

**EMPLOYMENT AGREEMENT
BETWEEN
THE TOWN OF LEXINGTON, MASSACHUSETTS
AND
WILLIAM MIDDLEMISS**

This Agreement is made and entered into this 1st day of July, 2007 pursuant to Chapter 753 of the Acts of 1968 as amended (the Town Manager Act), between the Town of Lexington (the "Town"), a municipal corporation within the Commonwealth of Massachusetts, acting by and through its Town Manager, and William Middlemiss ("Chief Middlemiss). In consideration of the mutual promises and agreements hereinafter set forth, and for other good and valuable considerations, the receipt and sufficiency of which are his/herby acknowledged, the Town and Chief Middlemiss agree as follows:

1. Employment: The Town hereby agrees to employ Chief Middlemiss, and Chief Middlemiss agrees to accept employment as Fire Chief .

2. Term: The term of this Agreement ("Term") shall be for a period of three (3) years after the Effective Date. The Town Manager shall give Chief Middlemiss written notice of the election not to renew the Agreement at least 90 days prior to the expiration of the original Term or any extension of this Agreement. After the expiration of this Agreement, its terms and conditions shall continue until a successor Agreement is executed. Notwithstanding the foregoing, this Agreement may be terminated at any time in accordance with the provisions of Section 12.

3. Definitions:

A day: For the purpose of calculating leave benefits in Sections 17, 18 or 19, a day shall be defined as 8 hours.

Effective Date: The Effective Date shall be July 1, 2007.

4. Duties: Chief Middlemiss shall faithfully perform all duties legally assigned to him by the Town Manager in accordance with the Act and any other local, state and federal laws, bylaws, rules, regulations and policies.

5. Compensation: The Town agrees to pay Chief Middlemiss (for services rendered under this Agreement an annual salary as found in Attachment 1 and 2, Grade 303, Step 7, less applicable withholdings and deductions, payable in accordance with the Town's usual practice for payment to its employees. Chief Middlemiss's salary shall not be decreased during the Term of this Agreement, as long as Chief Middlemiss holds the position of Fire Chief. In any fiscal year, Chief Middlemiss shall be eligible for a cost-of-living adjustment to his salary by a percentage no less than that granted to other Town senior department managers, as approved by the Board of Selectmen.

Every five years, at a minimum, the Town Manager shall conduct a labor market analysis to determine if the compensation of the Fire Chief is competitive with the compensation of positions of similar responsibility in comparable communities. The results of said study will be considered in subsequent adjustments to Chief Middlemiss's salary.

Nothing in this agreement shall preclude Chief Middlemiss from being eligible for any merit based bonus program, related to his annual performance evaluation (see Section 14), established by the Town Manager for senior managers.

6. Holiday Pay: Chief Middlemiss shall receive one day's pay (1/4 of a week calculated on base pay-without longevity) holiday pay for the 11 paid holidays shown in Section 21 and excluding the floating holiday. Said holiday pay payments shall be twice per year, in December and June according to the Town's regular payroll practices.

7. Longevity: Upon a minimum five years of service with the Town in the position of Fire Chief, and after reaching of the maximum salary step, Chief Middlemiss shall receive:

- In the first year eligible, a 2.5 percent length of service increase in base pay (i.e., 7/1/2006);
- After five years of reaching initial eligibility, an additional 2.5 percent length of service increase in base pay (i.e., 7/1/2011);
- After 10 years of reaching initial eligibility, an additional 2.5 percent length of service increase in base pay (i.e., 7/1/2016);
- After 15 years of reaching initial eligibility, an additional 2.5 percent length of service increase in base pay (i.e., 7/1/2021).

This length of service payments shall be paid, effective on July 1 following the attainment of said criteria and paid as part of the regular bi-weekly payroll process.

8. Educational Career Incentive: The Chief shall receive annually, an Educational Career Incentive (ECI) payment of \$2,600, payable in June of each year.

9. Professional Certification:

Certification Program: In order to encourage professional growth and training beyond what is required by the position description, Chief Middlemiss is eligible to receive an additional stipend for a professional certification. All of the following criteria must be met in order to receive the \$500.00 certification stipend.

- That the certification program being considered is pre-approved by the Town Manager or designee;

- That the certification is from a recognized professional association or organization;
- That the certification is consistent with the duties outlined in the employee's current position description;
- That the certification is not already required in the position description;
- That the certification has an annual requirement for continuing education/training hours, unless waived by the Town Manager. This documentation shall be presented prior to the payment being made.
- That obtaining the certification requires a meaningful effort by the employee.

If Chief Middlemiss has attained more than one certification, then he shall only receive one payment of \$500.00. Payment shall be in one lump sum normally on the first pay date in June of each fiscal year.

10. Vehicle Use: During the Term of this Agreement, the Town shall provide Chief Middlemiss with an automobile for use in the performance of his official duties for the Town, and for commuting to and from work, which shall include reasonable, in-state personal use. Out-of-state personal use will only be allowed with the written approval of the Town Manager or Deputy Town Manager. Upon submission of reasonable and customary supporting documentation from Chief Middlemiss, the Town shall reimburse Chief Middlemiss for reasonable out-of-pocket expenses for gasoline, tolls, parking and maintenance (Chief Middlemiss understands that the Town may be required to report the value of his commuting use of the Town vehicle as income for tax purposes). Further, Chief Middlemiss agrees to comply with any Town vehicle use policy that is not in conflict with this section. If the Massachusetts Public Employee Retirement Administration Commission determines that the value of the personal use of this automobile shall be included as part of the Fire Chief's regular compensation for the purpose of determining retirement benefits, then for the purpose of this calculation, it shall be determined that twenty-five percent of the vehicle use shall be considered personal use.

11. Hours of Work: Chief Middlemiss agrees to devote the amount of time and energy during the normal business hours that is reasonably necessary to faithfully perform the duties of this position. It is understood that Chief Middlemiss shall attend evening meetings as required or necessitated for the proper performance of his duties and functions, subject to the other provisions of this Agreement. In light of the foregoing, it is understood that Chief Middlemiss is expected to devote substantial time outside of the Town's normal business hours to performing his duties, and to this end Chief Middlemiss shall be permitted to

adjust his work schedule as he shall deem appropriate during said normal business hours, provided that the business of the Town is not adversely affected by such adjustment in Chief Middlemiss's work schedule as judged by the Town Manager.

- 12. Professional Development:** Chief Middlemiss will have access to professional development opportunities. Reasonable reimbursement will be made for expenses incurred at professional activities, consistent with any training and travel policies adopted by the Town. Said expenses will include travel, registration fees, meals and lodging for conferences, including national and state professional association conferences and memberships in professional associations. All out-of-state travel will require prior approval, in writing, by the Town Manager or designee.
- 13. Other Reimbursements:** Chief Middlemiss shall receive reimbursement for any expenses incurred up to a \$150 maximum per fiscal year in the performance of his duties or as a representative of the Town, including attendance by him at civic or social events.
- 14. Uniform Allowance:** Chief Middlemiss shall receive \$85.00 annually to purchase authorized apparel and equipment, such as belts, undershirts, service and ball caps, socks and sweatshirts. Said payment shall be made in February of each year according to the Town's regular payroll process.
- 15. Termination:** The following terms and procedures are established for the termination of this Agreement prior to the expiration of its Term.

- A. Termination by the Town for Cause. The Town Manager may terminate this Agreement at any time for Cause. For purposes of this Agreement, the Town shall have "Cause" to terminate this Agreement if any of the following have occurred: (1) gross misconduct by Chief Middlemiss; (2) insubordination by Chief Middlemiss; (3) any material breach of this Agreement by Chief Middlemiss; (4) arrest or indictment of Chief Middlemiss for a felony; arrest for a misdemeanor related to Chief Middlemiss duties and fiduciary responsibilities as Fire Chief; or for a violation of G.L. c. 268A; (5) conviction of, plea of guilty by, or admission of sufficient facts to enter a finding of guilt by Chief Middlemiss for any criminal offense. In the event that the Town terminates this Agreement for Cause, all compensation and benefits provided to Chief Middlemiss by the Town pursuant to this Agreement or otherwise shall cease as of the date of termination, except that Chief Middlemiss shall receive any salary earned but unpaid through the date of termination, including any accrued but unused vacation time, and he shall continue to receive his monthly salary for a period of one (1) month after the date of termination (the "Termination Benefit"). The payment of the Termination Benefit, less the usual deductions and withholdings, shall be made in accordance with the Town's usual payroll practices.

- B. Termination by the Town for Other than Cause. The Town Manager may terminate this Agreement at any time for other than Cause. In the event that the Town Manager terminates this Agreement for other than Cause, all compensation and benefits provided to Chief Middlemiss by the Town pursuant to this Agreement or otherwise shall cease as of the date of termination, except that Chief Middlemiss shall receive payment for any salary earned but unpaid through the date of termination, including any accrued but unused vacation time. Further, Chief Middlemiss shall continue to receive his monthly salary and benefits, but expressly excluding the accrual of vacation time, for a period of: two weeks pay for each year of service with the Town, with a maximum of twelve months pay, after the date of termination (the “Severance Benefit”).

- C. Resignation: Chief Middlemiss may resign his employment under this Agreement at any time by submitting four weeks’ written notice to the Town Manager, provided that the Town Manager in his sole discretion may allow a lesser amount of time of notice. During the four (4) week notice period, Chief Middlemiss may not take any vacation leave unless expressly permitted by the Town Manager in writing. In the event that Chief Middlemiss resigns, all compensation and benefits provided to Chief Middlemiss by the Town pursuant to this Agreement or otherwise shall cease as of the effective date of resignation, except that Chief Middlemiss shall receive payment for any salary earned but unpaid through the effective date of resignation, including any accrued but unused vacation time.

- D. Death: If termination is caused by the death, all compensation and benefits due Chief Middlemiss shall be made to his estate.

16. Performance Evaluation: The Town Manager or designee shall review and evaluate Chief Middlemiss at least once annually during the Term of this Agreement, regardless of his step rate in the compensation plan. This evaluation shall include goals objectives and other performance indicators developed jointly by the Town Manager or designee and Chief Middlemiss. Based on a satisfactory review, Chief Middlemiss shall be eligible for a step increase as provided in Attachment 1 and 2 until the maximum step is reached.

17. Medical/Dental and Other Benefits: Chief Middlemiss shall be eligible for the same medical/dental, life insurance, flexible-spending and all other benefits as offered to other Town employees. The Town’s contribution rate and the plan design for these benefits may change from time-to-time as negotiated by the Employee Health Coalition.

18. Vacation: Each January 1 during the term of this agreement, Chief Middlemiss shall be credited with twenty-five vacation days.

Up to five weeks of vacation may be carried over from one year to the next with the written approval of the Town Manager. Carrying over more than five weeks vacation will be allowed in extraordinary circumstances with the written approval of the Town Manager.

Chief Middlemiss may, at his option, sell back in December of each year up to five (5) unused vacation days, paid at the current daily salary.

Upon termination of employment, Chief Middlemiss shall receive payment equal to the amount of vacation pay she would have received had the termination not occurred. If termination is caused by death, such payment shall be made to the Chief Middlemiss estate.

19. Personal Leave: Chief Middlemiss will be credited with three (3) personal days each January 1 during the term of this contract. Personal days shall not carry forward from year to year and will not be eligible to be bought back at retirement. Personal days may be used in hourly increments.

20. Sick Leave: Chief Middlemiss shall receive sick leave of 1.25 days per each calendar month worked, up to a total of 15 working days each year. Unused sick leave will accumulate year to year to a maximum of 135 days. If Chief Middlemiss, upon retirement, has maintained during each of the prior 36 months of employment 120 days of unused sick leave, and met or exceeded the sick leave performance standard of no more than five sick days per each 12 month period for the prior 36 months of employment, excluding time used during this period for any long-term illness or injury, she shall receive a one-time Employee Attendance Incentive Payment of \$3,000.

Sick Leave Bank: Chief Middlemiss is eligible for extended sick leave consistent with the policy established for senior managers.

21. Holidays: The following days shall be recognized:

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

Chief Middlemiss will receive regular compensation for the above legal holidays plus the holiday pay as defined in Section 6.

Floating Holiday: Chief Middlemiss shall have one (1) additional day per year to be taken at any time.

Any use of time off for religious holidays shall be charged to Chief Middlemiss' vacation or personal leave or taken as leave without pay.

22. Bereavement Leave:

Chief Middlemiss will be granted up to a maximum of five (5) days of paid leave in the event of the death of a member of the immediate family. "Immediate" includes life-partner, child, mother, father, sister, brother, grandparent, grandchild, mother-in-law, father-in-law, or any relative who resides as a member of his household.

23. Jury Duty:

The Town has a policy of allowing employees to serve their communities by participating in jury duty in accordance with Massachusetts State Law. To encourage this participation, the Town provides protection against loss of income during required jury duty service. Chief Middlemiss will be granted the necessary time off to fulfill this duty. He will be paid his regular wage/salary during the period required for such service, less any stipend paid to him for serving on jury duty.

24. Family Medical Leave:

The Family Medical Leave Act of 1993 (FMLA) requires employers to provide up to twelve (12) weeks of unpaid, job-protected leave to eligible employees for certain family and medical reasons. Unpaid leave must be granted for any of the following reasons: to care for spouse, son or daughter, or parent, who has a serious health condition; to care for a son or daughter within one year of birth, adoption or the initiation of foster care; or if Chief Middlemiss has a serious health condition that makes him unable to perform his job. Any leave granted counts towards the twelve (12) weeks of FMLA leave.

Chief Middlemiss may be required to provide advance leave notice and medical certification. Taking of leave may be delayed if requirements are not met. Chief Middlemiss must ordinarily provide thirty (30) days advance notice except when the leave is "unforeseeable". The Town may require medical certification to support a request for leave because of a serious health condition, and may require second or third opinions (at the Town's expense). In the event that it is the employee who is suffering from a serious health condition, a fitness for duty report may be required to return to work.

During any FMLA leave, Chief Middlemiss may maintain his health coverage under any "group health plan" by paying him portion of the full monthly premium, while the Town continues to pay its portion of the premium. Except in certain circumstances, the Town will seek recovery of the premium paid if Chief Middlemiss does not return to work upon completion of the leave of absence. Upon return from FMLA leave, most employees must be restored to their original

or equivalent position with equivalent pay, benefits and other employment terms. There are exceptions and Chief Middlemiss should contact the Human Resources office to discuss these. The use of FMLA leave cannot result in the loss of any employment benefit that accrued prior to the start of an employee's leave. Requests for additional sick leave shall be referred to the Town Manager and may be granted in extreme necessity and emergency.

25. Leave of Absence: The Town Manager may authorize special leaves of absence, with or without pay, for any period(s) not to exceed 26 weeks in any one calendar year for the following purposes: attendance at college, university, business school or other recognized training program for the purposes of training in subjects relating to the work of the employee and which will benefit the individual and the Town.

26. Indemnification:

The Town shall indemnify and hold harmless Chief Middlemiss against any claim, suit, or judgment by a reason of any act or omission, except an intentional violation of civil rights of any person, criminal conduct or intentional tort if, at the time of such act or omission, he was acting within the scope of his official duties.

27. Notices: Any and all notices required or permitted under this Agreement shall be sufficient if furnished in writing and given by delivery in hand or by registered mail, return receipt requested, addressed, if to the Town, to the attention of the Town Manager's office or to such other address as the Town may designate from time to time to Chief Middlemiss, and, if to Chief Middlemiss, to Chief Middlemiss' last known residence. Notice shall be deemed given, if by personal delivery, on the date of such delivery or, if by registered mail, on the date shown on the applicable return receipt.

28. Waiver: No waiver of any provision hereof shall be effective unless made in writing and signed by the waiving party. The failure of either party to require the performance of any term or obligation of this Agreement, or the waiver by either party of any breach of this Agreement, shall not prevent any subsequent enforcement of such term or obligation or be deemed a waiver of any subsequent breach.

29. Governing Law: This Agreement shall be construed under, and governed by, the laws of the Commonwealth of Massachusetts, without regard to any choice of law principal that would dictate the application of the laws of another jurisdiction.

30. General Provisions:

- A. This Agreement shall become effective as of the Effective Date.
- B. Except as expressly provided herein, this Agreement may not be amended, supplemented, revised or otherwise modified except by a writing signed by the parties hereto.

- C. For purposes of the Fair Labor Standards Act, Chief Middlemiss shall be deemed an exempt employee.
- D. If any provision of this Agreement shall, for any reason, be held to be invalid or unenforceable in any respect, such invalidity or unenforceability shall not affect any other provision of this Agreement, and this Agreement shall be construed as if such invalid or unenforceable provision had not been included herein.
- E. Chief Middlemiss obligations and duties under this Agreement shall be personal and shall not be assignable or delegable by him in any manner whatsoever. This Agreement shall be binding upon and shall inure to the benefit of Chief Middlemiss and his executors, administrators, heirs, successors and permitted assigns, and upon the Town and its successors and assigns.
- F. Additional Duties: Whenever significant changes in duties of responsibilities occur, Chief Middlemiss will receive out-of-grade increase of 15 percent to compensate for those additional responsibilities due to another Senior Manager's absence including retirement, resignation, termination, long-term illness or death.
- G. This Agreement constitutes the entire understanding and agreement between the parties hereto with regard to the subject matter hereof and supercedes all prior understandings and agreements, whether written or oral.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as a binding contract as of the date first written above.

Town of Lexington Acting By
And through its Town Manager

Carl F. Valente Date

William Middlemiss Date