

MODEL “TERMS AND CONDITIONS OF EMPLOYMENT” LETTER

(Note: The following is provided as an aid to the membership and municipal officials and does not represent any official position of the New Jersey Municipal Management Association or the New Jersey State League of Municipalities)

In the recruitment and appointment process, once the municipality has selected their top candidate, there should be a written understanding between the parties as to all of the conditions of employment. This is often referred to as an “Offer of Employment Letter” or a “Terms and Conditions of Employment Letter”. It is not unusual for a municipality to ask the applicant to outline his/her terms and conditions in a letter format for a starting point for the final discussions or they may draft such a letter themselves. Furthermore, it is not unusual for this letter to be the only written document incorporating the understanding of the parties involved, although the letter can also serve as the basis for the development of a formal employment contract. Finally, given the time constraints that are often at play in the selection process, it is not unusual for the applicant to be formally appointed to the position based upon the Terms and Conditions cited in this letter, with the Attorney to prepare a formal contract to incorporate these conditions in the upcoming weeks.

Consequently it is very important that both the selected candidate and the governing body have a good outline or inventory of the important items to be included in such a letter of understanding (hereinafter called “Employment Letter”). This Membership Report provides a detailed outline of such an Employment Letter for use by members of NJMMA in the appointment process. The basic outline of the Employment Letter was derived from a document used by Jersey Professional Management of Cranford, New Jersey in their recruitment program, supplemented and edited to be more responsive to the specific needs of the Association membership. The Association wishes to thank Jersey Professional Management for their permission to use their document as the basis for this suggested model Employment Letter. In addition there is attached a model resolution for appointment that can be used to complete the selection process using the Employment Letter as the basis for the appointment.

This model Employment Letter is not a legal document. In fact it contains some issues to which some municipal attorneys would take exception. The model Employment Letter is meant to be used as a tool to assist in the negotiation process for a new position. The key here is to recognize that normally at the end of the selection process there are negotiations which occur over the terms and conditions of employment to govern the appointment. This model is to provide a tool for members to use in this process.

As a general premise, such an Employment Letter should be developed by the selected applicant and the elected officials to provide guidance to the attorney who may be drafting any final document. If the Employment Letter is being sent by the municipality to the selected applicant, the letter should be on the official municipal letterhead and signed by the Mayor as the official municipal representative. This is also important to insure that the Mayor, as the official spokesperson of the municipality, is fully aware of

the issues outlined in the letter. In addition, any Employment Letter should have an acceptance line for the applicant to sign signifying full understanding of the issues involved. If the municipality requests such a letter from the applicant, then the same format can be used with the letter in a standard business format (name and return address in upper right hand corner and the Mayor's name, municipality name, address and etcetera on the left-side before the body of the letter). If signed by the applicant, there should be an acceptance line to be signed by the Mayor. Each page should be initialed to avoid any future consideration that an item was "new". Normally a more formal process results in better overall communications amongst the affected parties. It is common for elected officials to respect a well done document (and they would expect an applicant to provide it as an example of his/her "professionalism").

It must be emphasized that this initial Employment Letter must contain not only those provisions that are of immediate concern (i.e., salary, starting date and benefits) but also any future items for consideration that were the subject of discussions between the applicant and the elected officials. In addition, there should be specific provisions for potential termination of employment, should that event occur on an adversarial basis. Remember: The elected officials who hire a person have the best of intentions but they are normally not the elected officials that may seek a change in the administrator/manager position. Consequently it is important that the document be drafted to reflect the possible actions of future elected officials who may not share the same support and enthusiasm as the incumbents. If a current elected official should question the provisions on severance and similar future related items, advise them of this concern and they will understand that, in a profession where change is a constant, one must always be prepared for this potentiality.

The model Employment Letter has a number of options listed for consideration by the applicant and the municipality. NJMMA and NJLM is not endorsing these options as applicable in all situations. The model serves as a mechanism for raising these issues to insure that everyone is comfortable with the final document. There are obviously other variations on the items included in this letter; the list is not meant to be inclusive but a "norm" or an "outline" to assist those in the appointment process. It is not unusual for variations to exist in these letters on required periodic reviews of the administrator/manager's performance, relocation issues, vehicle issues and etcetera. All of these local issues can only be resolved by the direct negotiation between the applicant and the appropriate elected officials. The model Employment Letter deliberately did not include some of the more unusual items since their listing may undermine the credibility of the basic document as a "universal norm". Please note: Some municipal attorneys may take exception to some of the provisions listed in this model letter. There are varying viewpoints on the discretion permitted to local officials on severance and some other issues. This does not preclude a discussion on these items with the governing body and the attorney, and possible alternate arrangements to resolve any attorney's concerns.

In reference to the section concerning governing termination, it is important that every Administrator/Manager be aware of the specific statute governing termination under a particular form of government.

For those appointed under the general “administrator” provision of state law, (NJSA 40A9-138) there is no specific requirement for a hearing on the termination. As a matter of fairness, it is usually understood that any employee has a right to be aware of the reasons from their termination and be able to respond to them in a meaningful manner. The model Employment Letter provides for these protections. This issue is important in any township or borough form of government unless the municipality has adopted the model Administrator Ordinance prepared by the Association.

For those appointed as a Manager under the Optional Municipal Charter Act (Faulkner Act) there are specific provisions governing the termination process including the rights to hearings (NJSA:69A-93). This section could be modified reflecting these statutory requirements; however it doesn’t hurt to have the right to a hearing reiterated in the Employment Letter as a redundancy. Although not used frequently, there is no hearing process under the Mayor-Council-Administrator plan (NJSA 40:69A149.9).

For those serving as the Business Administrator under the Mayor Council form, recent legislation provides for a three month severance provision for Administrators terminated but this must be implemented by local ordinance (see NJSA40:69A-43). Note that there is no formal hearing process involved here although there is a 20 day notice to the council of the pending termination. Due to the unique relationship of the Mayor to the Business Administrator in this form of government, the requirement of a hearing before the Mayor may be difficult to include.

For those under special charters or some of the older forms of government, each applicant must verify these conditions before they accept employment, or use the model employment letter as a boiler plate in hopes that it would override any other legal constraints.

One final note: Many administrators in non Mayor/Council governments are appointed for “terms”. This is often true in townships and boroughs. Legally if one is appointed under NJSA 40A9-138 there is no specific term. As a general premise, the Employment Letter should not contain a term unless one is required by law. “Tradition” in the borough and township form may have the Administrator reappointed in the annual meeting but this practice is not only contrary to law but also a disadvantage to the incumbent since it provides an annual opportunity to question the incumbent’s continued employment.

Note: The following document is not a legal instrument and is provided as a tool to assist an applicant and a municipality in the employment negotiation process.

OFFICIAL LETTERHEAD OF MUNICIPALITY

Date:

TO: Applicant Name
Location of residence

FROM: Mayor _____
Name of Municipality

SUBJECT: Offer of Employment and Terms of Employment

The (Township, Borough, City, etc.) (Council, Committee, etc.) and I have reviewed your credentials and believe you are the appropriate person to fill the position of (title of position). Consequently on behalf of the (name of municipality) I am pleased to offer you appointment to the position of (title of position) of the (Township, Borough, City, etc.) subject to the following terms and conditions of employment. Recognizing that the acceptance of this offer of employment will have significant long term consequences for you, these terms and conditions will be incorporated into a mutually agreed upon employment agreement so as to avoid any future misunderstandings. For simplicity's sake, hereinafter you are referred to by your last name:

1. (Last name) will become the new, full time (title of position) for the (name of municipality) effective (starting date) at an annual salary of \$xxxxxxx.
 - a. This salary may be adjusted in future years in recognition of your performance and the salary adjustments provided to other managerial employees
 - OR
 - This salary shall be adjusted in 2xxx by xx% and by xx% in 2xxx
 - b. (Last name)'s existing salary shall not be reduced by a governing body without (Last name) having an opportunity to discuss with the governing body his/her performance and any reasons for any salary reduction.
2. This is an appointment in accordance with relevant state law (note: see introductory statement for a partial list of appropriate citations) and

Section xxx, et. seq., of the Code of Ordinances of the (name of municipality). You will continue serving as the (title of position) provided that you faithfully, industriously and to the best of your ability perform the duties of (title of position) subject only to the following:

- a. (for those serving in a Mayor/ Council form of government), (Last name) will serve for a term expiring on (December 31, , xxxx) (or an alternate legally established date)

OR

(for those serving in any other form of government where there is not a fixed term for the Administrator/Manager) (Last name) will serve for an indefinite term at the pleasure of the governing body.

- b. Supplementing and complementing the provisions of the state statutes and local ordinance governing the termination of someone serving in the position of (title of position), (Last name) will receive notice of any meetings being held concerning his/her performance and continued employment with the (name of municipality) and will be given an opportunity to be heard prior to the adoption of any resolution affecting his/her tenure with the (name of municipality), said opportunity at the discretion of (Last name) may be held in public session.

(Note: although state statutes cite a 3 month severance policy for a terminated manager/administrator, some municipalities and individuals recognize that this may not be adequate. Consequently the following clause, or some similar provisions, may be appropriate in these instances.

- c. In recognition of the financial impact being incurred by (Last name) in leaving his/her existing position and/or relocating to the municipality, in recognition of the time restraints of finding alternate employment should (Last name)'s services with the (name of municipality) be terminated for any reason other than "just cause", and in recognition that a person serving in the position of (title of position) is required to work many hours in excess of the normal "work week" required of other management personnel, it is hereby agreed that in addition to the severance requirement of state law, (Last name)'s notice of termination is hereby supplemented by an additional xx weeks after xx years of tenure with the (name of municipality) and xx weeks after yy years of additional tenure with the municipality.)

3. (Last name) will report directly to the (Mayor, Township Council, Township Committee or other appropriate elected body) and will be

responsible for the day-to-day operations of the (name of municipality) according to state laws and regulations and the Code of Ordinances of the (name of municipality), as well as any other duties legally assigned to him/her by the (Mayor, Council, Committee) of the (name of municipality).

4. The benefits to be provided by the (name of municipality) and enjoyed by (Last name) during his/her employment includes but is not limited to:

A. A \$xxxxxx per year base salary, in accordance with the provisions of the annual salary ordinance.

(In future years, (Last name) will be eligible for any longevity payments or other similar salary payments provided to other management employees of (name of municipality) in the same manner as provided to these other employees)

OR

((Last Name) will not participate in longevity or other similar salary payments provided to other management employees of (name of municipality)

OR (In future years, (Last Name) will be eligible for salary adjustments based upon a review of his/her performance by the (mayor, governing body)

B. Full health insurance benefits, prescription, dental, eyeglass and similar benefits in the same manner as provided to all other (name of municipality) management employees

C. Pension coverage under the N.J. PERS. including Life insurance which is included with the State pension plan.

(Note the position of Administrator/Manager is subject to the 2007 legislative changes establishing the Defined Contribution Plan rather than PERS. However a person who was serving in a PERS position in 2007 and has been in "continuous service" in PERS positions since that time may continue to be in PERS. Otherwise the person is in the DCRP program [401 retirement plan]. Under the DCRP, the statute dictates the percentage contributions by both the employer and employee although there is some disagreement on alternate provisions allowable under IRS regulations which should be explored separately.)

D. Coverage under a short term disability plan

OR

(If the municipality does not provide a short term disability or similar program, or if the income from this program is inadequate, a clause similar to the following may be appropriate: In recognition of the fact that (Last Name) shall not have accrued sick

leave with (name of municipality) on beginning employment, (name of municipality) shall make available to (Last Name) xx days of sick leave for any catastrophic illness incurred by (Last Name), subject to the approval of the governing body and verification by medical experts of the municipality. Such additional sick leave shall not be considered as an addition to the normal sick leave that will accrue to (Last Name) during his/her tenure with (name of municipality).

E Same number of paid holidays and personal days provided to other (name of municipality) management employees. For the initial year of 2xxx, (Last name) will receive xx personal days.

F For the year 2xxx, (and subsequent years), xx vacation days.

OR

(For the initial year 2xxx, xx vacation days, and for the year 2xxx and subsequent years, xx vacation days)

(Some possible variations and/or guidelines on usage:

i. These vacation days will be advanced to (Last name) effective the first of every year for his/her use during the year. If (Last name) should resign during the year, (Last name) will receive a pro rata share of vacation days and will reimburse the (name of municipality) for any vacation days taken in excess of the pro rata amount.

ii. If (Last name) should be terminated during the year for any reason other than “just cause”, (Last name) will be paid for the full allotment of any vacations days unused for that year.

iii. (Last name) may carry over to future years any unused accrued vacation leave with this unused accrued vacation leave being paid to (Last name) only upon her termination by the (name of municipality)

iv. (Last name) will not be absent from the (name of municipality) for more than two consecutive weeks at any one time without the prior approval of the (Mayor, Council, Committee, etc)

v. Usage of vacation days will be governed by the regulations established for other managerial employees of (name of municipality) unless specifically modified by this agreement.

G (Last name) will be entitled to the same number of paid sick days per year and sick leave policies as enjoyed by all other management employees of the (name of municipality). For the initial year of 2xxx (Last name) will receive xx sick leave days advanced to him/her upon initiation of employment. For 2xxx and thereafter, the full allotment of annual sick days will be advanced to (Last name) for his/her use at any time during the year.

(Note: see comments under section 4c for short term disability and catastrophic illness during initial time of employment)

H (Last name) will be permitted the time off and reimbursement of expenses for professional development and/or attendance at conferences and training seminars, conducted by ICMA, NJMMA and the New Jersey State League of Municipalities. The (name of municipality) agrees to provide adequate provision for dues to these organizations and for attendance at these conferences and training programs in the annual budget of the (name of municipality).

(Note: It is not unusual for there to be an agreement as to the total number of days to be provided for these activities or a maximum annual cost. This alternate may be beneficial since it establishes a benchmark in the Agreement even if the person does not use the full allotment in the first couple of years.)

I (Last name) will be able to attend other seminars and conferences on municipal time and expense reimbursement with prior approval of the appropriate authorities.

J (Last name)'s regular schedule will be xxx a.m. to xxx p.m., Monday through Friday for a xx hour work week, as well as attendance at official events of the (name of municipality) where his/her presence is appropriate for his/her duties and responsibilities. (Last name) regular salary also includes his/her attendance at various evening meetings and occasional weekend meetings without receiving any additional time off nor compensation. Recognizing that the (title of position) must devote a great deal of time outside of normal working hours to the business of the municipality, (Last name) will be allowed to adjust the normal business hours to reflect these other commitments. Any such adjustment on a reoccurring basis shall be approved by the governing body.

K (Last name) will not be required to live within the boundaries of the (name of municipality).

OR

(Last name) will be required to establish residency in the (name of municipality) within xx days of assuming the office of (title of position)

(Note: If relocation to the municipality is required, it is not unusual for the municipality to agree to reimburse the applicant for all or a portion of these direct relocation expenses. If this is to be considered, this provision should be included here.)

- L (Last name) will be permitted to establish a Deferred Compensation Plan that corresponds to the existing plan he/she currently utilizes.
- M The (name of municipality) shall bear the cost of any fidelity or position bonds required by the municipality for this position.
- N. (name of municipality) will reimburse (Last name) for all reasonable expenses incurred on behalf of the municipality.
4. (Last name) will be provided an appropriate municipally supplied vehicle, cell phone and similar equipment needed to fulfill his/her responsibilities and will operate same in accordance with the established policies of the (name of municipality) for other management employees. (Since (Last name) is "on call" at all times for municipal functions and emergencies, (Last name) will be permitted twenty four hour use this municipal vehicle, including for commuting to and from work [and other incidental personal use].) OR ([Last name] will not be permitted to use this municipal vehicle for commuting to and from work).
- OR
- (Last name) will be reimbursed for the use of his/her personal car at the rates annually established by the IRS of the Federal government.
- OR
- The (name of municipality) shall pay to (Last name) the some of \$xxx per month for his/her use of his/her personal car for municipal business.
5. (If appropriate) (Last name) will not be eligible for xxxxx provided to other municipal employees without the approval of the governing body. (Note: If there are specific benefits that are provided to other management personnel which are not be provided to the new person, they should be listed here)
6. (Name of municipality) shall defend, save harmless and indemnify (Last name) 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 (Last name)'s duties, including any action which might commence or continue after (Last Name)'s retirement, resignation or termination.
7. (Last name) hereby certifies that upon acceptance of the position of (title of position) for the (name of municipality), (Last name) will devote full time and energy to fulfilling the duties and responsibilities of the position. (Last name) will seek prior approval of the Mayor and governing body of the municipality prior to assuming any other employment for remuneration or consulting/teaching.

- 8. (Last name) and the officials of (name of municipality) hereby acknowledge that they are entering into this agreement freely and voluntarily for the purposes set forth herein. All parties acknowledge that the terms and conditions are fair and equitable and in the best long term interest of the (Last name) and (name of municipality). (Last name) and officials of (name of municipality) agree to execute any and all documents that may be necessary to carry out the terms of the Offer of Employment.
- 9. (Last name) shall provide a minimum of 30 calendar days notice of his intention to resign from the (name of municipality), and shall assist the (name of municipality) in any transition work required to assist the replacement (title of position) selected by the (name of municipality)
- 10. This Letter of Employment shall be governed by the laws of the State of New Jersey. In the event that one or more of the provisions of this Letter of Employment are found to be invalid or unenforceable by a court of law, (Last name) and officials of (name of municipality) shall within 30 days of the date of such a determination agree to restructure the terms of the agreement so as to carry out the intent of the agreement, it being understood that each element of the agreement is material to (Last name) and (name of municipality).

May I suggest that you review these terms, and if you conclude that they are acceptable, please countersign and return one copy to my office. The Municipal Attorney will work with you to include the above items in an employment agreement

| | |
|----------------------------------|--------|
| _____ | _____ |
| Mayor, (Name of municipality) | (Date) |

| | |
|---------------------------------|--------|
| Accepted by _____ | _____ |
| (Name) Location of residence | (Date) |