TOWN MANAGER
AMENDED EMPLOYMENT AGREEMENT

This Amended Employment Agreement, made and entered into as of this 17th day of November, 2016 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 on the anniversary date of his hire. 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 days. Any unused, accrued vacation days carried over from the 2015/2016 fiscal year shall not be added to the twenty (20) days. 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 5th day of October, 2015.

Town of Westerly

By: _____
James V. Silvestri
Town Council President

By: _____
Matthew T. Oliverio
Town Solicitor

Attest:

By: _____, MMC
Donna Giordano
Town Clerk

Employee:

By: _____
Derrik M. Kennedy
Town Manager