

**TOWN OF WHITMAN, MASSACHUSETTS  
CONTRACT OF EMPLOYMENT FOR  
THE TOWN ADMINISTRATOR**

This **Agreement** is made by and between the **Town of Whitman**, Commonwealth of Massachusetts, a municipal corporation, acting by and through its Board of Selectmen, hereinafter referred to as “the **Board**”, who act hereunder in their representative capacity only and without any personal liability to themselves, hereinafter referred to as “the **Town**”, as party of the first part, and **Lincoln Heineman**, hereinafter referred to as “**Heineman**”, as party of the second part, both of whom understand and agree as follows:

**WITNESSETH:**

**WHEREAS**, pursuant to Massachusetts General Laws, chapter 41, §23A the **Town** has authorized its Board of Selectmen to appoint a Town Administrator; and,

**WHEREAS**, Massachusetts General Laws, chapter 41, §108N authorizes the **Town**, acting by and through its Board of Selectmen, to establish an employment contract for its Town Administrator; and,

**WHEREAS**, the **Town** desires to employ the services of **Heineman** as its Town Administrator; and,

**WHEREAS**, it is the desire of the **Town** to provide certain benefits, establish certain conditions of employment, and set the working conditions for **Heineman**; and,

**WHEREAS**, **Heineman** represents that he is qualified and capable of performing the duties and responsibilities of said position;

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

***Section 1: Duties***

The **Town** hereby agrees to employ **Heineman** as Town Administrator of the Town of Whitman to perform the functions and related duties of said position as specified in Massachusetts General Laws, chapter 41, §23A, as amended from time to time, applicable by-laws, rules and regulations of the **Town**, votes of the Town Meeting, general or special laws, all of which as may be amended, rescinded and supplemented from time to time, and to perform such other legally permissible and proper duties and functions as the Board of Selectmen or Town Meeting shall from time to time assign and/or are normally within the range of duties and responsibilities performed by a person holding the position of Town Administrator. **Heineman** agrees to perform such duties in a timely and efficient manner consistent with applicable professional standards.

**Section 2: Term**

- A.** **Heineman** agrees to remain in the exclusive employ of the **Town** from February 8, 2021 through June 30, 2024, and neither to accept other employment nor to become employed by any other employer or be involved in any other activity that would prevent him from performing his duties as stated herein, unless he has received the prior written approval of the Board of Selectmen, until said termination date, unless said termination date is affected as hereinafter provided.
- B.** The Parties agree to endeavor to meet and confer approximately nine (9) months prior to the expiration date of this **Agreement** for the purpose of discussing the continuation of the employment relationship and, if agreeable to continuing the employment relationship hereunder, to endeavor to negotiate the terms of a successor agreement. It is understood by the Parties that the objective of this clause is to enable the Parties to know by at least approximately eight (8) months prior to the expiration of this **Agreement** as to whether the Parties are to continue in an employment relationship, so that each may, if necessary, have the maximum amount of advance notice if the relationship is not to continue. To that end, each Party agrees to act in good faith in meeting the time periods in this clause; however, the Parties may agree to another time period(s). A failure to so meet or reach agreement whether or not to continue the employment relationship or as to the terms of any successor agreement shall not be construed as a breach of this **Agreement** or give any rights or benefits to **Heineman** by reason thereof.
- C.** Nothing in this **Agreement** shall prevent, limit or otherwise interfere with the right of the Board to suspend and/or terminate the services of **Heineman** at any time, subject only to the provisions of this **Agreement** and the provisions of any other applicable law.
- D.** Nothing in this **Agreement** shall prevent or otherwise interfere with **Heineman's** right to resign at any time from his position with the **Town**, subject only to the provisions set forth in this **Agreement** at Section 7.C, below, and the provisions of any other applicable law.
- E.** For purposes of this **Agreement**, all references to the term "Contract Year" or "fiscal year" or "year" shall mean the fiscal year period of July 1 through June 30.

**Section 3: Compensation**

**A. Salary**

**Heineman** shall be paid a total annual salary as set forth below, pro-rated to reflect the actual period of employment, payable in periodic installments on the same basis as other employees of the **Town**, subject to withholdings for income taxes, social security (FICA), retirement and other deductions, as are authorized by the Parties or required by law:

1. Effective February 8, 2021, One Hundred Forty Thousand Dollars and No Cents (\$140,000.00);

2. Effective July 1, 2021, One Hundred Forty-Two Thousand Eight Hundred Dollars and No Cents (\$142,800.00);
3. Effective July 1, 2022, One Hundred Forty-Five Thousand Six Hundred Fifty-Six Dollars and No Cents (\$145,656,00); and,
4. Effective July 1, 2023, One Hundred Forty-Eight Thousand Five Hundred Sixty-Nine Dollars and No Cents (\$148,569).

***B. Per Diem Rate***

**Heineman's** per diem rate shall be calculated at a rate of 1/260<sup>th</sup> of his then current salary, as set forth above.

***Section 4: Hours of Work***

**Heineman** shall work at a minimum such hours as other administrative personnel of the **Town** work and shall, in addition thereto, devote as a minimum, such time and effort as is necessary to properly perform the duties and responsibilities of the position.

Due to the unique nature of this employment, it is understood and agreed that in order to properly perform the job required, **Heineman** may have to expend additional time beyond the normal work day and he agrees to do same as is required. Such additional time includes but is not limited to time required to represent the **Town** and/or the Board at various meetings and events, meetings with the Board and other Town boards, commissions, departments and Town Meetings, and time necessitated by emergency situations. It is acknowledged that the position is that of an Executive/Administrative nature as that term is used in the Fair Labor Standards Act, its rules and regulations. There shall be no paid overtime or additional compensation for said additional time.

***Section 5: Outside Activities***

**Heineman** shall not engage in any other employment without the prior written authorization of the Board of Selectmen. In no event shall any such employment or outside activities interfere with the obligations **Heineman** has to the **Town** or the Board or be adverse to the interests of the **Town** or the Board.

***Section 6: Benefits***

***A. Health, Dental, Life Insurance, and Disability Insurance***

**Heineman** shall be eligible for participation under such group health, dental, life and disability insurance plans provided to employees of the **Town of Whitman** to the same extent as any other employee of the **Town**.

In addition, the **Town** will provide **Heineman** with a term life insurance policy in the amount of \$100,000.00 during the term of this **Agreement**.

**B. *Deferred Compensation Plans***

**Heineman** shall be eligible for participation in such deferred compensation plans provided to employees of the **Town of Whitman** to the same extent as any other employee of the **Town**.

**C. *Vacation, Holidays, Personal, Sick Time and Bereavement Time***

**1. *Vacation Time***

- a.** **Heineman** shall be granted twenty-five (25) days' vacation leave, pro-rated for less than a full Contract Year of service. Said vacation days must be used in the Contract Year granted, except as permitted under subsection b or c, below, or shall be forfeited with no cash redemption value. The Board will provide **Heineman** with the opportunity to use such time. Use of said vacation days must be mutually agreed upon by **Heineman** and the Board, acting by and through its Chair.
- b.** **Heineman** may elect on an annual basis to buy back up to ten (10) unused vacation days, provided written notice of such election is made to the Board of Selectmen, through its Chair, no later than June 1 of any year.
- c.** In the event of extraordinary circumstances, **Heineman** may request leave from the Board to carry over unused vacation days from one fiscal year to the next. Such request must be made in writing by June 1 of any year and approved by a majority vote of the Board of Selectmen.
- d.** Unused vacation days remaining as of June 30 of any fiscal year, except to the extent such days may be bought back or carried over pursuant to the provisions set forth above, shall be surrendered and have no cash redemption value.
- e.** In the event that this **Agreement** is terminated prior to the conclusion of a fiscal year, all accrued and unused vacation time will be paid to **Heineman** calculated at his then current per diem rate of pay.

**2. *Holidays***

**Heineman** shall be provided with time off with pay for all federal and state holidays which are provided to other **Town** employees.

**3. *Personal Days***

In each year of this **Agreement**, **Heineman** shall be provided with four (4) paid personal days, pro-rated for less than a full Contract Year of service. Unused personal days may not accrue or be carried forward from year to year.

**4. Sick Leave**

**Heineman** shall be provided with fifteen (15) days of sick leave annually, pro-rated for less than a full Contract Year of service, and may accrue unused days in a personal sick leave bank with said days to be carried over from fiscal year to fiscal year to be used for the sole purpose of providing **Heineman** with sufficient sick days to bridge the time to the effective date of any short or long-term disability policy that may be in effect. Long-term disability insurance shall be provided for any illness or disability that renders him incapacitated from performing the essential functions of his job. There shall be no right to payment for unused sick days upon separation of employment or contract termination.

**5. Bereavement Leave**

- a.** **Heineman** shall be provided with five (5) days of paid leave for the death of a member of his immediate family. The term “immediate family” shall include: spouse, children, parents, parents-in-law, siblings, or siblings-in-law.
- b.** **Heineman** shall be provided with two (2) days of paid leave for the death of a relative. The term “relative” shall include: aunts, uncles or cousins.
- c.** Additional bereavement leave may, when necessary, be granted by the Board of Selectmen.

**D. Automobile Travel Expense Reimbursement**

**Heineman** shall be reimbursed at the IRS rate per mile for all travel necessary or advisable for him to travel in order to perform his duties.

**E. Cellular Telephone**

The **Town** shall provide **Heineman** with a cellular telephone. Said telephone shall be considered property of the **Town of Whitman** to be used for **Town** purposes. The **Town** will pay for all **Town**-related charges on plans selected by **Heineman** and approved by the Board of Selectmen.

**F. Professional Memberships and License Fees**

The **Town** agrees to pay for all professional memberships and license fees required and approved by the Board of Selectmen, to include, at a minimum, the Massachusetts Municipal Association (“MMA”), the Massachusetts Municipal Management Association (“MMMA”), and the International City/County Management Association (“ICMA”).

**Heineman** may be reimbursed for expenses associated with professional conferences upon prior approval of the Board.

**Section 7: Annual Evaluation and Review**

The Board shall annually review and evaluate **Heineman**. Said review and evaluation shall be based on the goals and objectives developed jointly by the Board and **Heineman**. Further, the Board shall provide **Heineman** with a summary written statement of the evaluation findings of the Board and shall provide an adequate opportunity for **Heineman** to discuss his evaluation with the Board. The individual evaluations of Board members and the summary evaluation shall be part of **Heineman**'s personnel file, subject to Massachusetts General Laws, chapter 30A, §23(e). The Parties acknowledge that goals and objectives statements cannot predict every administrative challenge; therefore it is not the intention of the parties to penalize **Heineman** in circumstances where public health, welfare or safety require an unanticipated diversion of administrative effort from stated goals and objectives.

**Section 8: Suspension, Termination and Severance Pay, Resignation**

**A. Suspension**

1. The Board may suspend **Heineman** with or without pay and benefits at any time during the term of this **Agreement**, for just cause or for a violation of the terms and conditions of this **Agreement** or the duties of the position, provided that: a majority of the Board and **Heineman** agree to such suspension; or, after a hearing, the Board, with at least three (3) members voting in the affirmative, votes to suspend **Heineman**. **Heineman** shall be provided with written notice of the proposed suspension and grounds therefor at least seven (7) calendar days prior to the scheduled hearing.
2. Nothing contained herein shall prevent the Board, at a regular meeting and upon a majority vote of the members present, from placing **Heineman** on administrative leave with full benefits and pay and without prejudice.

**B. Termination and Severance Pay**

1. The Board may terminate the service of **Heineman** for just cause or for violation of any of the terms or conditions of this **Agreement** or the duties of the position, provided that after a hearing, the Board votes to terminate **Heineman**. **Heineman** shall be provided with written notice of the proposed termination and grounds therefor at least seven (7) calendar days prior to the scheduled hearing.
2. In the event that the Board votes to so terminate **Heineman**, he shall receive one (1) months' severance pay per year of service or part thereof. During the first month following the vote of termination, **Heineman** shall remain available to assist the **Town** in the transition caused by his separation from employment. This assistance may include **Heineman** reporting to work at the Town Hall or providing off-site consultation services, as mutually agreed by the Parties.
3. In the event that the Board terminates **Heineman** at any time during the term of this **Agreement**, **Heineman** shall receive all accrued salary and vacation days owed to him as of the effective date of his termination.

4. The acceptance by **Heineman** of the severance pay and/or benefits provided hereunder shall constitute a complete and full release of any other rights, claims or causes of action, whether in law, equity or otherwise, that **Heineman** may have against the **Town**, its officers, agents, officials or employees and shall constitute compensation to **Heineman**.
5. If there is a lack of funding to meet the obligations under this **Agreement**, and in the reasonable judgment of the Board there are no other funds available to compensate **Heineman**, then it shall be deemed that just cause for termination exists and to the extent legally permissible, **Heineman** shall be entitled to all rights and benefits provided in this **Agreement** for such a termination.

**C. Resignation**

**Heineman** may resign his position as Town Administrator under this **Agreement** by giving the Board written notice sixty (60) days prior to the effective date of resignation. **Heineman** shall not be permitted to utilize accrued vacation time during this notice period, unless specific permission is granted by the Board. **Heineman** shall be entitled to receive payment for his earned and vested but unused vacation time as of the effective date of his resignation.

**Section 9: Warranty Of Credentials**

**Heineman** warrants the validity of the credentials and experience represented to the Board in pursuit of this position and any material misrepresentations made therein may constitute grounds for immediate termination of this **Agreement** and **Heineman**'s employment.

**Section 10: State Ethics Laws**

**Heineman** is expected to familiarize himself with all applicable ethics laws of the Commonwealth of Massachusetts and is expected to comply in all respects with such laws during the term of this **Agreement** and in connection with the performance of his job duties and responsibilities.

**Section 11: Bonding**

The **Town** shall bear the full cost of any fidelity or other bonds required of **Heineman** under any law or by-law or as may be required by the Board of Selectmen.

**Section 12: Other Terms and Conditions of Employment**

The Board, upon mutual agreement with **Heineman**, shall fix any such other terms and conditions of employment as it may determine from time to time, relating to **Heineman**'s performance, duties and responsibilities, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this **Agreement**. **Heineman** agrees to perform such duties in a timely and efficient manner consistent with applicable professional standards.

***Section 13: Indemnification***

The **Town** agrees to provide indemnification and legal defense of **Heineman** in accordance with Massachusetts General Laws, chapter 258, to the extent applicable. As a condition of said indemnification and legal defense, **Heineman** shall cooperate with the **Town**, its attorneys and agents in all matters relating to said claim.

***Section 14: Salary Deductions***

This **Agreement** shall be deemed to have been entered into subject to all provisions of the laws of the Commonwealth of Massachusetts and shall conform to regulations governing deductions from the above-stated compensation with reference to withholding tax and retirement provisions, and any other deductions authorized by **Heineman** and agreed upon by the Parties or required by law.

***Section 15: Entire Agreement***

This **Agreement** embodies the whole agreement between the **Town** and **Heineman** and there are no inducements, promises, terms, conditions or obligations made or entered into by either party other than those contained herein. This **Agreement** may not be changed except by a writing signed by the party against whom enforcement thereof is sought. All benefits and obligations, except as otherwise specifically provided herein, shall be conditional upon **Heineman** being employed as and performing the services required of the Town Administrator of the Town of Whitman.

***Section 16: Invalidity***

The failure of a Party to insist on strict compliance with a term or provision of this **Agreement** shall not constitute a waiver of that or any term or provision of this **Agreement**. If any paragraph, part of or rider to this **Agreement** is invalid, it shall not affect the remainder of said **Agreement**, but said remainder shall be binding and effective against all parties.

***Section 17: Law Governing***

This **Agreement** shall be construed and governed by the laws of the Commonwealth of Massachusetts.

***Section 18: Effective Date And Counterparts***


This **Agreement** shall become effective when executed by all Parties and may be executed in two (2) counterparts, each of which shall be deemed an original, and all of which taken together shall be deemed one and the same instrument. Any proof of this **Agreement** shall require production of only one such counterpart duly executed by the Party to be charged therewith. The Parties agree that electronic signatures and/or signatures by fax and/or scanned and sent via email are acceptable as originals.



IN WITNESS WHEREOF, the Town of Whitman, Massachusetts has caused this Agreement to be signed and executed on its behalf by its Board of Selectmen, and Lincoln Heineman has signed and executed this Agreement, both in duplicate, as of the last date of execution written below.

  
Daniel L. Salvucci, Acting Chair

Dated: 1/12/2021

  
Lincoln Heineman

Dated: 01/17/2021

  
Dr. Carl F. Kowalski, Member

Dated: 1/12/2021

\_\_\_\_\_  
Brian J. Bezanson, Clerk

Dated: \_\_\_\_\_

  
Justin Evans, Member

Dated: 1/12/2021

  
Randy Lamattina, Member

Dated: 1/12/2021