



# Council Business Meeting

April 18, 2023

<b>Agenda Item</b>	City Manager 1 Year Performance Review	
<b>From</b>	Sabrina Cotta	Deputy City Manager/ Interim HR Director
<b>Contact</b>	<a href="mailto:Sabrina.cotta@ashland.or.us">Sabrina.cotta@ashland.or.us</a>	
<b>Item Type</b>	Requested by Council <input checked="" type="checkbox"/> Update <input type="checkbox"/> Request for Direction <input type="checkbox"/> Presentation <input type="checkbox"/>	

## **SUMMARY**

City Manager Joseph L. Lessard had successfully completed his first year of employment with the City of Ashland. Per his contract, the City Manager will participate in an annual review.

## **BACKGROUND AND ADDITIONAL INFORMATION**

The City Council conducted the Manager’s annual performance review in executive session at the April 4<sup>th</sup>, 2023, and March 21, 2023, City Council Business Meetings. City Manager Lessard has met the standard of performance as dictated by the Mayor and Council with areas of excellence and areas of improvement identified. The Mayor and Council will conduct an assessment in six months to track progress to identified goals.

## **SUGGESTED NEXT STEPS**

I move that the City Manager has successfully met the performance standard as set by City Council and has successfully passed his annual performance review.

## **REFERENCES & ATTACHMENTS**

City Managers Contract



**CITY OF ASHLAND  
EMPLOYMENT AGREEMENT**

**CITY MANAGER**

THIS EMPLOYMENT AGREEMENT ("Agreement"), is made and entered into this 3<sup>rd</sup> day of January 2022, by and between the City of Ashland, an Oregon municipal corporation ("City"), and Joseph L. Lessard ("Employee").

**RECITALS**

- A. The City desires to employ the services of Employee as the City Manager of the City of Ashland; and
- B. It is the desire of the City to establish certain conditions of employment for Employee; and
- C. It is the desire of the City to: (1) secure and retain the services of Employee and to provide inducement for Employee to remain in such employment, (2) to make possible full work productivity by assuming Employee's morale and peace of mind with respect to future security, (3) to act as a deterrent against malfeasance or dishonesty for personal gain on the part of Employee; and (4) to provide a just means for terminating Employee's services at such time as Employee may be unable fully to discharge Employee's duties due to disability or when City may otherwise desire to terminate Employee's services; and
- D. Employee desires to accept employment as the City Manager of the City of Ashland and to begin his employment on January 3, 2022.

**AGREEMENT**

**Now therefore, the City and Employee hereby agree as follows:**

**Section 1. Duties and Ethical Commitments.**

- A. The City hereby agrees to employ Joseph L. Lessard ("Employee") as the City Manager of the City of Ashland, and Employee agrees to perform the functions and duties of the City Manager specified in the Ashland City Charter, the Ashland Municipal Code, and the job description for the position, and to perform such other legally and ethically permissible and proper duties and functions as the Mayor and/or the City Council, shall from time-to-time assign. The City Manager shall devote his full time to the performance of his duties except as specifically permitted by Subsection 2.C. of this Agreement.
- B. Employee shall be the chief executive and administrative head of the City and shall faithfully perform Employee's lawfully prescribed and assigned duties with reasonable

care, diligence, skill, and expertise. Employee shall not be required to accept the City's assignment of any duties outside of the scope of those stipulated in the Ashland City Charter, the Ashland Municipal Code, and the job description for the position of the City Manager and customarily performed by persons holding the role of City Manager in the absence of Employee's express written consent to such assignment. The City may not reassign Employee to another position in the absence of Employee's express written consent to such assignment. The City shall not unreasonably interfere with Employee's performance of such duties.

- C. Except as may be provided otherwise by the Ashland City Charter, the Ashland Municipal Code and other applicable law, or the City's agreement with any other person, Employee shall have the authority to establish internal rules and procedures which the Employee deems necessary for the efficient and effective operation of the City.
- D. The City expects Employee to adhere to the highest professional standards. The Employee shall not endorse candidates, make financial contributions, sign or circulate petitions, or participate in fundraising activities for individuals seeking or holding elected office, nor seek or accept any personal enrichment or profit derived from confidential information or misuse of public time. The City shall support Employee in keeping these commitments by refraining from any order, direction or request that would require Employee to violate the International City Manager Association (ICMA) Code of Ethics. The ICMA Code of Ethics are attached hereto as Exhibit "A" and incorporated herein by this reference. Neither the Mayor, the City Council, nor any individual member thereof shall request Employee to endorse any candidate, make any financial contribution, sign or circulate any petition, or participate in any fundraising activity for individuals seeking or holding elected office, nor to handle any matter of personnel on a basis other than fairness, impartiality, and merit.

## **Section 2. Effective Date; Term.**

- A. Nothing in this Agreement shall prevent, limit, or otherwise interfere with the right of the City, as provided in the Ashland City Charter, to terminate the services of the City Manager at any time, subject only to the provisions set forth in Section 11, "Termination and Severance Pay," of this Agreement. Except as specifically provided in this Agreement, Employee shall serve at the pleasure of the City without any requirement to demonstrate cause for dismissal.
- B. Nothing in this Agreement shall prevent, limit, or otherwise interfere with the right of the Employee to resign at any time from his position with the City, subject only to the provisions of this Agreement.
- C. Employee agrees to begin his employment with the City on **January 3, 2022** (the "Effective Date") and to remain in the employ of the City and not become employed by any other employer until this Agreement is terminated. This provision shall not restrict Employee from using vacation leave or administrative leave for teaching, consulting, or

other activities provided these activities do not conflict with the regular duties of the Employee and are approved in writing by the City Council.

- D. In the event Employee wishes to voluntarily resign his position during the term of this Agreement, Employee shall be required to give the City not less than thirty (30) calendar days' prior written notice of such intention, unless such notice is waived by the Mayor, with the consent of the City Council. Employee will cooperate with the City in every way with the smooth and normal transfer of his position to any newly appointed individual.

### **Section 3. Salary.**

Beginning January 3, 2022, the City agrees to pay Employee a monthly salary at Step 3 of the City's salary schedule (**currently \$13,623.05 per month/\$163,477.00 annually**). Employee may advance to the next step of the salary schedule (**currently \$14,304.22 per month/\$171,651.00 annually**) after six (6) months of employment with successful performance as determined by the City Council. The City agrees to annually increase the monthly salary and/or other benefits of the City Manager in the same percentage as may be accorded to other Management and Confidential Employees of the City. This Agreement shall be automatically amended to reflect any salary or benefit adjustments that are provided or required by the City's compensation policies.

### **Section 4. Performance Evaluation.**

The Mayor and City Council shall review and evaluate the performance of the Employee at least once annually. Employee shall receive a written copy of the performance evaluation and be provided an adequate opportunity for the Employee to discuss the details of the evaluation.

The City agrees to provide Employee a reasonable opportunity to cure all substantive criticisms, complaints, and suggestions with respect to Employee's performance of his duties and services pursuant to this Agreement.

### **Section 5. Hours of Work; Administrative Leave.**

It is recognized that Employee must devote a great deal of time outside the normal office hours to the business of the City, and to that end Employee will be allowed to take compensatory time off as Employee shall deem appropriate during normal office hours, so long as the business of the City is not adversely affected. Work in excess of forty (40) hours per week is deemed part of the professional responsibility for which the Employee shall not be paid overtime. In recognition of the extra hours required of the City Manager, Employee shall receive eighty (80) hours of Administrative Leave in July of each year, beginning in July of 2022, as set forth in the City's Management Resolution. Employee will receive forty (40) hours of Administrative Leave on the Effective Date of this Agreement. Administrative Leave shall be used before June 30 each year or it shall be deemed forfeited.

## **Section 6. Automobile Allowance.**

Employee's duties require that Employee shall have the use of a motor vehicle at all times during employment with the City. The City shall provide an automobile allowance of **\$400.00 per month** for the use of said motor vehicle for travel. Employee shall also receive reimbursement for mileage at the IRS mileage rate in effect at the time for any travel beyond fifty (50) miles from the City of Ashland. Employee shall be responsible for paying for insurance, operation, maintenance, and repairs of the motor vehicle.

## **Section 7. Health Insurance, Sick Leave, and Other Benefits.**

- A. Except as modified by this Agreement, Employee shall be entitled to receive the same retirement, health insurance, vacation, sick leave benefits, holidays, and other fringe benefits and working conditions as they now exist or may be amended in the future, as apply to Management and Confidential Employees, as set forth in the City's Management Resolution in addition to any benefits enumerated specifically for the Employee in this Agreement. Employee shall accrue vacation leave at the rate set forth in Subsection 6.1.3 of Resolution No. 2021-18 (14 hours for each full calendar month of service) for the first year of employment beginning on the Effective Date of this Agreement and at the rate set forth in Subsection 6.1.4 of Resolution No. 2021-18 after the first full year of employment (16 hours for each full calendar months of service). Additionally, the City will provide forty (40) hours of vacation leave and forty (40) hours of sick leave on the Employee's first day of work. Sick leave shall accrue without limit; however, Employee will not be entitled to receive any form of compensation for unused sick leave upon leaving employment with the City. Employee will be required to use at least eighty (80) hours of vacation leave annually.
- B. Except as otherwise specifically provided in this Agreement, the Employee shall be entitled, at a minimum, to the highest level of benefits that are enjoyed by or offered to Management and Confidential Employees of the City as provided in the City's Management Resolution.

## **Section 8. Housing Assistance.**

At Employees option, the City agrees to either: a.) reimburse Employee for the actual cost of any rental housing used as by Employee as a residence in an amount of up to **\$2500.00 (two thousand five hundred dollars)** during Employee's first six (6) months of employment with the City; or b.) provide the City-owned property known as the Hardesty House to Employee for Employee's use as a residence for a period not to exceed twelve (12) months beginning on the Effective Date of this Agreement. The use of the Hardesty House shall be provided at the 2022 local Fair Market Rent set for two-bedroom houses of \$1195.00 (one thousand one hundred and ninety-five dollars) per month. Employee may rent storage space at the Hardesty House property for Employee's household items or other belongings for a period not to exceed twelve (12) months from the Effective Date for a monthly rental rate of \$100.00 (one hundred dollars). If Employee elects to use the Hardesty House as either a residence or as storage space, Employee shall be required to execute a waiver of liability and release of claims with the City prior to such use.

## **Section 9. Memberships and Professional Development**

The City hereby agrees to budget and to pay the professional dues and subscriptions of Employee for his participation in up to three (3) national, state, and local associations and organizations necessary for Employee's continued professional growth and advancement, and for the good of the City. The City agrees to budget for Employee expenses to attend the annual ICMA, Oregon City/County Managers Association (OCCMA) and Oregon League of Cities conferences. Expenses include registration fees, lodging, meal expenses, and mileage as set forth in Section 6 (or airfare). If sufficient funds are available and budgeted, the City also agrees to reimburse Employee in an amount not to exceed \$2,000.00 (two thousand dollars) annually for registration fees, lodging, and other necessary travel and subsistence expenses of the Employee when he represents the City at additional conferences, for trainings or seminars, or official business meetings that serve the City's interest and are reasonably necessary to provide for the Employee's professional advancement. Membership on any national or state government commission or committee shall be subject to the approval of the City Council.

## **Section 10. Professional Liability and Bonding**

- A. The City agrees that, to the maximum extent permitted by law, it shall defend, hold harmless, and indemnify the Employee from and against any costs, expenses, demands, claims, suits, actions, or awards incurred in connection with or arising out of an alleged act or omission occurring in the performance of the Employee's duties in his official capacity, provided the incident arose while the Employee was acting within the scope of his duties.
- B. The City shall bear the full cost of any bonds that Employee is required to obtain by any law or ordinance.

## **Section 11. Termination and Severance Pay**

- A. For the purpose of this Agreement, termination shall occur when:
  - 1. The City terminates the Employee in accordance with the Ashland City Charter, the Ashland Municipal Code, or a City personnel policy.
  - 2. If the City, its citizens, or the legislature acts to amend any provision of the Ashland City Charter, the Ashland Municipal Code, or enabling state legislation pertaining to the role, powers, duties, authority, or responsibilities of the Employee's position and such change substantially alters the City's form of government, the Employee shall have the right to declare that such amendments constitute termination.
  - 3. If the Employer reduces the base salary, compensation, or any other financial benefit of the Employee, unless such reduction is applied in no greater percentage than the average reduction of all department heads, such action shall constitute a breach of this Agreement and will be regarded as a termination.
  - 4. If the Employee resigns following an offer to accept resignation, conveyed in

writing or during a Council Business Meeting or an Executive Session, by the Employer that is representative of the majority of the governing body that the Employee resign, then the Employee may declare a termination as of the date of the offer.

4. A breach of any provision of this Agreement by the City which is not cured within thirty (30) calendar days after written notice from Employee describing the conduct that constitutes a breach.
5. A breach of any provision of the Agreement by the Employee is not cured within thirty (30) days of written notice from City describing the conduct that constitutes a breach. Employee's refusal to comply with a directive that violates the ICMA Code of Ethics shall in no event be deemed as conduct that constitutes a breach of contract.

- B. In the event Employee is dismissed by the City during the term of this Agreement, and Employee is not being dismissed for any reason set forth in Subsection A.1, Subsection A.5., Subsection C, or Subsection D of this Section 11, the City agrees to offer Employee a severance agreement. Such severance agreement shall not be unreasonably withheld. The amount of severance pay to be offered to Employee in the severance agreement shall be equal to twelve (12) months of the Employee's monthly base salary at the time of dismissal during the first two (2) years of employment. The amount of severance pay to be offered to Employee in a severance agreement shall be reduced to an amount equal to nine (9) months of the Employee's monthly base salary at the time of dismissal beginning in year three (3) of his employment and shall be further reduced to an amount equal to six (6) months of the Employee's monthly base salary at the time of dismissal beginning in year four (4) of his employment with the City.

In addition, the severance agreement offered to Employee will require the City to continue to pay the employer portion of the premiums for medical and dental insurance coverage through the end of the month the Employee's severance pay is intended to cover or until the last day of the month in which Employee obtains employment with alternative insurance whichever occurs earlier.

As a condition of the severance agreement, the Employee will be required to fully release the City, its officers, representatives, insurers, and employees from any and all claims arising from employment with the City and the separation of employment.

- C. Employee will not be eligible to receive the severance agreement described in this Section 11 if Employee breaches any provision of this Agreement, or if Employee neglects his duties or engages in any act of misconduct in the performance of duties on behalf of the City. The term "misconduct" includes misappropriation, dishonesty, breach of trust, insubordination, neglect of duty, failure to perform duties in a manner that is consistent with applicable law, or failure to correct performance deficiencies identified in writing by the City Council after a reasonable opportunity, as determined by the City, to correct the deficiencies; committing any violation of City policies or standards that the City deems a serious violation; or engaging in other acts or omissions demonstrating a

disregard for the interests of the City. The term "misconduct" also includes engaging in criminal acts or in any other off-duty behavior that the City views as impairing the Employee's ability to effectively perform the Employee's duties or as materially jeopardizing the reputation of the City.

- D. Employee will not be eligible to receive the severance agreement described in this Section 11 if Employee, in accordance with applicable law, is dismissed due to a disability that prevents Employee from performing the duties of the position.

#### **Section 12. Amendments to Agreement.**

City may, upon agreement with the Employee and by written amendment to this Agreement, fix such other terms and conditions of employment from time to time, as it may determine relating to the performance by Employee, provided such terms and conditions are not inconsistent or in conflict with the provisions of this Agreement.

#### **Section 13. Moving and Relocation Expenses**

The City will pay the expenses associated with moving Employee's household to the City of Ashland and will reimburse the actual costs associated with the move in an amount not to exceed **\$20,000 (twenty thousand U. S. dollars)**. Moving expenses include packing, moving, storage costs, unpacking, and insurance charges for moving and storing Employee's household goods. Moving expenses may also include actual lodging and meal expenses and mileage costs for moving two personal automobiles and shall be reimbursed at the current IRS allowable rate while the Employee is in transit. Moving expenses may also include actual lodging, meal expenses, and mileage (or airfare) for travel between the cities of Ashland and Austin, Texas, for the Employee and his spouse for purposes of securing a residence in Ashland or for managing Employee's household relocation to Ashland from Austin, including oversight of final arrangements for Employee's vacated Austin housing. Due to the shortness of time available to Employee to relocate to the City of Ashland before the Effective Date of employment, Employee shall be allowed to use compensatory leave for travel between the cities of Ashland and Austin and for moving Employee's personal automobiles. The provisions of this Section 13 shall be in addition to any reimbursements due to Employee for expenses incurred on behalf of the City for Employee's final employment selection interview trip to Ashland from November 30 to December 6, 2021.

#### **Section 14. Other Terms and Conditions of Employment.**

The Employee is subject to all personnel policies of the City and the City's Management and Confidential Employees Resolution except to the extent that they are inconsistent with an express provision set forth in this Agreement. In the event of any conflict between the terms, conditions, and provisions of this Agreement and the terms or provisions of the City's personnel policies, including the City's Management and Confidential Employees Resolution, the terms of this Agreement shall take precedence.



**Section 15. PERS Pick-up.**

The City shall enroll the Employee into the Public Employees' Retirement System (PERS) at the first permissible opportunity. Employee contributions to PERS shall be "picked up" by the City. Employee shall not have the option of receiving money designated for retirement contributions and directly making the contribution to PERS.

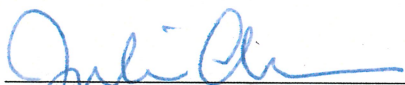
**Section 16. Severability.**

If any term or provision of this Agreement is held by a court of competent jurisdiction to be illegal or in conflict with the laws of the State of Oregon, the validity of the remaining portions of the Agreement shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular term or provision.


**Section 17. Complete Agreement**

This Agreement constitutes the entire understanding between the City and Employee and supersedes all prior agreements, representations, and understandings between them, whether oral or in writing. No supplement, modification or amendment of this Agreement shall be binding on the City unless it is set forth in writing and signed by the Mayor and approved by the City Council. Likewise, no waiver of any provision of this Agreement shall be valid unless set forth in writing and signed by the Mayor and approved by the City Council.

Dated this 17<sup>th</sup> day of December, 2021.

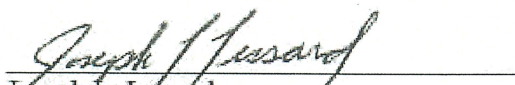


Julie Akins  
Mayor



Gary Milliman  
City Manager Pro Tem

Accepted this 17<sup>th</sup> day of December, 2021.



Joseph L. Lessard  
Employee

**Policy No. #2019.10.03**

**ORIGINATING DEPARTMENT:** Administration

**SUBJECT:** Compensation for work out of classification

**PURPOSE:** To create a consistent City standard for situations when added compensation is granted for work outside of regular job classification. This policy applies to all exempt and hourly employees not covered by a collective bargaining unit. Employees covered by a collective bargaining contract will be paid according to the terms of that agreement.

**STATEMENT OF POLICY:** The City of Ashland recognizes that the needs of the organization change over time and during organizational change, existing staff may be required to perform duties in addition to, or outside of, their regular work assignment. In such cases, the City will recognize added responsibility with added compensation in two ways: Temporary Extra Duty Pay or Out-of-Class/ Acting-in-Capacity pay.

**TEMPORARY EXTRA DUTY PAY**

When compensation is requested for significant work tasks assigned in addition to a City employee's existing job duties for a period of longer than 30 work days. Significant work tasks are job duties that another City employee would be paid to perform due to the specialized knowledge or skill needed. Significant work tasks would not include work that could be performed by an untrained temporary worker, higher volumes of the employee's normal work, or backlog created by an employee's unsatisfactory performance.

**Temporary Extra Duty Pay** may be granted to an employee or employees who absorb those "significant" work tasks on a temporary basis. Examples of applicable situations include but are not limited to: a position vacancy that remains unfilled, an unforeseen absence of a regular employee, time-sensitive legal mandates, special projects, or other unforeseen staffing shortages which necessitate work to be accomplished by existing staff in addition to their normal job duties.

Temporary Extra Duty Pay of up to 2.5%/hour may be granted when an employee is assigned significant additional tasks in addition to their normal workload for a specific period of time greater than 30 days. Work tasks to be compensated must be clearly defined in-writing by a supervisor and endorsed by the Department Head in consultation with Human Resources as the most efficient means of carrying out the work.

Temporary Extra Duty Pay will be reflected on the Personnel Action Form of the receiving employee(s) and will be subject to monthly review by the Department Head for a period up to (6) six months. Temporary Extra Duty Pay is intended to compensate an active employee for additional work performed and will not be paid during periods of paid time off (sick, vacation, comp or admin leave). If a holiday



falls during a time Extra Duty Pay is assigned, it will apply for the holiday. Temporary Extra Duty Pay will be evaluated by the City Administrator and Human Resource Director at six months. In no case shall an employee receive Temporary Extra Duty Pay for more than six months without specific written authorization from the City Administrator.

### **OUT-OF-CLASS (OOC) or ACTING-IN-CAPACITY PAY (AIC)**

Existing employees may be required to perform work in a higher job classification while still remaining in their current job classification. The City recognizes the added duties and responsibilities by paying Out-of-class pay or Acting-in-Capacity Pay.

Out-of-Class or Acting-in-Capacity assignments are also temporary in nature. They require an employee to fill a higher job classification on a temporary basis, along with additional significant work tasks. Employees receiving OOC or AIC shall receive additional compensation of 5%/hour above their base compensation or the first step in the salary range of the higher position they are filling, whichever is higher.

Compensation for OOC or AIC will only be provided if assignment is preauthorized and the employee substantially performs the work of the higher job class for a duration exceeding 10 workdays. There is no retroactivity for OOC or AIC pay, it must be established before the employee fills the higher job classification. Examples of when the City may elect to pay OOC or AIC pay include but are not limited to: vacant positions that have a legal or operational requirement to be filled, during emergencies, or other circumstances when a critical staffing need can most effectively be met by moving an existing employee into that position on a short-term basis.

### **Authorization for OOC or AIC Assignment**

A request for OOC or AIC Assignment should be made in writing and submitted to the Human Resources Director and City Administrator for approval. The request must include the following elements for consideration:

- Employee's current job classification and pay rate
- Rate of pay being requested (the first step in the higher pay range or 5% whichever is greater).
- Why is the employee being asked to perform work at a higher level? Or, what are the current staffing conditions that initiated this request for the employee being asked to perform work at a higher level?
- How long will the employee be performing work out of class?

Appointments into a higher job class will be broken out into two separate categories:

**Short-duration OOC or AIC Assignments:** Appointments into a higher job class intending to last 30-days or less will be noted on the employee's timesheet and payment of the higher rate will only apply to active workdays and paid holidays. Any accrued paid leave (sick, vacation, comp or administrative leave) will be paid at the employee's regular rate of pay.

**Long-duration OOC or AIC Assignments:** Appointments into a higher job class for more than 30-days will be noted on the Employee's Personnel Action Form. OOC or AIC Appointments longer than 30-

days will result in a temporary override to the employee's pay grade, and he/she will be paid at the higher payrate for the entire appointment to include all paid time off including vacation, sick, compensatory time, administrative leave, and holidays. All other compensation, benefits or accrual rates stay at the level associated with the employee's regular job classification.


OOC and AIC appointments are intended to compensate current City employees who fill a dual-role on a temporary basis, OOC and AIC appointments are not intended to last longer than 6-months. A formal review of job tasks and employee classification must be conducted within 6-months. Requests to extend an OOC or AIC assignment beyond 6-months must be made in-writing to the City Administrator. Any changes to the duration of the appointment, wage or other conditions must be pre-approved by Human Resources and the City Administrator through a change to the employee's Personnel Action Form.

Approved:

  
\_\_\_\_\_  
Kelly Madding, City Administrator

Date: 11/22/19

Reviewed as to Form:

  
\_\_\_\_\_  
Dave Lohman, City Attorney

Date: 11/20/19

