfeasance, or dishonesty for personal gain on the part of the manager, and (5) to provide a just means for terminating the manager’s services at such time as she may be unable fully to discharge her duties due to disability or for other reasons, when the City Council may otherwise desire to terminate her employ;

WHEREAS, Judith A. Milner desires to accept the employment as City Manager for the City of Franklin and to devote her full-time effort to such a position to the best of her ability; and

WHEREAS, the parties mutually understand that the offer of employment contained herein is conditioned upon several contingencies contained in Section 16, herein;

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

SECTION 1. DUTIES

The City agrees to employ said Judith A. Milner as City Manager of said City to perform the function and duties specified by the laws of the State of New Hampshire, by the Franklin City Charter, the Administrative Code and Ordinances of the City of Franklin, and to perform such other legally permissible and proper duties and functions as the City Council shall from time to time assign. Such duties shall include, but shall not be limited to, the general management of the administration of the City and all departments thereof, the preparation of such reports and information as deemed necessary by the Council for presentation to the Council or such other bodies or persons as the Council may direct, the attendance at all meetings of the City Council, whether formal meetings or “work sessions”, the attendance at all meetings of committees and subcommittees of the Council, at the request of the Chair person of such committees, the attendance of other such meetings by various boards, commissions or other political subdivisions of the City as requested and the performance of such other duties as may be required or allowed by the Council or by law. It is understood that the City Manager is the Administrative Head of all City Departments under her jurisdiction and that all municipal department heads are responsible to the Manager for the efficient administration of the departments. The Manager understands that she shall, in all matters, be subject to the direction and supervision of the City Council.

SECTION 2. TERMS

- A. This employment agreement shall take effect on July 1, 2023 and shall remain in effect until June 30th, 2028. On or before this date, the contract may be extended with the approval of the City Council and the City Manager.

The Manager specifically waives any rights that she may have to an indefinite appointment pursuant to Section C-19 of the Franklin City Charter and agrees that she shall bring no action, claim or suit of any kind, in law or in equity, asserting a right to employment upon terms other than those contained in this document and specifically not to assert any claim to an indefinite appointment of employment. Should the Manager bring any such claim, the City shall be entitled to immediate judgment in its favor and the Manager shall indemnify and hold the City harmless for all expenses arising from said claim, including any judgment on the merits of such claim.

- B. Nothing in this agreement shall prevent, limit or otherwise interfere with the right of the City to terminate the services of the Manager, subject only to the provisions set forth in the City Charter or this agreement.
- C. Nothing in this agreement shall prevent, limit or otherwise interfere with the right of the City Manager to resign at any time from her position with the City.
- D. The Manager agrees to not accept supplemental or additional employment (moonlight) during the term of this agreement. The Manager may engage in occasional teaching, writing, or consulting performed during her time off with the approval of the Council.
- E. In the event written notice is not given by either party to this agreement to the other, 90 days prior to the termination date as herein before provided, this agreement shall be extended on the same terms and conditions as herein provided, all for an additional one year.

SECTION 3. DISABILITY

- A. If the Manager, after an examination by a physician or other medical specialist of the City Council's choosing is found to be unable to perform her duties because of sickness, accident, injury, mental incapacity, or other reason, for a period of four successive weeks beyond any accrued sick leave, or for twenty (20) working days over a thirty (30) day period, the City shall have the option of terminating this agreement. However, the Manager shall be compensated for any accrued sick leave, vacation, holidays, and other accrued benefits minus only debts due the City.
- B. If the sickness, accident, injury, or mental incapacity is job related, the provisions of the New Hampshire Worker's Compensation law shall apply.

SECTION 4. SALARY

- A. Under this agreement, the City agrees to pay the Manager a salary of no less than \$131,040 (gross wages) annually, paid weekly at the rate of \$2,520.00 (gross wages). This amount shall not be reduced during the terms of this agreement extension (See Section 2-A).
- B. Such annualized salary shall be payable in equal installments at the same time as other employees of the City are paid. Should the City revise the pay periods for City employees, the Manager will be on the same timetable as City employees.
- C. For the entire term of this contract and any additional contract extension, the Council will perform an annual review of the City Manager before or during the month of April (with the exception of April, 2023). The results of the annual performance review will be the basis for any salary and/or COLA increases determined by a majority vote of the Council and which will take effect on July 1 following.

SECTION 5. MISCELLANEOUS EXPENSES

- A. The City shall be responsible for paying the accepted federal allowance for all actual mileage driven on City business when the manager uses her private vehicle.
- B. The City also agrees to budget and pay for a cellular telephone allowance at the rate of \$30.00 per month.

SECTION 6. VACATION AND SICK LEAVE

- A. The Manager shall accrue, and have credited to her personal account, sick leave at the same rate as provided by the City personnel policy.
- B. The Manager shall be entitled to twenty (20) days vacation annually. Accrual of personal vacation days shall be capped at forty (40) days. Any accrued vacation accrual beyond forty (40) days shall be treated in accordance with the city's personnel plan.

SECTION 7. HEALTH, DISABILITY, DENTAL AND LIFE INSURANCE

- A. The City agrees to provide hospitalization, dental, surgical, and comprehensive medical insurance for the Manager and her bonafide dependents, and to pay one-hundred percent (100%) of the premiums thereon for coverage which is the equivalent of that provided to other City employees pursuant to the City personnel regulations. The City's sole responsibility under this provision shall be the payment of the relevant premiums and all co-pays, deductibles or other similar expenses shall be borne by the Manager.

- B. The City agrees to purchase and to pay the required premiums on a term life insurance policy equal to the Manager's annual salary for each fiscal year, with the beneficiary to be named by the Manager.
- C. The City agrees to purchase and to pay 100% of the required premiums for an illness/injury disability insurance policy providing loss of income coverage of 60% salary for a period of up to 26 weeks with a seven-day waiting period.
- D. The City agrees that other insurance programs shall be the same as those offered to other employees pursuant to the City personnel regulations.

SECTION 8. RETIREMENT PLAN

- A. The City agrees to execute all necessary agreements for the City's continued participation in the State of New Hampshire Retirement Plan on behalf of the Manager.

SECTION 9. DUES AND SUBSCRIPTIONS

The City agrees to budget and to pay for the professional dues and subscriptions of the Manager necessary for her continuation and full participation in national, state, regional, and local associations and organizations necessary and desirable for her continued professional participation, growth and advancement, and for the good of the City. This shall include the International City Management Association, the State Manager's Association, the New Hampshire Municipal Association and other organizations mutually agreed upon by a majority vote of the City Council.

SECTION 10. PROFESSIONAL DEVELOPMENT

- A. The City hereby agrees to budget for and to pay the travel and subsistence expenses of the Manager for professional and official travel, meetings and occasions adequate to continue the professional development of the Manager and to adequately pursue necessary official and other functions for the City, including but not limited to, the annual conference of the International City Management Association, meetings of the New Hampshire Manager's Association, New Hampshire Municipal Association, and such other national, regional, state, and local governmental groups and committees thereof which the Manager serves as a member. All payments are subject to presentation by the City Manager to the City Council and approved based upon a majority vote of the City Council prior to incurring any expenses.
- B. The City also agrees to budget for and pay for the travel and subsistence expenses of the Manager for short courses, institutes, and seminars necessary for her professional development and for the good of the City. All payments are subject to presentation by the City Manager to the City Council and approval based upon a majority vote of the City Council prior to incurring any expenses.

- C. Subject to the advance approval of the Council, the City will reimburse the Manager for one graduate level course per contract year. Reimbursement for such course shall be subject to the following:
- Prior approval of the specific course selection by the City Council in a study area within the discipline of public administration.
 - Mutual agreement between the Manager and the City Council of the time commitment required for the course, including research and study time.
 - Achievement of a grade of “B” (or equivalent) or above.
 - The Manager may present related expenses for approval by the City in advance of incurring them.
 - The specifics of this section may be subject to renegotiation annually as part of the Manager’s review process.
 - The Manager’s reimbursement request shall also be subject to the Council providing funding for same (although not necessarily a specific line item) during the annual municipal budget process.

SECTION 11. INDEMNIFICATION

- A. The Manager shall be indemnified against any tort, professional liability claim or demand or other legal action in accordance with Section 61-5 through 61-8 of the Franklin City Code as in effect on the date of the execution of this contract.

SECTION 12. OTHER TERMS AND CONDITIONS OF EMPLOYMENT

- A. Upon review, consultation, and agreement with the Manager, the Council may amend the terms and conditions of employment by a majority vote, as deemed necessary from time to time, provided such terms and conditions are not inconsistent with or in direct conflict with the provisions of this agreement, or any law.
- B. The City and the Manager agree that all other rules and regulations of the City related to vacation, sick leave, holidays, and other fringe benefits and working conditions as they now exist or hereafter may be amended, also shall apply to the Manager as they would to other employees pursuant to the City personnel regulations, in addition to said benefits enumerated specifically for the Manager in this agreement except as modified herein.

SECTION 13. RESIDENCY

- A. In concurrence with the City Charter, the City does not require the City Manager to reside within the City of Franklin.

SECTION 14. TERMINATION AND SEVERANCE PAY

- A. The parties agree that this contract is for employment at will. The Manager specifically waives any rights that she may have to an indefinite appointment pursuant to Section C-19 of the Franklin City Charter and agrees that she shall bring no action, claim or suit of any kind, in law or in equity, asserting a right to employment upon terms other than those contained in this document and specifically not to assert any claim to an indefinite appointment of employment. Should the Manager bring any such claim, the City shall be entitled to immediate judgment in its favor and the Manager shall indemnify and hold the City harmless for all expenses arising from said claim, including any judgment on the merits of such claim.
- B. In the event of early termination by the City, the severance pay will be equal to six (6) months aggregate salary plus all accrued leave balances. In the event the Manager is terminated because of a conviction in a court of law of any illegal act, including but not limited to a criminal conviction involving theft, dishonesty, or moral turpitude, in that event, the City shall have no obligation to the severance sum designated in this section.
- C. In the event the Manager voluntarily resigns from her position with the City before the expiration of the aforesaid term of her employment, then the Manager shall give the City 60 days notice in advance. The Manager shall then receive the normal payoff of benefits earned.

SECTION 15. 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 Manager.
- C. This agreement shall become effective on _____, 2023.
- D. If any provision, or any portion thereof, contained in this agreement is held invalid, unconstitutional or unenforceable, the remainder of this agreement, or portions thereof, shall be deemed severable, shall not be affected and shall remain in full force and effect.

SECTION 16. CONDITIONAL NATURE OF AGREEMENT.

- A. This agreement is conditional in nature and both parties recognize that it shall not be considered effective in any way or binding upon either party until a standard employment background investigation (including criminal

record and credit), Not Applicable on contract renewal, has been conducted as directed by the City Council and the results of said investigation have been reviewed by the Council. In the event any portion of that investigation results in the disclosure of negative information (in the sole discretion of the Council), the Council may, (again, in its sole discretion), withdraw the offer of employment contained herein and this contract shall be considered null and void and of no effect.

- B. Should the Council, in its sole discretion, revoke the offer of employment contained herein and nullify this contract in accordance with this section, the Manager agrees that the decision of the Council shall be final and binding and that she shall make no effort to enforce any term of the contract or seek damages from the City as a result of that revocation and/or nullification. In the event that the Manager takes any such action, this term shall constitute a binding agreement on her part that judgment in favor of the City may be entered promptly and that no appeal of that judgment shall be taken.
- C. By signing this agreement, the Manager recognizes that the terms of employment as stated herein are conditioned upon the contingencies stated above and no other terms shall be considered binding upon the City, regardless of the execution of this document, until she has been notified by the Council that they have accepted the results of the background investigation and those results have not caused them to exercise their rights contained within this section.

IN WITNESS WHEREOF, the City of Franklin has caused this agreement to be signed and executed in its behalf by the Mayor of the City Council; and duly attested by the City Clerk, and the Manager has signed and executed this agreement, both in duplicate, the day and year first written above.

Jo Brown, Mayor
City Council
City of Franklin

Attest: Michelle Stanyan, City Clerk
City of Franklin

Judith A. Milner
City Manager Designee

