

## **EMPLOYMENT AGREEMENT**

### **TOWN OF MIDDLEBOROUGH TOWN MANAGER**

THIS AGREEMENT is made pursuant to Chapter 41, Section 108N of the Massachusetts General Laws and is entered into by and between the Town of Middleborough ("Town"), acting by and through its Board of Selectmen, ("Board") and Robert G. Nunes ("the Town Manager"):

WHEREAS, the Board, under Chapter 41, Section 108N of the General Laws, desires to contract with Robert G. Nunes to be the Middleborough Town Manager and he agrees to accept continued employment as the Town Manager of said Town.

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

**SECTION 1 - Functions and Duties of the Town Manager** – The functions and duties include without limitation the following:

The Town Manager shall be the administrative head of all departments of the Town Government, which the Selectmen oversee under the Massachusetts General Laws, the Town Manager's Act of 1920 and the Town Charter, except as provided otherwise in the Town Charter. The Town Manager shall perform the duties and have the powers and responsibilities of the Town Manager specified in the Town Charter, and such other duties as the Board shall from time to time legally assign to him. The powers and duties shall include the following:

- (A) To organize, continue, or discontinue such divisions or departments from time to time as may be determined by vote of the Selectmen not inconsistent with the provisions of this act.
- (B) To appoint upon merit and fitness alone and, except as otherwise provided herein, to remove all Superintendents or Chiefs of departments and all subordinate officers and employees in such departments, and to fix all salaries and wages of all subordinates and employees subject to law. A Superintendent or Chief of a department shall not be removed by the Town Manager, except on five days notice in writing which shall state the cause of such removal.
- (C) To exercise control of all departments or divisions subject to his supervision.
- (D) To attend all regular meetings of the Selectmen, and to recommend to the Selectmen for adoption such measures requiring action by them or by the town as he may deem necessary or expedient.
- (E) To keep full and complete records of his office and to render as often as may be required by the Selectmen a full report of all operations during the period reported on; and annually, or often, if required by the Selectmen, to make a synopsis of all the reports for publication.
- (F) To keep the Selectmen fully advised as to the needs of the town within the scope of his duties, and to furnish the Selectmen in writing on or before the Thirty-first day of December of each year with a detailed list of the appropriations required during the next ensuing fiscal year for the proper conduct of all departments of the town under his

control.

- (G) To keep in repair all the town buildings.
- (H) To purchase all supplies and materials for all departments of the town except books for schools.
- (I) To administer the health regulations of the town as required by the by-laws, or by the Selectmen, in addition to those provided by statute, either directly or through a person appointed by him, to be designated as the Health Officer, and under the supervision of the Selectmen exercising the powers of the Board of Health.
- (J) To perform such duties, consistent with his office, as may be required of him by the by-laws of the town, or by vote of the Selectmen.

### SECTION 2 - Term of Contract

This Agreement shall be for a term beginning November 17, 2018 and ending November 17, 2023.

There will be an automatic extension of the agreement for a single, one year term--- November 18, 2023 through November 17, 2024--under the following conditions:

- A. Between August 1 and October 31, 2022, the Town Manager notifies the Town in writing that the November 17, 2022 automatic one year extension date for the agreement is approaching.
- B. The Board fails to notify the Town Manager in writing by November 17, 2022 of its intention not to automatically extend the agreement at the end of its term. The Board's notice may include a statement of the Board's willingness to attempt to negotiate a successor agreement without negating the notice of no automatic extension. Likewise, any subsequent negotiations shall not negate the notice of no automatic extension.

### SECTION 3 - Removal and Severance Pay

- A. The Board may remove The Town Manager during the term of this Agreement in accordance with Section Twenty-One of the Town Charter (set forth below):

SECTION TWENTY-ONE: The Selectmen, by a majority vote, may remove the Town Manager by filing a written statement with the Town Clerk setting forth in detail the specific reasons for his removal, a copy of which statement shall be delivered to the Town Manager. Such removal shall not take effect until the expiration of five days after the filing of the statement with the Town Clerk, but if it is so recited in the statement the Town Manager shall be suspended from office forthwith. If the Town Manager so requests within the said five day period, a public hearing shall be given to him by the Selectmen, and in that event the removal of the Town Manager shall not take effect until a written decision following the hearing shall have been filed with the Town Clerk. Such decision by a majority vote of the Selectmen shall be final.

A timely notice by the Board not to extend the Contract at the end of the initial term shall

not constitute a removal.

- B. Except where the removal is for cause related to misconduct in office, in the event that the Town Manager is removed by the Board of Selectmen prior to the expiration of the term of this Agreement, the Town agrees that it shall pay to the Town Manager a lump sum cash severance payment equal to 5 (five) months aggregate salary, as well as unused vacation time, which amount shall be paid to the Town Manager on or before the effective date of removal from his employment. If the removal is for cause related to misconduct in office, no severance pay will be due the Town Manager. The Agreement shall be deemed to be terminated upon removal. All rights and benefits shall cease, except for any entitlement to severance and unused vacation pay and post removal indemnification as set forth in Section 9.
- C. In the event that the Town Manager voluntarily resigns his position as Town Manager with the Town before the expiration of the term of this Agreement, the Town Manager shall give the Town four (4) months written notice in advance, unless the parties agree otherwise. A copy of the resignation shall be filed with the Town Clerk. Said resignation shall not take effect until four (4) months after the date written notice is given to the Town.

#### **SECTION 4 - Salary**

- A. The Town agrees to pay the Town Manager for services rendered under this Agreement an annual base salary, payable in the same installments as other employees of the Town are paid. At the time of the fiscal year 2018 signing of the Agreement taking effect November 17, 2018, the salary was \$143,276.61 (one hundred and forty three thousand and two hundred and seventy six dollars and sixty one cents). In determining any increase for fiscal year 2019 and beyond, the factors considered shall include the Town Manager's annual performance evaluation and the Town's fiscal condition, including as reflected by any increases provided to other Town employees, and any increase shall be subject to funding by Town Meeting.
- B. If the Town Manager continues in office after the expiration of this Agreement and there is no successor agreement, the Town Manager shall continue to receive the salary in effect at the time.

#### **SECTION 5 - Hours of Work**

The Town Manager will devote full time and attention to the business of the Town and will not engage in any other business, except with the approval of the Board.

#### **SECTION 6 - Health Insurance, Vacation, Holidays, Sick Leave, Funeral Leave, Jury Duty.**

- A. The Town Manager shall be eligible to enroll in the Town's health and life insurance programs with the Town contributing 75% and the Town Manager contributing 25% towards the premium cost of the plan. Any other costs, including co-payments, will be

paid for by the Town Manager. The Town will provide, at its expense, the standard life insurance that it provides other employees under M.G.L. c. 32B

- B. The Town Manager will be entitled to fifteen (15) days of paid vacation in each year of the Contract. He shall have the right to carry over up to five (5) days of vacation to be used in the next year with the advance approval of the Board. Said approval must be requested far enough in advance for vacation to be taken if the request is not approved. The vacation credit presumes full years of service and that the contract term will be fulfilled. If there are not full years of service, the vacation credit will be pro-rated based on the portion of the fiscal year served.
- C. The Town Manager has previously been credited with 15 (fifteen) sick days at the commencement of his employment as Town Manager. He will continue to accrue one (1) sick day per month. Unused sick days may be accumulated from year to year to a maximum of one-hundred (100) days, but unused days will not be bought back
- D. The Town Manager shall receive the following paid Holidays:

New Years Day	Labor Day
Martin Luther King Day	Columbus Day
President's Day	Veteran's Day
Patriot's Day	Thanksgiving Day
Memorial Day	Day after Thanksgiving
Independence Day	Christmas Day

If a Holiday falls on a day that the Town Manager is using paid vacation, he will be provided with an additional day off with pay.

All Holidays falling on a Sunday will be observed on the following Monday.  
All Holidays falling on a Saturday will be observed on the previous Friday.

The Town Manager will be entitled to three (3) hours off his regular workday on the working days preceding Christmas and New Years Day.

- E. Upon the death of the Town Manager's spouse or his children, the Town Manager will be granted leave of five working days without loss of pay. Upon death of the Town Manager's mother, mother-in-law, father, father-in-law, sister, brother, sister-in-law, brother-in-law, grandparents or grandchildren, the Town Manager will be granted leave of three working days without loss of pay.
- F. The Town Manager shall receive three (3) days personal leave each contract year.
- G. In the event that The Town Manager serves as a juror in a Federal Court or in the Courts of the Commonwealth, he shall receive from the Town the difference between his salary and the compensation he received for such jury services, exclusive of any travel or other allowance; provided, however, he shall receive his full pay for his first three days of

service for the Commonwealth of Massachusetts.

#### **SECTION 7 – Professional Development, Dues and Subscriptions**

The Town agrees to pay up to \$3,500 (thirty five hundred dollars) annually for dues, subscriptions, registration, travel and subsistence expenses of The Town Manager for memberships, conferences, short courses, institutes and seminars that are necessary for his professional development, as approved by the Board of Selectmen, including without limitation the ICMA Annual Conference, the Massachusetts Municipal Association Annual Conference and the Massachusetts Municipal Managers' Association Annual Spring Conference. Time spent in professional development activities shall not be deducted from vacation leave.

#### **SECTION 8- Automobile**

Whereas the Town Manager is deemed to be on duty twenty-four hours a day, three hundred sixty-five days a year, the Town Manager shall be provided with a Town vehicle for use in discharging his duties within the Commonwealth of Massachusetts, including, at his discretion, to commute from his residence. The Town shall provide, maintain, insure and repair said vehicle for the Town Manager's use and reimburse him for any gasoline, tolls, and parking expenses incurred in connection with the discharge of his duties.

The Town Manager shall be responsible for keeping mileage records for Internal Revenue purposes.

#### **SECTION 9 - Indemnification**

Pursuant to Chapter 258, Section 9, the Town will indemnify the Town Manager from personal financial loss, all damages and expenses, including legal fees and costs, if any in an amount not to exceed \$1,000,000 (one million dollars) arising out of any claim, action, award, compromise, settlement or judgment by reason of an intentional tort, or by reason of any act or omission which constitutes a violation of civil rights of any person under federal or state law, if the Town Manager, at the time of such intentional tort or such act or omission, was acting within the scope of his official duties or employment, except that he shall not be indemnified for violation of any such civil rights if he acted in a grossly negligent, willful or malicious manner. This section shall survive the termination of this Agreement or removal of the Town Manager for the Town Manager's acts or omissions that occurred during his tenure as Town Manager. The Town will provide the Town Manager liability insurance coverage under its public officers' liability insurance policy.

#### **SECTION 10 - Bonding**

The Town shall bear the full cost of any fidelity or other bonds required of the Town Manager, in the performance of municipal duties.

**SECTION 11 - Other Terms and Conditions of Employment**

All provisions of law of the Commonwealth of Massachusetts relating to retirement, health insurance and other fringe benefits shall apply to the Town Manager, except as otherwise provided in this Agreement.

**SECTION 12- No Reduction in Benefits**

The Town shall not at any time during the term of the Agreement, or any extension, reduce the salary, compensation or other benefits of the Town Manager except in accordance with the provisions of this Agreement.

**SECTION 13 - Town Manager Evaluation**

- A. Annually, the Board and the Town Manager shall define the goals and objectives which they determine necessary for the proper operation of the Town and the attainment of the Board's policy objectives, and shall further establish a general priority among those various goals and objectives, said goals and objectives to be reduced to writing. They shall generally be attainable within the time limits specified and within the annual operating and capital budgets and appropriations provided by the Town and the events that have occurred during the year.
  
- B. The Board shall review and evaluate the Town Manager every year from the date that the Town Manager commences his duties as Town Manager. Said review and evaluation shall be based on the goals and objectives developed jointly by the Board and the Town Manager. Further, the Chairman of the Board shall provide the Town Manager with a summary written statement of the evaluation findings of the Board and shall provide an adequate opportunity for the Town Manager to discuss his or her evaluation with the Board. The evaluation shall be part of the Town Manager's personnel file.

**SECTION 14- Notices**

Notices pursuant to this Agreement shall be given by deposit in the custody of the United States Postal Service, postage prepaid, or emailed, addressed as follows:

- A. TO TOWN: Chairman of Board of Selectmen  
Town Hall, 10 Nickerson Avenue  
Middleborough, MA 02346  
BoardofSelectmen02346@middleborough.com
  
- B. TO TOWN MANAGER: Robert G. Nunes  
45 Theresa Street  
Taunton, MA 02780  
rnunes@middleborough.com

Alternatively, notices required pursuant to this Agreement may be personally served. Notice

shall be deemed as 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. A party from time to time may give the other party written notice of an alternate address to which notices shall be given by mail hereunder in lieu of an address set forth above.

**SECTION 15- General Provisions**

- A. This Agreement supersedes any and all prior written or oral agreements and constitutes the entire agreement between the parties. No extension or modifications or same shall be effective unless by an instrument in writing duly executed by the parties.
- B. This Agreement is a Massachusetts contract and shall be governed by the laws of the Commonwealth of Massachusetts. If any provision, or any portion thereof, contained in this Agreement shall is determined to be illegal by a court of competent jurisdiction or otherwise, it shall be considered null and void but the remainder of this Agreement shall not be affected, and shall remain in full force and effect.
- C. For the purposes of the Fair Labor Standards Act, the Town Manager shall be an "exempt employee".

IN WITNESS WHEREOF, the parties hereunto set their hands and seal by their duly authorized representatives this 26<sup>th</sup> day of February 2018.

TOWN OF MIDDLEBOROUGH,  
Acting by and through  
Its Board of Selectmen

  
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Date

  
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ROBERT G. NUNES

2/26/18  
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Date