

Employment Agreement – County Manager
County of Cumberland, Maine

and

James H. Gailey

INTRODUCTION

This Amended Agreement, made and entered into this 21st day of July, 2026, by and between the County of Cumberland, Maine, a county corporation (hereinafter called the “County”), and James H. Gailey (hereinafter called the “Manager”), an individual who has the education, training and experience in local and county government management and who, as a member of the International City/County Managers Association (“ICMA”), is subject to the ICMA Code of Ethics, both of whom agree as follows:

WITNESSETH:

WHEREAS, the County Commissioners of the County desires to appoint Manager to serve, and the County desires to employ the services of Manager, as County Manager of the County of Cumberland, as provided in Section 4.2 of the Charter of the County of Cumberland (the “County Charter”);

WHEREAS, James H. Gailey was originally hired in July 25, 2016, and became the appointed Cumberland County Manager on June 12, 2017, and has served in that role uninterrupted since then.

WHEREAS, it is the desire of the Commissioners to provide certain benefits, establish certain conditions of employment, and to set working conditions of the Manager;

WHEREAS, it is the desire of the County Commissioners (1) to secure the services of the Manager and to provide inducement for him to remain in such employment, (2) to make possible full work productivity by assuring Manager’s morale and peace of mind with respect to future security, and (3) to provide a just means for terminating the Manager’s services at such time as he

may be unable to fully discharge his duties, within the discretion of the County Commissioners, due to disability, or when the County may otherwise desire to terminate his employment; and,

WHEREAS, the Manager desires to maintain employment as Manager of the County;

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: Term

This Agreement shall begin July 21, 2026 and end July 20, 2032, unless otherwise terminated pursuant to the terms of this Agreement. No later than January 1, 2032, the parties agree to meet and discuss the possible extension of this Agreement. The parties may extend this Agreement by mutual written agreement. By this date the County Commissioners shall inform the Manager if it does not intend to extend this Agreement. The term of this Agreement shall be in full force in effect from the signing dates until terminated by the County Commissioners or Manager as provided in the terms of this Agreement.

Section 2: Duties and Authority

The County hereby agrees to employ James H. Gailey as County Manager of the County of Cumberland. The Manager agrees to perform the functions and duties specified in the County Charter, County By-Laws, Administrative Regulations, and the Maine General Statutes, and to perform such other legally permissible and proper duties, and reasonable functions, as the County Commissioners shall from time to time assign to the Manager.

Section 3: Compensation

- A. Base salary: The County Commissioners agree to pay the County Manager his existing annual base salary, payable in installments at the same time that the other employees of the County are paid.

- B. The County agrees to increase the compensation of the Manager dependent upon the results of the annual performance evaluation conducted under the provisions of Section 17 of this Agreement. The Manager also will participate in any fixed annual increases granted to other county employees, based on cost of living adjustments.
- C. The Manager may be provided with such additional or further compensation above the base salary as may be approved by the County Commissioners from time to time, based upon its annual performance evaluation and review of the Manager.
- D. The County shall not, at any time during the term of this Agreement, reduce the salary, compensation or other financial benefits of the Manager except to the degree of such a reduction across-the-board for all management employees of the County.

Section 4: Termination and Severance (without cause)

This Agreement may be terminated and the Manager removed from office by the County Commissioners for convenience as set forth in 3.8.1 of the County Charter. In the event the County Commissioner terminates the employment of the Manager for convenience during the term of this Agreement, the County agrees as follows:

- A. The County shall have the right to terminate this Agreement without cause. In the event of such termination, Manager shall be paid in either a lump sum cash payment or weekly installments equal to six (6) calendar months of the Manager's then current salary plus one (1) additional month of then current salary for each year of service as the Cumberland County, Maine manager, for a maximum of twelve (12) months, less applicable withholdings and deductions. At the same time, Manager shall be compensated for all Planned Time Off (PTO) accrued to date of termination, calculated at the rate of pay in effect upon termination. In addition, all life insurance, family health insurance (COBRA), disability coverage, retirement benefits and all other County provided benefits shall continue in full force and coverage as provided herein during the severance period, not to exceed twelve months.

Section 5: Termination (with cause)

The County Commissioners have a right of termination for cause. The County's right to terminate this Agreement for cause shall be based upon official removal action under the terms of County's Charter and Personnel Policy. In the event the Manager's employment is terminated for cause, the County's only obligation to the Manager is to pay all compensation and benefits accrued, but unpaid, at the time of termination. For purposes of this Agreement, "just cause" is defined and limited for purposes of this Agreement to any of the following:

1. Misfeasance, malfeasance and/or nonfeasance in performance of the County Manager's duties and responsibilities.
2. Being convicted of any Class A, B, C, or D crime.
3. Neglect of duty, including the inability or unwillingness to properly discharge the responsibilities of office.
4. Violation of any substantive County policy or regulation, which should subject any other County employee to termination.
5. A finding by the Commissioners of any fraudulent act against the interest of the County.
6. A finding by the Commissioners of any act which involves moral turpitude, or which causes the County disrepute.
7. Violation of the International City/County Managers Association Code of Ethics.

Section 6: Resignation

In the event that the Manager voluntarily resigns his position with the County, the Manager shall provide 30 days' notice unless the parties agree otherwise. Upon said resignation, the County's only obligation to Manager is to pay all compensation and benefits accrued, but unpaid, as of the effective date of the resignation.

Section 7: Manager Incapacity

- A. Should Manager be disabled or otherwise unable to perform his duties because of sickness, accident, injury, mental incapacity or health (verified by his attending physician) for a period

of (1) one year, beyond any accrued leave, the County shall have the right to terminate this Agreement and the County's only obligation to Manager is to pay all compensation and benefits accrued, but unpaid, at the time of termination.

Section 8: Health, Life, Dental and Disability Insurance.

- A. The County agrees to provide to the Manager and his dependents the same health, life, dental and disability insurance coverage and benefits afforded to other County management employees upon commencement of employment. The County agrees to pay 100% of the costs associated with a family health insurance plan.
- B. The County shall pay the amount of premium due for term life insurance provided as part of a group life insurance program (e.g., Maine Municipal Employees Health Trust program) in the amount of three (3) times the Manager's annual base salary, including all increases in the base salary during the life of this Agreement. The Manager shall have the right to name the beneficiary of the life insurance policy.
- C. The County shall pay the amount of premium for short-term disability (IPP) at a rate of 40% of salary for Manager. The County shall also provide the same long-term disability insurance coverage to the Manager as is afforded to other County employees upon commencement of employment. If the Manager becomes temporarily or permanently disabled, the County shall provide the Manager, directly or indirectly, with those payments afforded to other County employees.
- D. To the extent the County provides the Manager with payments, and to the extent allowed by law, the Manager shall surrender to the County any Worker's Compensation, accident, sickness, or other disability benefits the Manager has received from the County or any of its insurers during the initial period, up to but not exceeding the amount of payments the County has provided to the Manager.

Section 9: Deferred Compensation and Retirement.

- A. The County shall execute the necessary agreement allowing the Manager to enroll in the Mission Square (formerly ICMA) Retirement Corporation's 457 and/or 401(a) Executive Deferred Compensation Plan. The County agrees to contribute 24% of the Manager's annual base salary, provided said amount shall not exceed the maximum dollar amount permissible under federal and state law, towards the Executive Deferred Compensation Plan. The Manager shall be considered vested at the time of contribution. Payment of this sum shall be made in accordance with the County's normal salary payment schedule. The County agrees to transfer full ownership of said plan to succeeding employers upon the Manager's resignation or discharge.
- B. In the event of the future option of MainePers open enrollment, the County shall allow the Manager to enroll and participate in the MainePers in accordance with the same contribution rate as afforded to all other employees of the County. The total contribution shall not exceed any maximum established by law.

Section 10: Computer Equipment, Cell Phone and Internet Service.

The County will provide the Manager with cell phone hardware and service, computer equipment and services for home base connectivity available 24/7 while employed as Manager. The Manager has the option to own any such equipment as long as it is not a computer security risk for the County.

Section 11: Automobile.

During the term in which the Manager is engaged in the performance of his duties and responsibilities pursuant to this Agreement, the County agrees to provide a seven hundred dollar (\$700.00) monthly allowance for automobile expenses in recognition of the requirements of the position. The County is under no obligation to reimburse the Manager for any automobile costs that exceed this amount, with the exception of mileage and tolls for business travel outside the County of Cumberland. Mileage shall be based on IRS thresholds.

Section 12: Dues and Subscriptions.

The County hereby agrees to budget and pay for the professional dues and subscriptions of the Manager 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 County.

Section 13: Professional Development.

The County hereby agrees to pay Manager's professional development expenses to continue his professional development and to adequately pursue official functions of the County, including but not limited to attending and participating in the training, institutes, seminars, regional and national conferences of the ICMA, the Maine Municipal Association, the Maine Town, City and County Managers Association, National Association of Counties, and other such national, regional and state governmental groups and committees.

Section 14: General Expenses - Expense Account.

The County recognizes that certain expenses of a non-personal and generally job-affiliated nature will be incurred by the Manager, and hereby agrees to reimburse or to pay said reasonable expenses upon receipt of duly executed expense vouchers, receipts, statements, or personal affidavits from the Manager.

Section 15: Holidays, Earned Time & Absences.

- A. The Manager shall receive three hundred and twenty hours (320) of paid time off on an annual basis, credited in accordance with the County's Personnel Policy. The Manager shall receive three (3) administrative personal days in addition to the earned time off. The Manager shall not utilize hours beyond those accrued without the consent of the County. The Manager may carry-over accrued unused earn time; provided, however, that the Manager shall not use more than twenty (20) days at one time unless approved by the County. Manager shall be allowed to receive payment of accrued earned time up to a maximum of 120 hours annually. The Manager may turn hours in either in June or November each year, consistent with the timeframes of the non-union personnel policy.

- B. The Manager shall be entitled to the same paid holidays as granted to other County employees.
- C. If the Manager leaves the position, either through his own will or termination, the Manager shall be entitled to payment for all credited earned planned time off.
- D. Any personal leave of absence requested by the Manager must be approved in advance by the County Commissioners.
- E. Upon acceptance of the County Commissioners, the Manager may take an educational leave of absence, not to exceed a mutually agreed upon time.

Section 16: Hours of Work.

Both parties recognize that the job requires hours outside the normal working hours. It is understood that the Manager must sometimes dedicate hours beyond the normal workweek in order to provide excellent leadership in performing the job. It is further understood that in some ways the job requirement represents a twenty-four (24) hour commitment, day in and day out. Hence, the County recognizes that the Manager must devote a great deal of time outside normal office hours on business for the County, and to that end the Manager shall be allowed to establish an appropriate work schedule.

Section 17: Annual Performance Evaluation.

- A. The County shall evaluate the work performance of the Manager annually. The County through a mutual evaluation tool developed between County and Manager shall conduct this annual evaluation. At the completion of the annual evaluation, the County shall provide the Manager with a written summary statement of the findings of the County and shall provide the Manager with a reasonably adequate opportunity to discuss the evaluation. The County may form a subcommittee to assist with the routine aspects of the Manager's annual performance evaluation. The final written evaluation should be completed and delivered to the Manager within 30 days of the evaluation meeting.
- B. In effecting and implementing the provisions of this section, the County Commissioners and the Manager mutually agree to abide by the provisions of applicable law.

Section 18: Indemnification.

- A. The County shall defend, save harmless, and indemnify the Manager against any action for any injury or damage suffered as a result of any act, event, or omission of action that the Manager reasonably believes to be in the scope of his duties or function, unless he acted in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property. The County may compromise and settle any such claim or suit and pay the amount of any settlement or judgment rendered thereon. The County shall not be liable for the acts or omissions of the Manager committed while acting outside the course and scope of his agreed duties or committed in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety or property. In such instance, the Manager shall reimburse the County for any legal fees and expenses the County has incurred or otherwise paid, for or on his behalf, in connection with the charged conduct.
- B. Said indemnification shall extend beyond the termination of employment and the expiration of this Agreement to provide protection for any such acts undertaken or committed in his capacity as Manager, regardless of whether the notice of claim or filing of a lawsuit occurs during or following employment with the City.
- C. Nothing here in intended, nor shall it be construed to waive or modify any immunity or limitation of liability to the County and/or the Manager under applicable state law, including but not limited to the Maine Tort Claims Act.

Section 19: Outside Work.

The Manager shall not spend more than an average of fifteen (15) hours per week in teaching, consulting, or other non-County connected business, without the prior approval of the County Commissioners.

Section 20: Bonding.

The County shall bear the full cost of any fidelity or other bonds required of the Manager under any law or Charter.

Section 21: Personnel Policy & Administrative Regulations.

Whenever any provision of this Agreement conflicts with or is inconsistent with those provisions of the County's Personnel Policy and/or Administrative Regulations applicable to the Manager, the provisions of this Agreement shall control.

Section 22: Other Terms and Conditions.

The County may fix such other reasonable terms and conditions of employment, as it may determine from time to time, relating to the Manager, provided such terms and conditions are not inconsistent with or in conflict with the provisions of the Agreement, the County Charter, or any other federal or state law.

Section 23: General Provisions.

- A. The text of this written Agreement and any amendments approved by the County and executed by the Chair, Vice Chair and the Manager constitute the entire understanding between the parties with respect to the employment of James H. Gailey as the County Manager of the County of Cumberland.
- B. This Agreement shall be binding upon the County Commissioners and the Manager, and their heirs, successors, and assigns.
- C. This Agreement may be amended at any time during its term by written agreement by both parties.
- D. This Agreement shall become effective upon execution.
- E. Maine law shall govern this Agreement and any litigation that may arise from this Agreement, shall be filed and litigated in the state courts of Portland.
- F. Upon Manager's death, the County's obligation under this Agreement shall terminate except for:
 - 1. Transfer of ownership of retirement funds, if any, to his designated beneficiaries;
 - 2. Payment of accrued leave balances in accordance with this Agreement;
 - 3. Payment of all outstanding hospitalization, medical and dental bills by County insurance policies or plans; and

4. Payment of all life insurance benefits in accordance with the life insurance plan.

Section 24: 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 25: Notices. Notices pursuant to this Agreement shall be given by deposit in the custody of the United States Postal Service, first class, certified or registered mail, postage prepaid, addressed as follows:

- 1) County: Chair of Board of Commissioners
27 Northport Drive
Portland, Maine 04103
- 2) Manager: James H. Gailey
County Manager
28 Sandy Hill Road
South Portland, Maine 04106

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 three (3) days after the date of deposit of such written notice in the course of transmission in the United States Postal Service.

IN WITNESS WHEREOF, the County of Cumberland has caused this Agreement to be signed and executed on its behalf by its Chair, Vice Chair and the Manager has signed and executed this Agreement on the date first above written.

WITNESS

James H. Gailey, County Manager
COUNTY OF CUMBERLAND, MAINE
Dated:

WITNESS

Patricia Smith, Chair
COUNTY OF CUMBERLAND, MAINE
Dated:

WITNESS

Thomas Tyler, Vice Chair
COUNTY OF CUMBERLAND, MAINE
Dated: