

## **MIDDLEBOROUGH GAS & ELECTRIC DEPARTMENT GENERAL MANAGER EMPLOYMENT AGREEMENT**

WHEREAS, the Middleborough Gas & Electric Department ("MGED") Board of Commissioners ("Board") desires to employ Jacqueline L. Crowley ("General Manager") (the MGED and General Manager collectively referred to as the "Parties"), as General Manager of the MGED pursuant to the provisions of the Massachusetts General Laws Chapter 164, Section 56; and

WHEREAS, the Parties are desirous of entering into a written agreement defining the rights, duties, obligations and areas of responsibility for both the MGED and the General Manager; and

WHEREAS, the Parties desire that Jacqueline L. Crowley be employed as General Manager of the MGED on the terms and conditions specified herein,

NOW, THEREFORE, in consideration of the mutual covenants, conditions, and stipulations hereinafter expressed and in consideration of the mutual benefits to be derived therefrom, the MGED and the General Manager hereby agree, promise and covenant as follows:

### **Article I General Manager of MGED**

- 1.1 Scope of Agreement. The MGED Board will employ General Manager in the position of General Manager of the MGED, as that position is defined in Chapter 164, Section 56 of the Massachusetts General Laws, and the General Manager agrees to accept such employment, as defined by that statute and on the terms and subject to the conditions set forth herein.
- 1.2 Duties. In such capacity, General Manager, will be considered the executive officer for the operation and management of MGED. General Manager shall perform faithfully, to the best of her ability the duties of General Manager and such other duties which may from time to time be assigned by the Board. General Manager shall be accountable and subject to the direction and control of the Board as set forth in Chapter 164, Section 56 of the Massachusetts General Laws, and as further defined by the Massachusetts courts. In connection therewith, the Board does grant and hereby delegates to the General Manager all appropriate authority necessary in order to carry out these responsibilities in accordance with the laws of the Commonwealth of Massachusetts. General Manager shall make her best efforts to be physically present at the MGED offices during times of emergency or extended periods of service interruption. General Manager shall attend all meetings of the Board, at the Board's reasonable discretion.

## **Article II**

### **Restrictive Covenant**

During the Term of this Agreement, General Manager shall devote her best efforts and her entire time to advance the interests of the MGED and she shall not directly or indirectly, alone or as a member of a partnership or as an Officer, Director or shareholder of any other Corporation, be engaged in or concerned with any other commercial duties or pursuits whatsoever.

## **Article III**

### **Term**

Unless terminated earlier as provided for in Article VI below, this Agreement shall be in effect for five years from August 1, 2019 ("Commencement Date") to July 31, 2024. There will be an automatic extension of the Agreement for a single, one-year term: August 1, 2024 to July 31, 2025 – under the following conditions:

- A. Between May 1 and July 31, 2023, the General Manager notifies the Board in writing that the August 1, 2023 automatic extension date for the Agreement is approaching.
- B. The Board fails to notify the General Manager in writing by August 1, 2023, of its intention to not automatically extend the Agreement at the end of its term. The Board's notice may include a statement of the Board's willingness to attempt to negotiate a successor Agreement without negating the notice of no automatic extension. Likewise, any subsequent negotiations shall not negate the notice of no automatic extension.

## **Article IV**

### **Compensation Review and Evaluation**

- 4.1 Except as provided elsewhere in this agreement, during the Term of this Agreement, the performance and compensation, salary and fringe benefits of General Manager shall be reviewed as follows:
  - (a) At least annually, with such review being completed prior to September 1st. The review will be based on criteria, goals and objectives established by the MGED Board in consultation with the General Manager.
- 4.2 The General Manager's annual salary shall be One Hundred and Eighty-three Thousand, Four hundred and twenty-three (\$183,423) Dollars from August 1, 2019 to July 31, 2020. In determining any increase for 2020-2021 and beyond, the factors considered shall include the General Manager's annual performance evaluation relative to goals and objectives.
- 4.3 The General Manager is exempt from FLSA and shall not be entitled to overtime pay.

- 4.4 Except as specifically provided herein otherwise, if the MGED Board determines at any time that the performance of General Manager is less than satisfactory, it shall provide to her, a specific list of performance deficiencies and the actions which the MGED Board believes that the General Manager may reasonably take to improve performance to a satisfactory level.

## **Article V**

### **Benefits**

- 5.1 Vacation. During the Term of Employment, General Manager shall be entitled to five (5) weeks of paid vacation time per contract year. Vacation time can be carried over from year to year with the approval of the MGED Board, providing it is used up in the following year.
- 5.2 Sick Days, Workplace Productivity Incentive and Personal Days. The General Manager shall be entitled to one and one-half (1-1/2) days of sick leave per month, The General Manager shall be entitled to accumulate sick leave to cover absences from work due to sickness, up to 360 days. At the salary level in effect at the end of the contract year, and upon retirement or death, the General Manager or her estate shall be given one (1) day's pay for every three (3) days of unused accumulated sick leave, up to a maximum of 300 days of accumulated sick leave.
- In the event that General Manager uses 4 or fewer days of sick leave in a calendar year, she shall be entitled to a Workplace Productivity Incentive equal to one week's pay (40 hours of pay based upon the weekly pay of the last full week in December of that year). If the General Manager qualifies for and receives an enhanced productivity incentive payment, the amount of unused sick leave days within a calendar year that she may contribute to her sick leave bank will be reduced by an equivalent week (40 hours) for that calendar year. The General Manager may, at her option, choose to opt out of the Workplace Productivity Incentive.
- General Manager shall be entitled to four (4) paid Personal Days per calendar year. Personal days may not be carried over into the next year.
- 5.3 Health Insurance. General Manager shall be entitled to enroll in the Town's Employee Health Insurance Program. The percentage of premium she will pay will be in accordance with the current policy with respect to MGED employees.
- 5.4 Business Expenses. During the Term of Employment, MGED shall reimburse the General Manager for all reasonable business expenses incurred by her, as a result of her position as General Manager, only while on official business of MGED, and only to the extent that such business expenses follow the policies of MGED's Board, and whether or not those expenses are incurred within the limits of the Towns of Middleborough and Lakeville. The MGED business credit card shall be used for all business expenses, unless emergency conditions require other arrangements.

- 5.5 Automobile. General Manager shall also be entitled, and the MGED shall provide for the exclusive business use and for exclusive non-business use (non-business is for New England only), a four-wheel drive automobile. The MGED shall be responsible for the maintenance and repair of said vehicle and for all operating expenses and insurance thereof. The amount to be spent for any future automobile shall be subject to MGED Board approval, which shall not be unreasonably withheld. The automobile shall be operated solely by the General Manager.

The General Manager shall be responsible for maintaining mileage records for Internal Revenue Service reporting purposes, including completion of the Town of Middleborough automobile use form to determine taxation of the personal vehicle use benefit.

- 5.6 Miscellaneous. During the Term of Employment, subject to applicable eligibility requirements, General Manager may participate in any and all pension, annuity, medical insurance (including, without limitation, accident, hospital and disability insurance) or other benefit plans presently in effect or which may be established during the term hereof and are generally applicable to employees of the Town of Middleborough.

## **Article VI Termination**

This Agreement may be terminated prior to the end of its Term as follows:

### **6.1 Termination by the MGED Board**

- (a) The MGED Board may terminate this Agreement only upon the occurrence of any of the following events:
  - (i) For cause, including but not limited to the following: (A) the continued failure by General Manager to substantially perform her duties hereunder (unless such failure is a result of her total and permanent disability); (B) violation by General Manager of any material provision of this Agreement; or (C) General Manager's arrest for an act of fraud or embezzlement against MGED. General Manager shall not be deemed to have been terminated for cause unless (1) reasonable notice has been delivered to the General Manager setting forth the reasons for the Board's intention to terminate for cause, and (2) a period of thirty (30) days has elapsed since delivery of such notice during which General Manager was afforded an opportunity to cure, if capable of remedy, the reasons for Board's intention to terminate for cause.
  - (ii) Disability or incapacity of General Manager pursuant to Article 6.3 below;
  - (iii) Death of General Manager, provided, however, that nothing contained in this subparagraph is intended to limit the rights, if any, of General Manager's heirs,

devises or estate to payments or benefits in which General Manager has an accrued, vested interest under the Agreement at the time of her death.

- (b) If General Manager is dismissed for cause, as defined in Article 6.1 (a)(i) above, then the Board shall provide General Manager with ten (10) days written notice of such dismissal, and the action to terminate General Manager shall not pass unless a majority of the MGED board members voting at a meeting of the Board, vote to terminate this Agreement. Any notice required under this section shall state the cause for the proposed termination in reasonable detail, including a written statement of the facts and reasons for such proposed termination. General Manager has the right to a meeting with the Board prior to any MGED Board vote for termination under Article 6(b). General Manager shall have the right to challenge the justness of cause for such proposed termination before the MGED Board at a hearing to be held in executive session or to be held in a public hearing as requested by General Manager. General Manager has the right to retain legal counsel of her choice and at her own expense to represent her at such hearing. Upon any such termination for cause, any and all obligations of the MGED Board under this Agreement shall cease.
- (c) Except as specifically provided herein elsewhere, if the MGED Board terminates this Agreement without cause, the Board must give the General Manager ninety (90) days written notice of such cancellation of the Agreement and the Board must provide General Manager with the Compensation and Benefits set forth in Articles 4 and 5 to which General Manager would have been entitled for the remaining Term of the Agreement as defined in Article 3. This payment does not apply in the event that the Board exercises its option not to extend pursuant to Article 3.

## 6.2 Termination by General Manager

- (a) General Manager may terminate this Agreement at any time by providing one hundred twenty (120) days written notice to the Board. If General Manager gives such notice to the Board of her cancellation of the Agreement during the Term of this Agreement, General Manager shall be compensated for all days worked until such date of cancellation.
- (b) Notwithstanding anything herein to the contrary, if General Manager terminates her employment without providing notice as set forth in Article 6.2(a) above, this Agreement shall immediately be deemed terminated, and General Manager shall not be entitled to any further compensation or other benefits hereunder.

6.3 Disability. In the event that the General Manager shall become totally and permanently disabled, then this Agreement, and the parties obligations under it, shall terminate but the General Manager shall be entitled to all disability and other payments (other than severance) generally payable by MGED to MGED employees upon their termination of employment by reason of disability or incapacity. General Manager shall be considered to be totally and permanently disabled hereunder if for reasons involving mental or physical injury General Manager is unable to or fails to perform a substantial

portion of her duties hereunder for a period of ninety (90) consecutive calendar days or more. The determination that, by virtue of total and permanent disability, General Manager is unable to perform a substantial portion of her duties hereunder shall be made by two physicians chosen by the Board and reasonably satisfactory to General Manager (or her legal representative). The General Manager shall cooperate fully with this evaluation, including providing any medical records and authorizing the General Manager's personal physician(s) to provide information to the physicians conducting the evaluation. The records and information shall be limited to the suspected or claimed disability. The cost of such examination shall be borne by the Board. General Manager shall submit to such examination upon the Board's request.

- 6.4 Return of Records and Equipment. In the event of notice of any termination of General Manager as provided herein, General Manager shall promptly return any and all records, equipment, materials and/or assets of any sort that are the property of MGED, and shall immediately cease and desist from using all credit cards or incurring any obligation on behalf of MGED.

## **Article VII**

### **Performance Obligations**

During the Term of the Agreement, General Manager shall provide the Board with the following annually:

- Annual Capital and Operating budget;
- Operational performance of the MGED gas and electric systems;
- Review, status and strategy regarding power and gas supply sources and costs and rates;
- Status and strategy regarding union negotiations, including without limitation any tentative agreements reached with any union, with the understanding that no agreement is final until approved by the Board;
- Status and strategy regarding payments to the Town of Middleborough;
- Status of MGED construction projects;
- MGED Goals and Objectives for coming year to be provided by the General Manager before October 1 of each year, to be reviewed and adopted by the Board before December 31 of the same year.

The above stated obligations do not diminish the General Manager's duties under G.L c. 164.

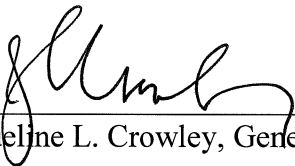
## **Article VIII**

### **Miscellaneous**

- 8.1 Notices. All notices and communications required to be sent pursuant to the provisions of this Agreement shall be in writing and shall be hand delivered, emailed or sent either by registered or certified mail, return receipt requested and all postal charges prepaid, or by Federal Express or similar overnight delivery service, addressed to the party to whom sent at its or her address set forth herein or to such address as may be specified in a notice similarly sent. All such notices and communications shall be deemed given when received by email, hand or certified mail.
- 8.2 Excuse of Performance. In the event that any court of competent jurisdiction orders that the Board vote(s) pertaining to the appointment of Jacqueline L. Crowley as MGED General Manager be rescinded, or otherwise invalidated, all further performance of this Agreement shall be excused and the rights and obligations of the parties hereunder shall terminate immediately and neither party shall be deemed in breach thereof.
- 8.3 Governing Law. This Agreement shall be interpreted under the laws of the Commonwealth of Massachusetts.
- 8.4 No Waiver. The failure of either party to raise an issue concerning a violation of the terms of this Agreement shall not be interpreted as waiving the rights of either party in any way.
- 8.5 Standards of Conduct. The Board and General Manager have entered into this Agreement in good faith relying that each party will conduct itself in a reasonable and prudent manner.
- 8.6 Benefit. This Agreement shall be binding upon and inure to the benefit of MGED and its successors and assigns, and General Manager and her heirs, legatees, executors, administrators, and legal representatives.
- 8.7 Indemnification. To the extent allowed by law and except for intentional wrong doing by General Manager, the MGED shall indemnify and hold the General Manager harmless from and against suits, judgements, damages, fines, liabilities, costs and expenses (including court costs and reasonable attorneys' fees) incurred as a result of claims, suits, actions or causes of actions that may be brought against the General Manager arising out of the General Manager's employment as, or exercising her duties as, General Manager of MGED, within the scope of her official duties or employment. This paragraph shall survive the termination of this Agreement for any reason. The Board will provide the General Manager with liability insurance coverage under its public officers' liability insurance policy. This provision shall not apply where the General Manager is a subject of an investigation that may result in disciplinary action.

- 8.8 Entire Agreement. This Agreement sets forth the entire agreement and understanding between the parties as to the subject matter hereof and merges and supersedes all prior discussions, agreements and understandings of any and every nature between them, and neither party shall be bound by any condition, definition, warranty or representation other than expressly set forth or provided for in this Agreement, or as may be, on or subsequent to the date hereof, set forth in writing and signed by the party to be bound thereby; and this Agreement may not be changed or modified except by an agreement in writing signed by the Board and General Manager. In the event of a dispute hereunder, this Agreement shall be interpreted in accordance with its fair meaning and shall not be interpreted for or against any party hereto on the ground that any such party drafted or caused to be drafted this Agreement or any part hereof.

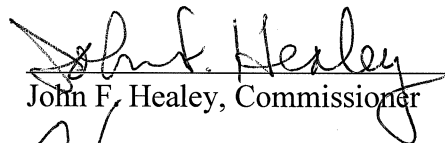
**Signed this 7th day of August, 2019**

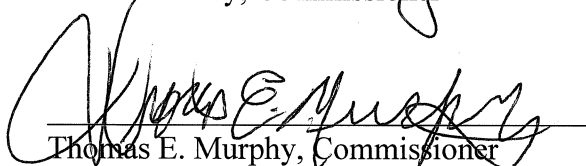
  
Jacqueline L. Crowley, General Manager

**MIDDLEBOROUGH GAS AND ELECTRIC DEPARTMENT  
BOARD OF COMMISSIONERS**

  
Daniel Farley, Commission Chair

  
Ellen M. Farley, Commissioner

  
John F. Healey, Commissioner

  
Thomas E. Murphy, Commissioner

\_\_\_\_\_  
Paul D. Smith, Commissioner