



TOWN OF FRANKLIN
RESOLUTION 17-48

Ratification of Town Administrator's Contract

BE IT RESOLVED THAT THE TOWN OF FRANKLIN acting by and through the Town Council:

Hereby ratifies the provisions of the Employment Agreement between the Town of Franklin and Jeffrey D. Nutting dated July 12, 2017 and effective for the period July 1, 2017 through June 30, 2019, a copy of which is attached to this resolution.

This Resolution shall become effective according to the rules and regulations of the Town of Franklin Home Rule Charter.



DATED: _____, 2017

VOTED:

UNANIMOUSLY: _____

YES: _____ **NO:** _____

A True Record Attest:

ABSTAIN: _____ **ABSENT:** _____

Teresa M. Burr
Town Clerk

Judith Pond Pfeffer, Clerk
Franklin Town Council

EMPLOYMENT AGREEMENT

Between

TOWN OF FRANKLIN

And

JEFFREY D. NUTTING

This agreement is made and entered into this 12th day of July 2017 by and between the Town of Franklin, a Massachusetts municipal corporation, having an address of 355 East Central Street, Franklin, Massachusetts 02038 acting by and through its Town Council and hereinafter called "Franklin", as a party of the first part, and Jeffrey D. Nutting of 2 Magnolia Drive, Franklin, MA hereinafter called "Nutting", as party of the second part, both of which understand as follows:

WHEREAS, Franklin and Nutting entered into an Employment Agreement dated February 7, 2001 pursuant to which Franklin employed the services of Nutting as its Town Administrator for an initial term and continuing:

WHEREAS, Franklin desires to continue to employ the services of Nutting as Town Administrator of the Town of Franklin, pursuant to Article Four, Section 4-1-1 of the Franklin Home Rule Charter ("the Charter") and Massachusetts General Laws Chapter 41, sec. 108N; and

WHEREAS, it is the desire of the Franklin Town Council, hereinafter called "the Council", to provide certain benefits, establish certain conditions of employment and to set working conditions of Nutting; and

WHEREAS, it is the desire of the Council to (1) secure and retain the services of Nutting and to provide inducement for him to remain in such employment, (2) to make possible full work productivity by assuring Nutting's morale and peace of mind with respect to future security, (3) to act as a deterrent against malfeasance or dishonesty for personal gain on the part of Nutting, and (4) to provide a just means for terminating Nutting's services at such time as he may be unable fully to discharge his duties due to age or disability or when the Council may otherwise desire to terminate his employ; and

WHEREAS, Nutting desires to continue employment as Town Administrator of Franklin; NOW THEREFORE, in consideration of the mutual covenants contained herein, Franklin and Nutting agree as follows:

SECTION 1 – DUTIES

Franklin hereby agrees to employ Nutting as Town Administrator of Franklin to perform the functions and duties and exercise the powers specified in Article Four, Section 2 of the Charter and in the Code of the Town of Franklin and to perform other legally permissible and proper duties and functions as the Council shall from time to time assign.

SECTION 2 – TERM

- A. The term of this agreement is July 1, 2017 through June 30, 2019.
- B. Nothing in this agreement shall prevent, limit or otherwise interfere with the right of the Council to terminate the services of Nutting at any time subject only to the provisions set forth in Section 3, Paragraph A of this agreement.
- C. Nothing in this agreement shall prevent, limit or otherwise interfere with the right of Nutting to resign at any time from his position with Franklin, provided that he gives Franklin thirty (30) days written notice prior to the effective date of his resignation.
- D. Nutting agrees to remain in the exclusive employ of Franklin for the term of this agreement and neither to accept other employment nor to become employed by any other employer until said termination date, unless said termination date is affected as hereinafter provided.
 - 1. The term “employed” shall not be construed to include occasional services (teaching, writing, or consulting) performed on Nutting’s time off, the same to be such as not to interfere with or conflict in any way with Nutting’s general duties to Franklin and are conducted in accordance with the provisions of Article Four, Section 2 of the Charter, and do not constitute a conflict of interest or the unreasonable appearance of a conflict of interest under the terms of Massachusetts General Laws, Chapter 268A (the “Conflict of Interest

Law”). By the Council’s execution of this agreement, the performance of said services is hereby approved by the Council, subject to said limitations.

2. During the period of his employment, Nutting will faithfully perform his duties to the best of his ability; and in accordance with the directions of the Council, Nutting will not become associated with, or engaged in, or render services to any other entity during the term of his employment, except as provided above.

E. This agreement shall be extended on the same terms and conditions as herein provided, for an additional period of one year, in the event written notice is not given by one party to the other two hundred and seventy (270) days prior to the termination date. Said agreement shall continue thereafter for one year periods unless either party gives two hundred and seventy (270) days prior written notice to the other party that the party does not wish to extend this agreement for an additional one year term.

SECTION 3 – SUSPENSION AND REMOVAL

A. Council may suspend Nutting with or without full pay and benefits or remove Nutting for good cause at any time during the term of this agreement. Suspension or Removal; proceedings shall be as follows: (a) a written notice of intent to suspend or remove, together with a statement of the cause or causes therefor, shall be delivered by register mail to Nutting; (b) within 10 days following receipt of said written notice, Nutting shall have the right to request a public hearing before the Town Council which shall be held within (14) days after such request is made; (C) at any such hearing, Nutting shall have the right to be represented by counsel, present evidence, call witness, and question any witness; and (d) final action shall be taken by the Town Council within (7) days following the date of such public hearing or, if no hearing is requested, within seven (7) days after delivery of the notice to remove.

B. Nutting shall have the right to require that any suspension or removal hearing be held in executive session.

- C. Final removal of Nutting shall only be effected by a majority vote of the full Council at an open Council Meeting in accordance with Article Four, Section 4-3-1 of the Charter.

SECTION 4 – TERMINATION AND SEVERANCE

- A. In the event Nutting is terminated by the Council before expiration of the aforesaid term of employment and during such time that Nutting is willing and able to perform his duties under this agreement, then, in that event, Franklin agrees to pay Nutting a lump sum cash payment equal to six (6) months' aggregate compensation and his group medical insurance costs for a period of six (6) months after the effective date of such termination; provided, however, that in the event Nutting is terminated because of his conviction of any illegal act involving personal gain to him or with good cause for proven acts of embezzlement or fraud against Franklin, then, in that event, Franklin shall have no obligation to pay the aggregate severance compensation or medical insurance costs set forth in this paragraph.

1. If this agreement is not renewed or Nutting is terminated, he shall be entitled to compensation for 100% of all earned leave allowance accumulated and not taken.

SECTION 5 – COMPENSATION

- A. Franklin agrees to compensate Nutting for his services rendered pursuant hereto, Effective July 1, 2017 a salary of \$201,300 payable in bi-weekly installments. Effective July 1, 2018 the salary shall be increased by 3%.
- B. In addition, the Council agrees to increase said base salary or benefits of Nutting in such amounts and to such extent as the Council may determine that it is desirable to do so on the basis of annual performance evaluations of Nutting.
- C. Nutting's compensation and benefits shall not be reduced unless there is a general reduction in salary among municipal employees.

SECTION 6 – PERFORMANCE EVALUATION

- A. The Council and Nutting shall annually establish mutually agreed upon goals. The Council shall review Nutting's progress toward meeting such goals on a

semi-annual basis. The Council shall comprehensively review and evaluate the performance of Nutting at least once annually in advance of the adoption of the annual operating budget. Said annual review and evaluation shall be in accordance with specific criteria developed jointly by the Council and Nutting. Said criteria may be added to or deleted from as the Council and Nutting may from time to time determine. Further, the Council shall provide Nutting with a summary written statement of the findings of the Council and provide adequate opportunity for Nutting to discuss his evaluation with the Council.

- B. Annually, the Council and Nutting shall define such goals and performance objectives which they determine necessary for the proper operation of Franklin and in the attainment of the Council's policy objectives and shall further establish a relative priority among those various goals and objectives, said goals and objectives to be reduced to writing. They shall generally be attainable within the time limitations as specified and the annual operating and capital budgets and appropriations provided.
- C. In effecting the provisions of this Section, the Council and Nutting mutually agree to abide by the provisions of applicable law.

SECTION 7 – HOURS OF WORK

- A. Nutting's workweek shall ordinarily consist of a five (5) day week, Monday through Friday, plus whatever evening and/or weekend hours may be necessary from time to time in order to properly respond to the demands of the position. It is understood that Nutting shall also attend and participate in all Council meetings and other meetings at which his attendance is necessary for the orderly conduct of Franklin's business and operations.
- B. It is recognized that Nutting must devote a great deal of time outside the normal office hours to business of Franklin, and to that end, Nutting will be allowed to take time off as he shall deem appropriate during said normal office hours provided that the business of Franklin is not adversely affected by the taking of said time off.

SECTION 8 – OUTSIDE ACTIVITIES

- A. Except for the performance of occasional, part-time consulting, writing and teaching works as set forth in Section 2, Par. D. 1. above, Nutting shall accept no outside employment without the prior approval of the Council. He shall not engage in any business activity within Franklin unless he shall notify the Council in advance; the Town Attorney shall find there is no legal conflict of interest; and the Council shall find there is no infringement on his ability to perform his duties as Town Administrator.

SECTION 9 – PLACE OF RESIDENCE

- A. Notwithstanding anything in Article Four, Section 4-1-2 of the Charter to the contrary, Nutting may reside outside of Franklin. By executing this agreement, the Council hereby waives the residency requirement set forth in Article Four, Section 4-1-2 of the Charter.

SECTION 10 – VACATION, SICK LEAVE, PERSONAL LEAVE, AND HOLIDAYS

- A. Nutting shall be credited annually on March 1 with forty-seven (47) days of earned leave for vacation, sick leave, personal leave, and holiday purposes (hereinafter collectively (“earned leave”). Nutting shall annually have the option to be paid for up to ten (10) days annual earned leave days. Effective July 1, 2017 Nutting will be credited with (30) days of accumulate vacation leave. He shall annually have the option be paid for up to fifteen (15) days of the balance of the accumulated vacation leave.
- B. 100% of all earned leave days unused at the termination of this agreement shall be paid to Nutting upon non-renewal of the contract, termination, resignation or retirement.
1. In the case of Nutting’s death during the term of this agreement, payment shall be made to the estate of Nutting in an amount equal to 100% of all earned leave days allowance accumulated and not taken.
 2. If services are terminated by dismissal through no fault or delinquency of Nutting or by resignation or retirement, payment shall be made in an amount equal to 100% of all earned leave days allowance accumulated and not taken.

- C. Unused annual leave days to be used for sick leave purposes may be carried over from one year to another, with an overall limit on accumulation of sixty (60) days. No sick leave accumulation will be paid to Nutting upon non-renewal of the contract, termination, resignation or retirement
- D. Any unused vacation or sick leave remaining at the expiration of this agreement shall carry over and be credited to Nutting if this agreement is extended.
- E. Nutting shall ordinarily not be required to work on the following recognized holidays on the dates proclaimed by the Governor or the General Court of the Commonwealth:

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

Leave for such recognized holidays shall be included in Nutting's annual leave.

SECTION 11 – BEREAVEMENT LEAVE

- A. In the event of the death of a member of Nutting's immediate family or a member of his household or a relative, Nutting may take bereavement leave with pay in accordance with the Human Resources Regulations. Any such leave taken shall be in addition to his aforesaid annual leave.

SECTION 12 – HEALTH AND LIFE INSURANCE; DISABILITY INSURANCE ALLOWANCE

- A. Franklin agrees to put into force and to make required premium payments for Nutting's insurance policies for life, accident, sickness, major medical and dependent's coverage group insurance covering Nutting and his dependents. The levels and types of such coverages and Franklin's contribution to the cost of such coverages shall be the same as other managerial employees of Franklin.

SECTION 13 – RETIREMENT

- A. Franklin and Nutting acknowledge and understand that membership in the Massachusetts Contributory Retirement System is mandatory for all permanent, full-time employees. The retirement deduction required by law to be made for each pay period is eight percent (8%) of the gross pay up to \$30,000.00 per annum and an additional two percent (2%) or ten percent (10%) of the gross pay for the portion of the gross pay which exceeds \$30,000 per annum.
- B. Nutting may avail himself of the right to elect under any provision of Chapter 44, Section 67 of the Massachusetts General Laws, including directing the Town Treasurer to defer a portion of his employee income and also to purchase additional life insurance.

SECTION 14 – DUES AND SUBSCRIPTIONS AND PROFESSIONAL DEVELOPMENT

- A. Franklin agrees to pay for reasonable professional dues and subscriptions of Nutting necessary for his continuation and full participation in the professional municipal management organizations necessary and desirable for his continued professional participation, growth and advancement, subject to appropriation in the annual budget process.
- B. Franklin also agrees to pay for reasonable travel and subsistence expenses of Nutting for professional and official travel, meetings and occasions adequate to continue the professional development of Nutting and to adequately pursue necessary official and other functions for Franklin, subject to appropriation in the annual budget process.

SECTION 15 – INDEMNIFICATION

- A. Franklin shall defend, save harmless and indemnify Nutting against any claim, demand or other legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring within the scope of his employment and to the extent permitted by Massachusetts General Laws Chapter 258. Franklin shall have the right to defend compromise or settle any such claim or suit, as it deems appropriate after consulting with Nutting. Nutting agrees to promptly notify the

Council and to cooperate fully with legal counsel designated by the Council to handle such claim. However nothing herein shall prohibit or restrict Nutting from seeking, and the Town or its insurer appointing, legal counsel separate from legal counsel appointed for another municipal official or employee with respect to a particular matter, in the event that such representation is warranted by the facts and circumstances or applicable case law. Franklin may obtain such insurance to cover obligations hereunder as it deems appropriate, however neither said insurance, nor the payment of any insurance proceeds from said policy shall limit or be construed to limit this indemnification or the scope thereof. The provision of this indemnification shall not limit the insurance coverage or any payment pursuant thereto. Willful torts, to the extent required by said Chapter 258, and criminal acts are excepted here from. This section shall survive the expiration or termination of this Agreement.

SECTION 16 – OTHER TERMS AND CONDITIONS OF EMPLOYMENT

- A. The Council, in agreement with Nutting shall fix such other terms and conditions of employment, as it may determine from time to time, relating to the performance of Nutting, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this Agreement, the Charter or any other law.
- B. Should Nutting be called for jury duty and have to be absent from regular duty, he may, upon application, be paid the difference between the compensation received from jury duty and his regular compensation, upon presentation of an affidavit of jury pay granted.
- C. For purposes of the Federal Fair Labor Standards Act of 1938, as amended, the position of Town Administrator shall be deemed to be an “exempt” employee.

SECTION 17 – NOTICES

- A. Notices pursuant to this agreement shall be given by deposit in the custody of the United States Postal Service, postage prepaid, addressed as follows:
 - (1) Franklin: Town Council, Franklin Municipal Building, 355 East Central Street, Franklin, MA 02038

(2) Nutting: Jeffrey D. Nutting, 2 Magnolia Drive Franklin, Massachusetts 02053

Alternatively, notices 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 of the date of deposit of such written notice in the course of transmission in the United States Postal Service.

SECTION 18 – GENERAL PROVISIONS

- A. The text herein shall constitute the entire agreement between the parties.
- B. This agreement shall be binding upon and inure to the benefit of the heirs at law and executors and administrators of Nutting.
- C. This agreement shall become effective commencing on July 1, 2017.
- D. If any provision, or any portion thereof, contained in this agreement is held unconstitutional, invalid or unenforceable, the remainder of this agreement, or portion thereof, shall be deemed severable, shall not be affected and shall remain in full force and effect.
- E. Should any portions of this agreement be in conflict with any provision or provisions of the Charter or state laws, the requirements of the Charter or state laws shall govern. Neither party shall be deemed to have reduced or waived any of their rights, duties or obligations as provided for by virtue of having entered into this agreement.
- F. This agreement may be amended at any time by mutual written consent of the parties, except as otherwise provided for herein.
- G. The Council shall appropriate the necessary funding for this agreement.
- H. This agreement is a Massachusetts contract and shall be governed and construed in accordance with the provisions of the laws of the Commonwealth of Massachusetts.
- I. By executing this agreement, Nutting certifies pursuant to Massachusetts General Laws Chapter 62C, Section 9A under the penalties of perjury that he has complied with all tax laws of the Commonwealth of Massachusetts.

IN WITNESS WHEREOF, the Town of Franklin has caused this agreement to be signed and executed in its behalf by its Council and duly attested by its Town Clerk, and Nutting has signed and executed this agreement, both in duplicate, the day and year first above written.

Jeffrey D. Nutting

FRANKLIN, by:

Matthew Kelly, Chairman

Robert Vallee, Vice Chairman

Judith Pond Pfeffer, Clerk

Andrew Bissanti

Robert Dellorco

Glen Jones

Thomas Mercer

Peter Padula

Deborah Pellegrini

It's Town Council