

**FIRE CHIEF EMPLOYMENT AGREEMENT
BETWEEN
TOWN OF MIDDLEBOROUGH
AND
LANCE M. BENJAMINO**

THIS AGREEMENT is made pursuant to Chapter 41, Section 108O 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 Lance M. Benjaminó ("Fire Chief"):

WHEREAS, the Board, under Chapter 41, Section 108O of the General Laws, desires to contract with Lance M. Benjaminó to be the Middleborough Fire Chief and he agrees to accept employment as the Fire Chief 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 Fire Chief

The control of the Middleborough Fire Department shall remain at all times with the Fire Chief and the Fire Chief shall have all the powers given to a Chief under the provisions of Massachusetts General Laws, Chapter 48, Section 42, as from time to time amended. Duties shall include, but not be limited to the following:

1. The Fire Chief shall be responsible for and supervise the daily operations of the Fire Department.
2. The Fire Chief shall have appointment and supervisory authority over all Fire Department personnel.
3. The Fire Chief shall be responsible for the preparation, submission and presentation of the Fire Department's annual budgets.
4. The Fire Chief shall provide regular or special reports to the Board of Selectmen and/or Town Manager either orally or in writing to ensure proper communication between the Department, Board of Selectmen/Town Manager and the general public.
5. The Fire Chief shall be responsible for all departmental expenditures, disbursements and funds collected in accordance with the laws of the Commonwealth of Massachusetts and the by-laws and regulations of the Town.
6. The Fire Chief shall be responsible for maintaining good order in the Department, including the discipline of Department employees under the Fire Chief's jurisdiction. In doing so, the Fire Chief shall notify and consult with the Town Manager and the Board of Selectmen concerning any contemplated suspension or dismissal to insure that the action

is consistent with the Town's obligations under any pertinent collective bargaining agreement and laws.

7. The Fire Chief shall be responsible for the assignment of shifts and duties of all departmental personnel.
8. The Fire Chief shall be responsible for insuring that department personnel are properly trained, and receive continuous training as necessary for sworn or civilian employees to carry out their duties respectively.
9. The Fire Chief shall be responsible for all equipment, including vehicles belonging to the Fire Department.
10. The Fire Chief shall establish clothing uniform standards and requirements for the Fire Department.
11. The Fire Chief shall be available for hearings before any board, committee or commission at which the Fire Department is required to appear, and shall attend Town Meetings when requested.
12. In consultation with the Town Manager and in recognition of the shared responsibility and authority, the Fire Chief shall administer and enforce any collective bargaining agreement, contract, personnel policies or by-laws applicable to any Fire Department personnel, including bringing to the attention of the Town Manager any issues arising thereunder. The Fire Chief recognizes that the Town Manager serves as the Town's chief union negotiator and makes the final decision on grievances in consultation with the Board of Selectmen. To the extent requested and authorized by the Town Manager, the Fire Chief will assist in collective bargaining matters, including negotiations.
13. The Fire Chief, in addition to the above noted duties, shall be responsible for the effective and efficient fulfillment of the duties and responsibilities in the Middleborough Fire Chief Job Description, herein attached and made a part of this Agreement.

SECTION 2 - Term of Contract

This Agreement shall be for a term beginning March 1, 2018 and ending February 28, 2021.

There will be an automatic extension of the agreement for a single, one year term--- March 1, 2021 through February 28, 2022---under the following conditions:

- A. Between November 1 and December 31, 2020, the Fire Chief notifies the Town in writing that the February 28, 2022 automatic year extension date for the agreement is approaching.
- B. The Board fails to notify Fire Chief in writing by February 28, 2020 of its intention not to automatically extend the agreement at the end of its term ("notice of no automatic extension"). 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 – Discipline, Suspension, Dismissal and Resignation

- A. The Fire Chief can be disciplined by the Board and/or Town Manager. Any suspension or dismissal shall be done in accordance with the provisions of M.G.L. c. 48, § 42, i.e., for cause after a hearing.
- B. In the event that the Fire Chief intends to resign his position as Fire Chief during the term of this Agreement, the Fire Chief shall give the Town three (3) months written notice in advance, unless the parties agree otherwise. A copy of the resignation shall be filed with the Town Clerk. The Fire Chief will cooperate fully to insure a smooth transition.
- C. The Fire Chief may appeal any suspension or removal by the Appointing Authority by written notice to the Board. The dispute will be resolved in arbitration, with the arbitrator selected under the rules of the American Arbitration Association or otherwise mutually selected by the parties. The decision of the arbitrator shall be final and binding upon the parties, subject to either party's right to a review under M.G.L. c. 150C. All costs of such arbitration shall be equally borne between the Fire Chief and the Town. Each party shall be responsible for their own attorney's fees.

SECTION 4 – Performance Evaluation

- A. Annually, the Board of Selectmen, through the Town Manager, and the Fire Chief shall define such goals, objectives and performance appraisal measures as they determine necessary for the proper operation of the Town and the attainment of the Board's policy objectives.
- B. The Board of Selectmen, through the Town Manager, shall review and appraise the performance of the Fire Chief annually. This review and appraisal shall be in accordance with the procedure established by the Town Manager.

SECTION 5 - Salary

- A. The Town agrees to pay the Fire Chief for services rendered under this Agreement an annual base salary of \$143,277.00 (One Hundred Forty-Three Thousand Two Hundred Seventy-Seven Dollars) effective March 1, 2018, payable in the same installments as other employees of the Town are paid. Any increase in salary for the second and/or third years of the agreement shall be at the discretion of the Board of Selectmen, with consideration given to the annual performance evaluation and the state of the Town's finances. The Fire Chief's annual salary includes any holiday pay which may be due him under M.G.L. c.48, §57E as well as any education incentive pay.

SECTION 6 - Hours of Work

The Fire Chief agrees to devote the amount of time and energy that is necessary for him to faithfully perform the duties of the Fire Chief position under this Contract, including being at work during regular Department business hours Monday through Friday. To perform his duties and obligations effectively, the Fire Chief may be required, outside of regular business hours, to respond to emergencies, attend meetings, make field inspections and participate in community activities. It is expected that the Fire Chief will spend such time as is necessary or reasonably required to assure the effective and efficient operation of the Fire Department. The Fire Chief will devote full time and attention to the business of the Town and will not engage in any other business, except his current position with the Department of Fire Services or with the approval of the Board of Selectmen.

SECTION 7 - Health Insurance, Vacation, Holidays, Sick Leave, Other Leaves

- A. The Fire Chief shall be eligible to enroll in the Town's HMO health insurance program with the Town contributing 75% and the Fire Chief contributing 25% towards the premium or the Town's PPO plan, with the Town contributing 60% and the Chief contributing 40% toward the premium. Any other health costs, including co-payments and deductibles, will be paid for by the Fire Chief. The Town will provide, at its expense, the standard life insurance that it provides other employees under M.G.L. c.32B.
- B. The Fire Chief will be entitled to twenty five (25) days 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 Town Manager. Said approval must be requested far enough in advance for vacation to be taken if the request is not approved.
- C. The Fire Chief will accrue one (1) sick day per month. Unused sick days may be accumulated from year to year but unused days will not be bought back.
- D. The Fire Chief shall receive the following days off with pay as 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 Fire Chief is using paid vacation or is required to work a full Holiday due to an emergency, he will be allowed to take another 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 Fire Chief's annual salary includes any additional holiday compensation which might be due him under M.G.L. c.48, §57E.

- E. Upon the death of the Fire Chief's spouse, children, mother, mother-in-law, father, father-in-law, sister, brother, sister-in-law, brother-in-law, grandparents or grandchildren, the Fire Chief will be granted leave of three (3) working days without loss of pay.
- F. The Fire Chief shall receive three (3) days personal leave each contract year.
- G. In the event that the Fire Chief 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.
- H. The Chief will advise the Town Manager whenever he intends to take leave of any type for more than three (3) consecutive days.

SECTION 8 – Injured on Duty/Fitness for Duty

The Fire Chief shall be entitled to injured on duty benefits as provided in Massachusetts General Laws, Chapter 41, Section 111F. At the Town's request, the Fire Chief will attend and cooperate fully with an evaluation by a Town physician to determine his eligibility for benefits under 41-111F or to otherwise determine his fitness for duty.

SECTION 9 - Professional Development, Dues and Subscriptions

The Town recognizes its obligation for the professional development of the Fire Chief and agrees that the Fire Chief shall be given opportunities to develop or refresh skills and abilities as a fire enforcement administrator. As such, the Fire Chief shall be reasonably allowed to attend such conferences and seminars with pay and without loss of vacation or other leave, and will be reimbursed by the Town for all reasonable expenses incurred while attending or traveling to aforementioned meetings. Prior to attending, the Fire Chief will notify the Town Manager. Additionally, the Town agrees to pay for reasonable professional dues and subscriptions related to professional growth, development, education and training of the Fire Chief. The Town Manager and/or Board of Selectmen, after consultation with the Chief, will make the final determination of what will be allowed expended under this section. The Town agrees that the Fire Chief shall be allowed to attend all necessary recertification courses, classes and paramedic rounds to maintain licenses and certifications held at the time of this agreement (EMTP, AHA CPR, AHA CPR-Instructor, ACLS, PALS, Hoisting).

SECTION 10- Automobile

The Town shall provide a department vehicle for use by the Fire Chief, and all attendant operating and maintenance expenses and insurance shall be paid by the Town. The Fire Chief is generally on call and may take the vehicle back and forth to his residence to assist him in responding when appropriate. The vehicle may be used by the Fire Chief for personal use since the Fire Chief is on call in the event of an emergency.

The Fire Chief shall be responsible for keeping mileage records for Internal Revenue purposes.

SECTION 11- Clothing Allowance

The Fire Chief shall receive an annual clothing/cleaning allowance of \$1,300. In addition, the Town shall provide an initial fire officer uniform and equipment as issued to all other sworn department personnel.

SECTION 12 - Indemnification

Pursuant to Chapter 258, Section 9, the Town will indemnify the Fire Chief 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 Fire Chief, 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 Fire Chief for such acts or omissions that occurred during his tenure as Fire Chief.

The Town will provide the Fire Chief liability insurance coverage under its public officers' liability insurance policy.

SECTION 13 - Residency

The Fire Chief shall maintain permanent resident in either Hanson or Middleborough.

SECTION 14 - Other Terms and Conditions of Employment

This Agreement shall not be interpreted to provide more retirement and health insurance benefits beyond those to which the Fire Chief is entitled to under the Massachusetts General Laws.

SECTION 15 - Notices

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

A. TO TOWN: Chairman of Board of Selectmen
Town Hall, 10 Nickerson Avenue
Middleborough, MA 02346

B. TO FIRE CHIEF: Lance M. Benjamino
825 Indian Head Street
Hanson, MA 02341

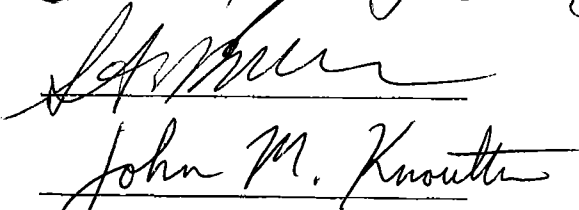
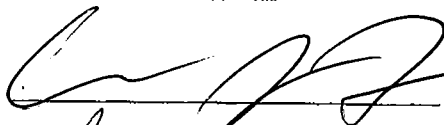
Notice shall be deemed as given as of the date of hand delivery or as of the date of deposit of such written notice in the course of transmission in the United States Postal Service. Any change of address shall be given in writing and delivered in the same manner as other notices.

SECTION 16- Additional Provisions

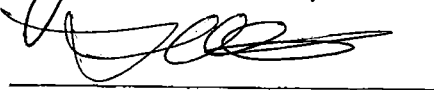
- A. This Agreement supersedes any and all prior written or oral agreements and constitutes the entire agreement between the parties. No extension or modifications or same shall be effective unless by an instrument in writing duly executed by the parties.
- B. This Agreement is a Massachusetts contract and shall be governed by the laws of the Commonwealth of Massachusetts. If any provision, or any portion thereof, contained in this Agreement shall be 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. All compensation and benefits provided under this Agreement are subject to appropriation by the Town Meeting. In the event that the Town Meeting does not vote to fund the monetary provisions, the parties shall attempt to renegotiate this Agreement or relevant portions thereof.
- D. For the purposes of the Fair Labor Standards Act, the Fire Chief shall be an "exempt employee".

IN WITNESS WHEREOF, the parties hereunto set their hands and seal by their duly authorized representatives this 12th day of February 2018

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



John M. Knout



2/12/18
Date:



LANCE M. BENAMINO

2/13/18
Date: