

# Employment Agreement

## Introduction

This Agreement, made and entered into this \_\_\_ day of May 2009, pursuant to M.G.L. c. 41, Section 108N, by and between the Town of Hopkinton, Massachusetts, a municipal corporation with its Town Hall located at 18 Main Street, Hopkinton, MA 01748, acting by and through its Board of Selectmen (hereinafter called the "Employer") and Norman Khumalo, of 4 Dew Lane, Uxbridge, MA 01569, (hereinafter called the "Town Manager") an individual who has the education, training and experience in local government management and who, as a member of the International City Managers' Association (ICMA), is subject to the ICMA Code of Ethics, both of whom agree as follows:

## Section 1: Term

The term of this Agreement shall be for an initial period of three [3] years and one month, i.e., from June 1, 2009 to June 30, 2012. This Agreement shall automatically be renewed on its anniversary date for an additional one (1) year term unless notice that the Agreement shall terminate is given at least six (6) months before the expiration date. In the event the Agreement is not renewed, all compensation, benefits and requirements of the Agreement shall remain in effect until the expiration of the term of the Agreement unless the Town Manager voluntarily resigns or is otherwise terminated or unable to perform the duties of the job. In the event that the Town Manager is terminated, as defined in Section 9 of this Agreement, the Town Manager shall be entitled to all compensation including salary, accrued vacation and sick leave, car allowance due up until said termination date, paid in lump sum plus continuation of all benefits until the effective date of such termination.

## Section 2: Duties and Authority

Employer agrees to employ Norman Khumalo as Town Manager to perform the functions and duties specified in the Town Charter and the Town Bylaws and to perform other legally permissible and proper duties and functions as may, from time to time, be assigned by the Board of Selectmen.

## Section 3: Compensation

A. Base Salary: Employer agrees to pay the Town Manager an annual base salary of One Hundred Twenty Thousand Dollars (\$120,000), (which shall not be reduced by the Selectmen during the term of this contract) payable in installments at the same time that the other management employees of the Employer are paid, subject to Section B.

B. For the purposes of this Agreement, the period June 1, 2009 through June 30, 2010 shall be referred to as "the first year" of the Agreement's term. In each year subsequent to the first year, the Town Manager's compensation may be increased by the Employer based on

an annual review of the Town Manager's performance as Town Manager, unless the Employer agrees otherwise. The Town Manager recognizes and agrees that he will not be entitled to any salary increases or changes in benefits otherwise accorded generally to other Town employees, unless the Board of Selectmen agrees to same by an amendment to this Agreement. The Board of Selectmen agrees that, if increases are provided to department heads, the Board shall give similar consideration to the Town Manager. To that end, the terms of this Agreement shall supersede and prevail over any terms and conditions of the Personnel Bylaw of the Town of Hopkinton or votes of Town Meeting, except where otherwise specifically provided.

#### **Section 4: Insurance and Other Benefits**

A. The Employer agrees to provide and to pay its share of the premiums for health insurance for the Town Manager and his dependents equal to that which is provided to all other managerial employees of the Town governed by the Personnel Bylaw.

B. The Employer agrees to pay up to Nine Thousand Five Hundred dollars (\$9,500) per fiscal year, starting as of July 1, 2009, for the three full fiscal years of this Agreement's term, to cover costs for one or more of the following, documentation of which shall be provided by the Manager in advance to the Town Treasurer:

- premium payments for short-term disability coverage for the Town Manager.
- term life insurance
- vehicle payments
- Section 457 deferred compensation plan

C. The Town Manager's other benefits shall be provided to him, pursuant to the Town's Personnel Bylaw and subject to this agreement.

D. All requests for unpaid leave shall be subject to the prior written approval of the Employer, which request may be denied.

E. To the extent legally permitted, the Employer shall have the right prior to the commencement of and during the term of this Agreement to have the Town Manager examined from time to time by qualified doctors of its own choosing. The Town Manager agrees to advise the Employer of any medical problems discovered during any examinations that diminishes his ability to perform his duties.

F. The parties acknowledge that in the course of his duties and responsibilities as Town Manager, the Town Manager may be required to and is expected to attend various conferences, meetings and other events on behalf of the Town and will incur vehicle, mileage and related expenses. It is understood that the Town Manager shall be paid for expenses related to non-motor vehicles, registration/conference fees, meals, lodging.

## **Section 5: Annual Leave**

A. Upon commencing employment, the Town Manager shall be credited with fifteen (15) vacation days. These may be taken during the first thirteen months of employment (i.e., through June 30, 2010) and up to seven (7) such days may be carried over into the next year. Starting with the second year of the contract, i.e., July 1, 2010, the Manager will be eligible to take four (4) weeks of vacation during such second and subsequent years or as allowed in Section 5 (B), which ever is greater. Leave for sickness, holiday and personal time off shall be governed by the provisions of the Personnel Bylaw.

B. Starting on July 1, 2010, the Town Manager will be subject to the provisions of the Personnel Bylaw concerning leave for sickness, vacation, holiday or personal time off. In applying the provisions of the Personnel Bylaw pursuant to this paragraph and Paragraph A only, the Town Manager's 13 + prior years of public service employment shall be credited as years of employment with the Town.

C. In the event the Town Manager's employment is terminated, either voluntarily or involuntarily, the Town Manager shall be compensated for all accrued vacation leave time according to the provisions, if any, of the Personnel Bylaw or applicable state law.

D. The Town Manager shall be entitled to military reserve leave time pursuant to state law and Town policy.

## **Section 6: Automobile**

A. Unless the Town Manager is supplied with a vehicle, the Employer shall reimburse the Town Manager at the Town's standard mileage rate for any business use of the Town Manager's personal vehicle.

B. The Employer shall be responsible for paying for tolls and parking while on official Town business.

C. The Town shall not be responsible for the Town Manager's commuting expenses.

## **Section 7: Retirement**

The Employer agrees to enroll the Town Manager into the applicable state retirement system.

## **Section 8: General Business Expenses**

A. Employer agrees to budget for and to pay for professional dues and subscriptions of the Town Manager necessary for continuation and full participation in national, regional, state, and local associations, and organizations necessary and desirable for the Town Manager's continued professional participation, growth, and advancement, and for the

good of the Employer.

B. Employer agrees to budget in the Town Manager's Expense Appropriation or similar line item for and to pay for travel and subsistence expenses of the Town Manager for professional and official travel, meetings, and occasions to adequately continue the professional development of the Town Manager and to pursue necessary official functions for Employer as approved by the Selectmen, including but not limited to the ICMA Annual Conference, the MMA/MMMA conference, and such other national, regional, state, and local governmental groups and committees approved by the Selectmen in which the Town Manager serves as a member.

C. Employer also agrees to budget for and to pay for travel and subsistence expenses of the Town Manager for short courses, institutes, and seminars that are approved by the Selectmen as necessary for the Town Manager's professional development and for the good of the Employer.

D. The Employer shall provide the Town Manager with such items as it deems necessary such as a computer, software, fax/modem, cell phone and pager required for the Town Manager to perform the job and to maintain communication.

#### **Section 9: Termination**

Section 4-3 of the Charter currently specifies the following procedure for the removal and suspension of the Town Manager:

(a). The Board of Selectmen may, by the affirmative vote of four (4) members of the Board of Selectmen, terminate and remove or suspend the Town Manager from office in accordance with the following procedure:

1. The Board of Selectmen shall adopt a preliminary resolution of removal by the affirmative vote of four (4) members, which must state the reason or reasons for removal. The preliminary resolution may suspend the Town Manager for a period not to exceed forty-five (45) days. A copy of the resolution shall be delivered to the Town Manager within forty-eight (48) hours of its adoption.

2. Within seven (7) days after receipt of the preliminary resolution, the Town Manager may request a public hearing by filing a written request for such a hearing with the Board of Selectmen. This hearing shall be held at a meeting of the Board of Selectmen not later than twenty (20) days after the request is filed or earlier than three (3) days after the request is filed. The Town Manager may file a written statement responding to the reasons stated in the resolution of removal with the Board of Selectmen, provided the same is received at the office of the Board of Selectmen more than forty-eight (48) hours in advance of the public hearing.

3. If the Town Manager has not requested a public hearing pursuant to paragraph (2) above, the Board of Selectmen, by the affirmative vote of four members of the Board of

Selectmen, may adopt a final resolution of removal not less than ten (10) nor more than twenty-one (21) days following the date of delivery of a copy of the preliminary resolution to the Town Manager. If the Town Manager has requested a public hearing pursuant to paragraph B above, the Board of Selectmen, by the affirmative vote of four members of the Board of Selectmen, may adopt a final resolution of removal. Failure to adopt a final resolution of removal within the time periods as provided in this section shall nullify the preliminary resolution of removal and the Town Manager shall, at the expiration of said time, resume the duties of the office.

4. Any action by the Board of Selectmen to terminate, remove or suspend shall be conducted pursuant to the provisions of M.G.L.A. c 39, sec.23B, the Open Meeting Law.

(b) The action of the Board of Selectmen in terminating, removing or suspending the Town Manager shall be final.

### **Section 10: Resignation**

In the event that the Town Manager voluntarily resigns his position with the Employer, the Town Manager shall provide a minimum of sixty (60) days notice, except as otherwise provided in Section 1 of this Agreement or as the parties agree otherwise.

This Section shall survive the termination of this Agreement.

### **Section 11: Performance Evaluation**

Within approximately thirty (30) days of the commencement date of the Town Manager's employment, the Employer and the Town Manager shall meet to discuss and arrive at goals and objectives of the Employer and the Town Manager, which they determine to be necessary for the proper operation of the Town and attainment of the Employer's policy objectives. The goals and objectives 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.

An evaluation by the Employer of the Town Manager's addressing and reaching said goals and objectives and the Town Manager's performance as Town Manager shall take place approximately six (6) months thereafter. Thereafter, an evaluation by the Employer of the Town Manager's addressing and reaching said goals and objectives, as the same may have been modified, deleted or added, and the Town Manager's performance as Town Manager shall take place annually on or before the anniversary of the commencement date of the Town Manager's employment. As their schedules permit, the parties will attempt to hold discussions approximately every four months on the Manager's performance. Nothing contained herein shall be construed to limit the Employer's evaluating and reviewing the performance of the Town Manager's addressing and reaching said goals and objectives and the Town Manager's performance as Town Manager at times other than as specified herein.

The Board of Selectmen, following any formal performance review, shall provide the Town Manager with a summary written statement of the findings of the Board and provide an adequate opportunity for the Town Manager to discuss his evaluation with the Board. Furthermore the Town Manager shall have the right to make a written response to the evaluation, said response to become part of the personnel file of the Town Manager. To the extent allowed by law, the discussion and reports will be done in Executive session or at least remain as confidential as possible.

In any disagreement over the goals and objectives and evaluations hereunder, the decision of the Employer shall prevail.

### **Section 12: Hours of Work**

It is recognized that the Town Manager must devote a great deal of time outside the normal office hours on business for the Employer, and to that end the Town Manager has a flexible work schedule. As an "exempt" employee, the Town Manager will not be entitled to overtime or compensatory time, but a flexible schedule under the FLSA. The Manager will keep time records as the Employer may from time to time require.

### **Section 13: Outside Activities**

The employment provided for by this Agreement shall be the Town Manager's sole employment. Recognizing that certain outside consulting or teaching opportunities provide indirect benefits to the Employer and the community, the Town Manager has permission to accept limited teaching, consulting or other business opportunities with the understanding that such arrangements shall not interfere with nor result in a conflict of interest with his responsibilities under this Agreement. The Employer may modify this approval during the life of the Agreement if it believes that the Town Manager's outside efforts are detracting from or otherwise interfering with his primary responsibilities to the Town.

### **Section 14: Duties**

A. The Town Manager shall have administrative control of the various Town departments, consistent with the Town Charter and any applicable laws, regulations or Town Bylaws, all of which may be amended, rescinded and supplemented from time to time, and the Town Manager shall perform such other legally permissible and proper duties and functions as the Employer 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 Manager as specified by Charter. The Town Manager agrees to perform such duties in a timely and efficient manner consistent with applicable professional standards. The Town Manager shall be the chief administrator of the Town and shall be responsible to the Board of Selectmen for the proper administration of all Town affairs placed in his charge by this Charter.

B. As set forth in Section 4-2 of the Town Charter, the Town Manger's powers and duties shall include but are not intended to be limited to the following:

(a) To supervise and be responsible for the efficient and coordinated administration of all Town functions under his control, as may be authorized by the Charter, by bylaw, by other Town Meeting vote or by the Board of Selectmen, including all officers appointed by him and their respective departments.

(b) To coordinate the activities of all Town Agencies serving under the Town Manager and/or the Board of Selectmen with those under the control of other officers and multiple member bodies elected directly by the voters. For this purpose, the Town Manager shall have the authority to require the persons so elected, or their representatives, to meet with the Town Manager at reasonable times for the purpose of effecting coordination and cooperation among all agencies of the Town.

(c) To appoint and remove department heads, officers and subordinates and employees for whom no other method of appointment or removal is provided in the Charter, the general laws or by bylaw. Appointments made by the Town Manager shall be filled at a regularly scheduled meeting of the Board of Selectmen and shall become effective upon confirmation by the affirmative vote of the majority of the Board of Selectmen.

(d) To act as a negotiator for all collective bargaining agreements to which the Board of Selectmen is a party.

(e) To conduct annual performance evaluations of all employees subject to his appointment and consult with elected and appointed boards to contribute to the preparation of the evaluations of department heads associated with such departments.

(f) To fix the compensation of Town officers and employees appointed by him within the limits established by the Salary Administration Plan, collective bargaining agreements or as required by the general laws.

(g) To attend all regular and special meetings of the Board of Selectmen, unless excused at his request, and have a voice, but no vote, in all discussions.

(h) To attend all sessions of the Town Meeting and answer all questions directed to him which are related to the office of the Town Manager or concerning which he possesses the relevant information.

(i) To see that all provisions of the general laws, of the charter, of the bylaws and other Town Meeting votes, and directives of the Board of Selectmen that require enforcement by him or by officers or employees subject to his direction and supervision, are faithfully carried out.

- (j) To coordinate the preparation of the Town's annual budget.
- (k) To coordinate the preparation of the Town's annual report.
- (l) To perform such duties as necessary or as may be assigned by this Charter, by by-law, by Town Meeting vote or by the Board of Selectmen.

C. The Town Manager may designate by letter filed with the Town Clerk and Board of Selectmen a capable officer of the Town to perform the duties of Town Manager during a temporary absence or disability. If such absence or disability exceeds thirty (30) days, any designation by the Town Manager shall be subject to approval by the Board of Selectmen. In the event of failure of the Town Manager to make such a designation, or if the person so designated is unable to serve, the Board of Selectmen may designate some other capable person to perform the duties of Town Manager until such time as the Town Manager returns.

The powers and duties of the acting Town Manager shall be limited to matters not admitting of delay and shall include authority to make temporary, emergency appointments or designations to Town office or employment, but not to make permanent appointments or designations.

The Employer, after discussion with the Town Manager, shall fix any such other terms and conditions of employment as it may determine from time to time, relating to the performance, duties and responsibilities of Town Manger, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this Agreement. The Town Manager agrees to perform such duties in a timely and efficient manner consistent with applicable professional standards.

#### **Section 15: Indemnification**

The Town will keep in force an insurance policy in an amount of no less than one million dollars, as it presently has, to cover civil liability for town employees, which will also cover the Manager. To the extent required by MGL c. 258, the Employer shall defend, save harmless and indemnify the Town Manager against any tort, professional liability, claim or demand, or other legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of his duties as Town Manager, even if said claim has been made following his termination from employment, provided that the Town Manager acted within the scope of his duties. The Town may compromise and settle any such claim or suit and will pay the amount of any settlement or judgment rendered thereon without recourse to the Town Manager.

This section shall survive the termination of this Agreement.

#### **Section 16: Bonding**

Employer shall bear the full cost of any fidelity or other bonds required of the Town Manager by the Employer or any requirement under applicable law or by-law.

### **Section 17: Other Terms and Conditions of Employment**

The Employer, only upon Agreement with the Town Manager, shall fix any such other terms and conditions of employment, as it may determine from time to time, relating to the performance of the Town Manager, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this Agreement, the Town Charter or any other law.

### **Section 18: Notices**

Notice pursuant to this Agreement shall be given by depositing in the custody of the United States Postal Service, postage prepaid, addressed as follows:

- (1) EMPLOYER: Chair, Board of Selectmen, Town Hall, 18 Main Street,  
Hopkinton, MA 10748,
- (2) TOWN MANAGER: Norman Khumalo, of 4 Dew Lane, Uxbridge, MA 01569

Alternatively, notice required pursuant to this Agreement may be personally served in the same manner as is applicable to civil judicial practice. Notice shall be deemed given as of the date of personal service or as the date of deposit of such written notice in the course of transmission in the United States Postal Service.

### **Section 19: General Provisions**

A. Integration. This Agreement sets forth and establishes the entire understanding between the Employer and the Town Manager relating to the employment of the Town Manager by the Employer. Any prior discussions or representations by or between the parties are merged into and rendered null and void by this Agreement. The parties by mutual written Agreement may amend any provision of this Agreement during the life of the Agreement. Such amendments shall be incorporated and made a part of this Agreement. The text herein shall constitute the entire agreement between the parties except to the extent that other documents are referred to herein which documents shall be deemed to be incorporated by reference herein.

B. Binding Effect. This Agreement shall be binding on the Employer and the Town Manager as well as their heirs, assigns, executors, personal representatives and successors in interest.

C. Effective Date. This Agreement shall become effective on June 1, 2009.

D. Severability. The invalidity or partial invalidity of any portion of this Agreement will not affect the validity of any other provision. In the event that any provision of this

Agreement is held to be invalid for any reason, such invalidity shall be construed as narrowly as possible and the balance of the Agreement shall be deemed to be amended to the minimum extent necessary to provide to the Employer and to the Town Manager the benefits set forth in this Agreement.

E. This Agreement shall be governed by the laws of the Commonwealth of Massachusetts.

F. 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.

G. All benefits and obligations, except as otherwise specifically provided herein, shall be conditional upon the Town Manager being employed as and performing the services required of the Town Manager.

H. References to seven (7) days or less shall refer to business days. Reference to more than seven (7) days shall refer to calendar days.

TOWN OF HOPKINTON


TOWN MANAGER

 6/2/09

Chair, for the Board of Selectmen

 6/2/09

Norman Khumalo

6/1/09  MEZ

Approved as to form:

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Town Counsel