

AMENDED BY TOWN  
COUNCIL VOTE ON  
6/29/16 (attached)

**TOWN MANAGER**  
**EMPLOYMENT AGREEMENT**

**This Employment Agreement**, made and entered into as of this \_\_\_\_ day of September, 2015 by and between The Town of Westerly, a Rhode Island Municipal Corporation (herein referred to as "Town") and Derrik M. Kennedy (herein referred to as "Employee"), and states as follows:

**WHEREAS**, the Town wishes to employ the services of Derrik M. Kennedy as Town Manager, as provided by the Charter of the Town of Westerly; and

**WHEREAS**, it is the desire of the Town to provide certain benefits and to establish certain conditions of employment for the Employee; and

**WHEREAS**, the Employee wishes to accept and continue employment as Town Manager of the Town of Westerly.

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

**SECTION 1: CHARTER**

It is specifically understood and agreed by the parties that nothing in this agreement is to be considered as contrary to or contradicting any provision of the Charter of the Town of Westerly, as may be amended from time to time, including but not limited to Article IV of the Charter entitled "Town Manager." Should it be found that any provision of this Agreement is in conflict with any provision of the Charter of the Town of Westerly, that provision is to be considered null and void in favor of the Charter of the Town of Westerly.

**SECTION 2: DUTIES**

The Town agrees to employ Derrik M. Kennedy as Town Manager of the Town of Westerly to perform the functions and duties specified in the Charter of the Town of Westerly and to perform other legally permissible and proper duties and functions at the discretion of the Town Council.

The Employee shall serve at the pleasure of the Town Council as set forth in the Charter of the Town and agrees to perform the duties and functions allocated to him pursuant to the Charter, the Code of Ordinances of the Town, and the General Laws of the State of Rhode Island.

**SECTION 3: TERM**

Since your employment is for an indefinite term as provided under Section 2-1-9(b) of the Charter, there is no expectation that you serve as Town Manager for any requisite period of time; however, it is the hope of the Town that you will serve an extended period of time provided

that you fulfill your duties under the Charter, and that that you meet or exceed the expectations of the Town Council.

#### **SECTION 4: COMPENSATION**

The Town agrees to pay the Employee an initial annual base salary of \$123,500 payable at the same time and in the same manner as other management employees of the Town are paid. The Employee will receive an annual performance evaluation pursuant to Section 5 of this Agreement with the possibility of a salary increase to take effect in the next fiscal year. The amount of said salary increase, if any, is wholly and entirely within the discretion of the Town Council, but will not exceed increases generally commensurate with those granted to other municipal employees. This Agreement shall be automatically amended to reflect any salary adjustments that are provided to the Employee.

#### **SECTION 5: PERFORMANCE EVALUATION**

Within 90 days of employment, Employee and the Town Council shall establish and agree upon a detailed list of goals and objectives which will serve as the primary focus of Employee's efforts beyond day-to-day administration of the Town's business affairs. The Town Council will complete a 6-month critique to review and adjust expectations and then provide Employee with a written performance review at least once per year on or about the anniversary date of Employee's employment. This review will address Employee's performance on the job and based on the duties of the Employee as set forth in the Charter, Ordinances and other criteria as determined by the Town Council, as well as progress made on the list of goals and objectives. During the review process Employee and the Town Council will update and revise the list of goals and objectives as mutually agreed. The Town Council will also provide for a multi-rater evaluation tool to maintain ICMA Credentialed Manager status once every five years.

#### **SECTION 6: HEALTH, LIFE & DISABILITY INSURANCE**

##### **Part 1- Health & Dental Insurance**

The Town will provide the Employee with the same health and dental insurance that is provided to Town department heads with the Employee responsible for the same premium and wellness incentives that are provided to the same. If such insurances are declined, the Employee will be entitled to an annual buy-back of \$2,000.

##### **Part 2 - Term Life Insurance**

The Employer will pay the full premium for \$100,000 Term Life Insurance coverage on the Employee covered by this Agreement. Said life insurance shall be administered in accordance with the terms and conditions of the carrier.

### **Part 3 – Disability Insurance**

Employee will be provided with Long Term Disability benefits with a ninety (90) day waiting period. Said disability insurance shall be administered in accordance with the terms and conditions of the carrier. Employee may also elect Temporary Disability Insurance which shall be paid by the Employee.

### **SECTION 7: VACATION & SICK LEAVE**

The Employee shall accrue vacation leave on an annual basis equal to twenty (20) days per year. At the completion of fiscal year 2016/2017, Employee may carry over up to twenty (20) unused vacation. Employee shall accrue sick leave on an annual basis equal to twelve (12) days per year with the right to carry over sick leave and accrual of up to sixty (60) days. In the event that the Employee's employment by the Town is terminated, either by the Town, the Employee, or by mutual agreement, the Employee shall not be compensated for any unused, accrued vacation or sick leave.

### **SECTION 8: AUTOMOBILE**

The Town shall provide the Employee with an automobile allowance in the amount of \$5,000 per year.

### **SECTION 9: RETIREMENT**

The Employee agrees to enroll in the Town-sponsored retirement plan as currently provided to all municipal employees, in which Employee makes a contribution equivalent to 6% of salary and the Town contributes 10% of salary.

### **SECTION 10: HOLIDAY LEAVE**

The Employee shall be entitled to the same holiday leave days as other non-union department heads.

### **SECTION 11: BUSINESS EXPENSES & PROFESSIONAL DEVELOPMENT**

The Town agrees to budget for, on an annual basis, and to pay the professional dues and subscriptions necessary for the Employee to fully participate in national, regional, state and local organizations and associations necessary and desirable for the continued professional participation, education, and advancement of the Employee and for the benefit of the Town.

Subject to the Town Council's discretion, the Town may budget for, on an annual basis, and pay for travel, lodging, meals and other reasonable and necessary business expenses of the Employee for professional and official travel, meetings and other occasions for the professional development of the Employee, including but not limited to the ICMA (International City/County Management Association) conference, The Employee shall obtain the approval of the Town Council President before attending any such meetings or conferences. Within thirty (30) days of

incurring these or any other business expenses, the Employee shall submit to the Town Council President for approval for reimbursement a statement of expenses incurred and any such expenses to be reimbursed by the Town. The Town Manager's budget shall include a line item for professional development for ALL Town administrators and it is understood that the Town Manager shall approve or deny all requests for professional development.

The Town will issue and pay for a cell phone and laptop computer with docking station; provided, however, that such devices be used exclusively for work-related tasks.

### **SECTION 12: TERMINATION**

Pursuant to Section 2-1-9(b) of the Town Charter, the Town Council may remove the Town Manager at its discretion and without cause by a vote of a majority of all members of the Town Council, with or without a hearing, as the Town Council in its discretion determines. There shall be no right of appeal from the decision of the Town Council.

### **SECTION 13: SEVERANCE & TERMINATION**

Severance will be paid by the Town to the Employee when the employment of the Employee is terminated as set forth in Section 12 of this Agreement. If employment is so terminated, without cause, within the first two (2) years of Employee's employment, severance representing twelve (12) months of base salary shall be paid and no other benefits whatsoever. After two years of employment, severance for termination without cause will equal six (6) months of base salary and no other benefits whatsoever. The total severance amount will be paid on a bi-weekly basis by the Town to the Employee over the course of twelve (12) or six (6) months, as the case may be, in equal installments, unless other payment terms are mutually agreed upon by the Town and the Employee. As a condition to receiving severance payments, the Employee will execute a release by which he will release the Town from any and all claims of any nature that he has or may have against the Town. The release will be in a form prepared by and acceptable to the Town Council.

The Town will not be obligated to pay severance to the Employee in the event of any of the following conduct or circumstances: (1) willful malfeasance or willful misconduct by the Employee in the course of his employment; (2) gross negligence by the Employee in performing any of his duties pursuant to this Agreement, the Charter of the Town of Westerly and/or the laws of the State of Rhode Island; (3) conviction or a plea of nolo contendere to any felony or misdemeanor involving dishonesty, a drug related offense; moral turpitude, or driving under the influence, as that offense is defined by the General Laws of the State of Rhode Island.

## **SECTION 14: RESIGNATION**

In the event that the Employee voluntarily resigns his position with the Town, the Employee shall provide a minimum of sixty (60) days' written notice in the manner prescribed in this Agreement to the Town, unless the Town and the Employee mutually agree otherwise. In the event that the Employee resigns, he will not be entitled to a severance payment.

## **SECTION 15: OTHER ACTIVITIES**

The employment provided to the Employee by this Agreement will be the sole employment of the Employee. Recognizing that certain independent consulting or teaching opportunities do exist that would be of benefit to both the Employee and the Town, the Employee may accept limited teaching and/or consulting opportunities with the understanding that such arrangements will not interfere with nor result in a conflict of interest with the employment of the Employee pursuant to this Agreement. All such consulting or teaching engagements will only be accepted by the Employee after first obtaining the consent of the Town Council President.

## **SECTION 16: NOTICES**

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

1. Town: Donna Giordano  
Westerly Town Hall  
45 Broad Street  
Westerly, RI 02891
2. Employee: Derrik M. Kennedy
3. Town Solicitor: Matthew T. Oliverio  
Oliverio & Marcaccio LLP  
55 Dorrance Street, Suite 400  
Providence, RI 02903

Alternatively, notice required by this Agreement may be personally served in the same manner as is required by the Rhode Island Superior Court Rules of Civil Procedure.

## **SECTION 17: GENERAL PROVISIONS**

- A. This Agreement shall be binding upon the Town and the Employee as well as their respective heirs, employees, executors, representatives, successors and assigns.
- B. This Agreement shall have an effective date of October 5, 2015.

- C. This Agreement shall be governed and construed in accordance with the laws of the State of Rhode Island.
- D. This Agreement is subject to the Charter and Code of Ordinances of the Town of Westerly.
- E. If any provision of this Agreement is held to be unlawful, invalid or unenforceable, the remaining provisions shall continue to remain in full force and effect.

### **SECTION 18: INDEMNIFICATION**

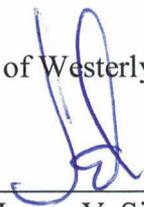
A. Beyond that required under Federal, State or Local Law, the Town shall defend, save harmless and indemnify Employee against any tort, professional liability claim or demand or other legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of Employee's duties as Town Manager or resulting from the exercise of judgment or discretion in connection with the performance of program duties or responsibilities, unless the act or omission involved willful or wanton conduct. Legal representation, provided by the Town for the Employee, shall extend until a formal determination of the legal action including any appeals brought by either party. The Town shall indemnify Employee against any and all losses, damages, judgments, interest, settlements, fines, court cost and other reasonable costs and expenses of legal proceedings including attorney's fees, and other liabilities incurred by, imposed upon, or suffered by such Employee in connection with or resulting from any claim, action, suit, or proceeding, actual or threatened, arising out of or in connection with the performance of his duties.

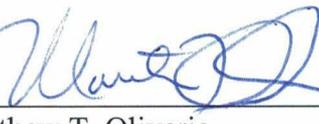
Any settlement of any claim must be made with prior approval of the Town in order for indemnification, as provided within.

B. Employee recognizes that the Town shall have the right to compromise a lawsuit to which it is a party and, unless the Employee is a party to the suit in his personal capacity, shall have no veto authority over any settlement. In the event the Town and Employee, as a private person and not in his official capacity as an agent of the Town, are both parties to a lawsuit, the Town may enter into a settlement of that suit but cannot require Employee, as a private person, to join in such settlement. In that regard, the Town agrees to pay all reasonable litigation expenses of Employee throughout the pendency of any litigation to which the Employee is a party, witness or advisor to the Town, provided that such litigation arises out of the Employee's employment by the Town. Such shall remain the obligation of the Town even though such litigation continues beyond Employee's employment.

**IN WITNESS WHEREOF**, the Town of Westerly has caused this Agreement to be signed and executed on its behalf by the Town Council President, as attested to by the Town Clerk, and the Employee has signed and executed this Agreement, both in duplicate, with an effective date of the 5<sup>th</sup> day of October, 2015.

Town of Westerly

By:   
James V. Silvestri  
Town Council President

By:   
Matthew T. Oliverio  
Town Solicitor

Attest:

By:   
Donna Giordano  
Town Clerk

Employee:

By:   
Derrik M. Kennedy  
Town Manager

Click [HERE](#) to view the VIDEO of this meeting or click at any video icon (  ) below to jump to that particular section of the meeting.

SPECIAL MEETING

WESTERLY TOWN COUNCIL

COUNCIL CHAMBERS

WEDNESDAY

JUNE 29, 2016

6:15 P.M.

## 1. 7:20 P.M. CALL TO ORDER

Present: Co. Pres. Silvestri, Vice Pres. Celico  
Councilors Carson, Overton, Gagnier, Sposato, Duhamel  
T. Mgr. Kennedy, T. Sol. Oliverio  
Co. Clk. Giordano, T. Sgt. Falcone

## 2. CONSENT CALENDAR

### a. Fiscal Matters

Present: Deb Bridgham, Finance Director

Town Manager Kennedy explained that the following are all prior resolutions adopted by the council, but that the funds were not used within the fiscal year. He stated that, according to GASB 54, another resolution must be adopted to dedicate the money. He noted that, if these funds are assigned, there will still be over 13% in fund balance.

Finance Director Bridgham explained the GASB requirement. She stated that, according to GASB 54, any funds committed and not spent before year end have to be committed again by the Council. She noted that approximately \$380,000 has been spent on the Santo Algiere Dog Park, but that there may be some invoices and punch lists for which monies may be available in July or August. She further noted that with regard to the Comprehensive Plan, a surplus, if any, would apply to this year's budget and the current unassigned fund balance would not be used. She stated that, if the Council does not commit these funds, it can assign them for the Manager to use.

Councilor Carson expressed concerned with using fund balance for capital projects and requested an explanation regarding the 26 Canal Street project, to which Town Manager Kennedy responded that this money is a grant match.

Councilor Overton echoed Councilor Carson's concerns, but expressed his satisfaction with the 13% fund balance.

Motion by Mr. Celico, Seconded by Mr. Duhamel, that the following resolutions be adopted: (Voted Unanimously)

[15/16-218](#) Resolution Authorizing Commitment Of Fund Balance (Dredging of Winnapaug Pond - \$400,000.00)

[15/16-219](#) Resolution Authorizing Designation Of Fund Balance (26 Canal Street - \$160,000.00)

[15/16-220](#) Resolution Authorizing Designation Of Fund Balance (Comprehensive Plan - \$89,250.00)

[15/16-221](#) Resolution Authorizing The Town Manager To Amend The Engineering contract With Garofalo & Associates, Inc. To Provide Additional Services For Construction Oversight & Construction Administration Assistance For Improvements to Cross Street – Change Order No. 7 (\$105,000.00)

Town Engineer LeBlanc was commended by the Town Manager and the Council for commencing the Cross Street project this week.

Motion by Mr. Celico, Seconded by Mr. Overton, that, at the request of Councilor Gagnier, the following resolution be moved to New Business for discussion. (Voted Unanimously)

[Resolution](#) Authorizing Designation Of Fund Balance (Santo Algieri Park - \$400,000.00)

### 3. NEW BUSINESS

- a. [15/16-222](#) Resolution Selecting Property, General Liability & Workers Compensation Insurance Carriers

Motion by Mr. Duhamel, Seconded by Mr. Carson, that the recommendation of the Town Manager to select the incumbents be accepted and the aforesaid resolution be adopted. (Voted Unanimously)

- b. [Proposed Ordinance](#) – “An Ordinance Authorizing A Supplemental Appropriation Of \$100,000 To Fund The Cost Of Maintenance And Remediation Of The Bus Depot Located On Springbrook Road” (Order Adv. for Public Hearing on 7/11/16)

Motion by Mr. Celico, Seconded by Mr. Duhamel, that the aforesaid proposed ordinance be ordered advertised for public hearing on July 11, 2016. resolution be adopted. (Voted Unanimously)

- c. [Proposed Ordinance](#) – “An Ordinance Authorizing A Supplemental Appropriation Of \$223,000 To Fund The Department Of Public Works Sanitation” (Order Adv. for Public Hearing on 7/11/16)

Present: Deb Bridgham, Finance Director

Finance Director Bridgham explained the purpose of this ordinance, which is to cover overages incurred by the Department.

Motion by Mr. Celico, Seconded by Mr. Gagnier, that the aforesaid proposed ordinance be ordered advertised for public hearing on July 11, 2016. (Voted Unanimously)

- d. [Proposed Ordinance](#) – “An Ordinance Establishing A Sixty-Day Extension On The Previously Approved Ninety-Day Moratorium On All Proposed Land Subdivision Projects And Land Development Projects Within Airport Hazard Area Land Use Zones to Complete The Airport Hazard Overlay District Ordinance Pursuant To State Law” (Order Adv. for Public Hearing on 7/11/16)

Present: Jason Parker, Zoning Official

Motion by Mr. Sposato, Seconded by Mr. Gagnier, that the aforesaid proposed ordinance be ordered advertised for public hearing on July 11, 2016. (Voted Unanimously)

- e. [15/16-223](#) Resolution Authorizing Designation Of Fund Balance (Santo Algieri Park - \$400,000.00)

Councilor Gagnier recused himself due to a possible conflict of interest being that his wife is employed by SUFA.

Motion by Mr. Sposato, Seconded by Mr. Celico, that the aforesaid resolution be adopted. (Voted 6 to 0 – Councilor Gagnier recused)

Motion by Mr. Sposato, Seconded by Mr. Duhamel, to go into executive session for discussion and/or action regarding those items of business exempt from open meetings under Rhode Island General Laws §42-46-4 and §42-46-5(a)(1) Personnel – Town Manager Job Performance and §42-46-5(a)(1) Personnel – Town Solicitor Review and Contract Renewal. (Voted Unanimously)

Such persons have been notified in writing and advised that they may require that such discussion be held at an open meeting.

4. 8:10 P.M. EXECUTIVE SESSION 

The purpose of this Executive Session was to discuss Personnel.

\* \* \* \* \*

8:40 P.M. Voted Unanimously to adjourn and seal the minutes of this Executive Session.

8:42 P.M. Reconvened as a Council.

Executive Session Report

Council President Silvestri reported that the Council met in Executive Session with the Town Manager and agreed to amend his contract so that his health plan contribution is in line with those of other Town administrators. He noted that there will be a cost savings of over \$100,000 due to an adjustment in the health care plan. Council President Silvestri reported that the Council also met in Executive Session with the Town Solicitor and agreed to amend his engagement letter to extend his tenure to June 30, 2017 and increase his monthly stipend from \$6,000 to \$7,500 based on an analysis of services provided.

Motion by Mr. Celico, Seconded by Mr. Gagnier, that the Executive Session minutes be sealed. (Voted Unanimously)

5. ADJOURNMENT

8:45 P.M. Voted Unanimously to adjourn.

ATTEST:



Donna L. Giordano, MMC  
Council Clerk

Details of the aforesaid proceedings are available on video on the Town of Westerly website.