

**CONTRACT
BETWEEN
TOWN OF BOXBOROUGH
AND
EDWARD M. CATALDO
INSPECTOR OF BUILDINGS/CODE ADMINISTRATION OFFICER**

Contract made effective as of the 15th of May, 2023 between the Town of Boxborough (hereinafter the “Town”), a duly authorized municipal corporation in Massachusetts in the County of Middlesex, acting by and through its Interim Town Administrator (hereinafter the “Administrator”) and Edward M. Cataldo (hereinafter the “Employee”).

Whereas the Town has established the position of Building Inspector/Code Enforcement Officer (hereinafter the “BI/CEO”); and

Whereas, the Town desires to appoint the Employee to serve as the BI/CEO; and

Whereas, it is the desire of the Town to provide certain compensation and establish the terms and conditions of employment of the Employee in such capacity;

Whereas, the Employee has agreed to accept the appointment as BI/CEO subject to the terms and conditions set forth herein;

Now therefore, in consideration of the mutual covenants contained herein, the parties agree as follows:

1. DUTIES:

Under the general supervision of the Director/Planner of the Office of Land Use and Permitting, the Employee shall perform the functions and duties set forth in the Massachusetts General Laws and the Town’s Bylaws relative to Inspectors of Buildings, and such other duties and functions as set forth in the Inspector of Buildings/Code Enforcement Officer job description attached hereto. In addition, the Interim Inspector of Buildings shall attend any hearings or meetings of Town boards for which his presence is necessary, and perform such other duties as may be legally assigned to him from time to time by the Board or its designee.

A more detailed list of the Employee’s job duties are set forth in the attached job description which may be amended, as necessary, by the Town and which are incorporated herein by reference.

2. HOURS OF WORK/JOB PERFORMANCE:

The Employee shall be required to devote the amount of time necessary to effectively, professionally, and diligently discharge the duties of the position, and manage the affairs of the Office and the employees under their supervision. The Employee's work week shall ordinarily consist of nineteen (19) hours per week over the course of a three day work week, plus such times that may be necessary from time to time in order to properly discharge their duties. Said time will be scheduled by the Employee to coincide with the hours that the Town Hall is open to the public.

It is recognized that in certain situations, the Employee may have to devote a great deal of time outside of the normal work week to properly discharge their duties, and to that end, the Employee will be allowed a flexible work schedule. Such flexible schedule will allow, for example, the Employee to take time off from work at their discretion, without such time being charged against available benefit leave time. The Employee shall not be granted any compensatory time for hours worked.

The Employee is to be available to the Town at all times of the day through the entire year for emergency response situations (e.g. fires and/or structural collapse), except during periods of illness, vacation or other leave, and acknowledges the need of the Town to have an efficient means of communication and contact with them, when off duty or out-of-town, for any and all reasons.

The Employee agrees to not engage in other employment unless such work has been approved by the Town Administrator before being commenced. Such approval may be revoked if, in the judgment of the Town Administrator, the employment conflicts with the Employee's responsibilities to the Town or their ability to discharge their duties for the Town with undivided loyalty and fidelity.

3. SPECIFIC ISSUES AND GOALS:

The Employee acknowledges that their performance shall be judged by the accomplishment of specific goals and objectives including the successful completion of their Professional Development Plan (the "PDP"). Such goals and objectives shall be, within sixty (60) days of the effective date of this Contract, reduced to writing, submitted to the Town Administrator for review and approval and attached hereto as Exhibit A as if set forth in full and at length herein. The Employee may seek extensions of the plan, approval not to be unreasonably withheld, to accommodate changes in course offerings and requirements for certification provided, however, that they shall demonstrate they have been faithfully pursuing such certifications at the time of such request.

Annually, as part of the budget process, the Administrator shall define such goals and performance objectives which, in consultation with the Employee, are determined necessary for the proper operation of the Office and in attainment of the Town's policy objectives for the coming three-year period. Further, the Administrator shall establish a relative priority among those various goals and objectives with such 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.

In conjunction with their annual performance review, the Employee shall submit their updated Professional Development plan for review and approval for the coming three years irrespective of the end date of this Contract.

4. SALARY, REVIEW & RETENTION BONUS:

The Employee shall receive a salary during each fiscal year which, if annualized, will at least be equal to \$62,500 (\$1,201.92 per week). In addition, the Employee shall be eligible to receive a salary increase of \$1,500.00 per year in Fiscal Years 2024 and 2025.

Each increase in salary shall be conditioned upon a finding of merit by the Administrator. Merit shall mean the Employee has achieved a positive performance evaluation which shall include the diligent pursuit of their Professional Development Plan.

These salaries will be payable in installments at the same time as other employees of the Town are paid, subject to retroactive payments for any delays in conducting the performance review. In the event the performance review is not conducted as provided, their compensation shall be adjusted as if a satisfactory review had been conducted and a finding of merit was achieved.

Within the thirty (30) day period prior to the commencement of each fiscal year, the Administrator shall conduct an annual salary review, which shall consist of the following: (1) a performance evaluation by the Administrator, which shall take into account the goals and objectives established under Section 3 of this Contract, above and (2) a written statement submitted by the Employee. The written statement by the Employee shall include, but is not necessarily limited to, the following:

- (i) A summary of the Employee's activities and accomplishments for the previous fiscal year together with the reasons – if any – for failure to meet the Goals and Objectives established in accordance with Section 3 of this Contract, above;
- (ii) The proposed goals and objectives of the Employee for the coming three-year period; and
- (iii) Their proposed professional development plan.

Upon completion of the annual performance evaluation, the Administrator shall provide the Employee with a summary written statement of the findings of the evaluation and provide an adequate opportunity for the Employee to discuss their evaluation.

5. BENEFITS:

The Employee shall enjoy the rights and benefits of the Town's Personnel Policy and all general benefits provided to Town employees under the General By-laws, under Town Meeting action, or by state law, as they now exist or may hereafter be amended or changed, except as hereinafter provided or modified for the Employee.

Vacation: The Employee shall be credited with three days of vacation on July 1, 2022. In addition, the Employee will be eligible to accrue up to three days of vacation during each of FY 2023, FY 2024, and FY 2025. Said three days of vacation will be accrued on a monthly basis in equal portions, but will not be credited to the Employee for use until July 1, 2023, 2024, and 2025, respectively.

Time not used in the year in which it is credited shall be time lost unless, in the event of an emergency or staffing levels so nominal as to not allow the Town to maintain its work processes in a reasonable manner, vacations are cancelled and the amount of time remaining on the books as of the date of cancellation shall be carried over.

Should the Employee separate from employment during the life of this Agreement for any reason, the Employee will be entitled to receive payment for only that portion of vacation leave that has been accrued through the date of separation only.

Parental Leave: In addition to the rights for unpaid parental leave in accordance with the provisions of GL Ch. 149, §105D, the Massachusetts Parental Leave Act ("MPLA"), the Employee shall, for the purpose of giving birth, or for the placement of a child under the age of 18 for adoption with the employee who is adopting or intending to adopt the child, or under the age of 23 if the child is mentally or physically disabled, after them having been employed by the Town in a full-time capacity for a period of at least twelve (12) consecutive months, be eligible to receive a matching paid day of leave time from the Town, subject to a maximum of 20 paid days, for each day of accrued paid leave that the employee utilizes from the employee's own leave balances during the parental leave period. The matching days from the Town may be used upon the commencement of the parental leave period and must be used within 6 months of the commencement of the parental leave period. Such days cannot be accumulated, cashed out or utilized outside of this time period.

All parental leave taken pursuant to this section shall be counted against the employee's annual leave allowance under the Family and Medical Leave Act.

Absences: All requests for vacation leave, sick leave and personal time shall be made to the Administrator on forms provided for said purposes. The Employee shall advise the Administrator of any anticipated or emergency absences from work greater than forty-eight (48) hours. Any use of vacation time in excess of three days shall be pre-approved, with said approval not to be unreasonably withheld, by the Administrator.

Absences Pre-Planned at the Time of Contract Execution: Reserved

6. PROFESSIONAL DEVELOPMENT:

The Town recognizes its obligations to the professional development of the Employee and the Employee recognizes their responsibility to participate in professional associations and pursue such professional development, both of which are set forth herein.

Accordingly, the Employee shall be allowed to attend applicable professional development courses, seminars and meetings, including, but not limited to those sponsored by the regional and state professional associations. Such attendance is to be approved in advance by the Administrator without loss of vacation or other leave. The Town also agrees to budget and pay an appropriate amount for the travel and subsistence expenses of the Employee for such courses, institutes, and seminars that, in the Employee's reasonable judgment are necessary for their professional development. If the Town requires the Employee to attend any course, seminar or meeting, the Town shall pay for the cost of such programs and for travel and subsistence expenses incurred by the Employee in attending such programs.

The Town agrees to budget and to pay an appropriate amount for the professional dues and subscriptions of the Employee for their continuation and full participation in national, regional, state and local associations and organizations necessary and desirable for their continued professional growth and advancement, and for the good of the Town.

7. GENERAL EXPENSES:

The Employee shall be reimbursed for any reasonable and necessary expenses incurred in the performance of their official duties within the limits of the official appropriations. Notwithstanding the foregoing, the Employee acknowledges that the Administrator, after consultation with the Employee, is the final arbiter of any dispute as to what is or is not a reasonable expense.

8. RESIDENCY & USE OF TOWN VEHICLE

Reserved

9. UNIFORMS AND EQUIPMENT

Reserved

10. TAXATION OF CERTAIN ITEMS

Reserved

11. INDEMNIFICATION AND LITIGATION

The Town shall defend, save harmless, and indemnify, without limitation, the Employee against any third-party tort, professional liability, claim or demand, or other legal action, whether

groundless or otherwise, arising out of an alleged act, or malfeasance or misfeasance, while the Employee is acting in good faith within the scope of their duties, even if such claim has been made following their termination from employment. The Town shall pay the amount of any settlement or judgment rendered thereon (except for willful, intentional, or criminal acts or civil rights violations) and may compromise or settle any such claim or suit and pay the amount of any compromise or settlement. In the event the Employee has left the service of the Town, but has been called upon to provide testimony, document review or advice as an expert witness or party in litigation, the Town shall compensate the Employee on a per diem basis by the payment of \$500.00 per day for such services. The Town shall also pay the ordinary and necessary expenses of air and ground transport, lodging, meals, fees and sundry items relative thereto.

This section shall survive any termination of this Contract.

12. DISCIPLINE AND DISCHARGE:

The Administrator may, after notice and a hearing, suspend, discharge or otherwise discipline the Employee for cause as defined in Section 13(a)(ii) of this Contract including, but not limited to, malfeasance or misfeasance. If, as a result of the hearing, the Administrator shall determine that there are grounds for discharge, the Administrator shall forward the matter to the Select Board which shall schedule a review of the matter within ten (10) days at which time the Employee may respond to the discharge and be represented by counsel. The Board shall determine if it deems the discharge is warranted, taking into account the Administrator's reasons for the commendation of discharge, and vote to confirm or reject the discharge within fifteen days of the review. If the Board shall not act within such time the discharge shall be considered effective.

Notwithstanding any provision of this Contract, in all instances of potential discipline or discharge, the Administrator, in their sole discretion, may place the Employee on immediate paid administrative leave, during the hearing periods, pending the outcome of the discipline or discharge process.

13. TERMINATION OF THIS CONTRACT:

This Contract may be terminated by either party as provided below:

(i) By mutual written Contract, signed by the Administrator and the Employee, upon such terms and conditions as may be acceptable to both parties at the time of termination; or

(ii) By the Administrator for Cause, subject to ratification of the Select Board. For all purposes of this Contract "Cause" shall be defined as objective grounds which are not arbitrary and which are reasonably related to the Town's need to operate an efficient and effective Office, including but not limited to, a failure to meet the contractual requirements set forth above and, misfeasance or malfeasance. In the event of such removal for cause, the Town shall have no obligation to pay any severance sum.

(iii) By the Administrator without Cause: In the event the Administrator wishes to

terminate this Contract without cause, as defined in Section 13(a)(ii) of this Contract, above, the Administrator, subject to ratification by the Select Board of such action, shall give the Employee notice of termination of the Contract and shall provide severance pay equal to two (2) months' salary to the Employee together with the Town's portion of health and life insurance. Said sum is to be paid as a lump sum at the time of termination.

(iv) By the Employee upon not less than sixty (60) days' written notice to the Administrator. Until the effective date of termination under such circumstances, the Employee shall continue to perform their duties and shall, if requested, cooperate with the Administrator in a search for a successor.

14. TERM:

The term of this Contract shall begin July 1, 2022 and terminate on June 30, 2025 (the "Termination Date") unless sooner terminated in accordance with Section 13.

- a. For purposes of this Contract, "year" shall mean a fiscal year. Any compensation earned or accrued on a yearly or annual basis shall be prorated in accordance with the portion of the year that the Employee is employed by the Town.
- b. Nothing in this Contract shall prevent, limit or otherwise interfere with the right of the Town to terminate the services of the Employee at any time, subject only to the provisions set forth in Sections 12 and 13 of their Contract.
- c. No sooner than six months and no later than five months prior to the Termination Date of the contract, the Employee shall notify the Administrator in writing of their desire to be reappointed to a subsequent term of office and negotiate the terms of employment for such subsequent term. Should the Employee provide such notice, the Administrator shall give the Employee notice no later than four months prior to the Termination Date of the contract either that (1) the Administrator does not intend to reappoint the Employee to a subsequent term, in which case the Employee's employment shall terminate on the Termination Date, or (2) in the alternative, the Administrator intends to negotiate a successor Contract, in which case a successor Contract must be mutually agreed to and entered into by the parties before three months prior to the Termination Date of the contract, failing which the Employee's employment shall terminate on the Termination Date. Should the Employee not provide such notice, then the Employee's employment shall terminate on the Termination Date unless otherwise agreed by the Town.

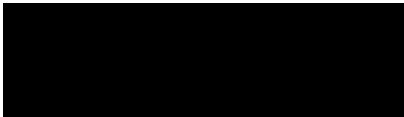
15. NOTICES:

Notices pursuant to this Contract shall be given personally in hand or by first-class mail, postage prepaid, addressed as follows, unless either party hereafter informs the other party in writing of a change of address:

TOWN:

EMPLOYEE:

Town Administrator
Boxborough Town Hall
29 Middle Road
Boxborough, MA 01719
townadmin@boxborough-ma.gov

Ed Cataldo

ecataldo@boxborough-ma.gov

Notice shall be deemed as given as of the date of personal service or as the postage mark of such written notice as sent by first-class mail.

16. RIGHTS IN DEATH

Upon the death of the Employee, the Town shall pay to their estate all compensation which would otherwise have been payable to the Employee, up to and including the date of their death.

17. AMENDMENTS

This Contract may be modified at any time in writing by the mutual consent of the parties executed in the same manner as this original Contract.

18. ENTIRE CONTRACT

The text herein contains the entire Contract of the parties. No prior understanding, oral interpretation, direction or change, unless executed in writing, shall be valid.

19. INTERPRETATION OF CONTRACT

The Contract will be interpreted and construed for all purposes under the laws of the Commonwealth of Massachusetts.

20. SEVERABILITY

Should any clause or provision of this Contract determined to be illegal by a court of competent jurisdiction, the remainder of this Contract shall not be affected thereby and shall remain in full force and effect.

21. APPROPRIATION

The terms of the Agreement shall be subject to annual appropriation by Town Meeting.

This Contract is executed as a sealed instrument this ___ 15 ___ day of ___ May ___, 2023.

Edward M. Cataldo

Ed Cataldo, Building Inspector/Code Officer

Michael C. Johns

Michael C. Johns, Town Administrator

Presented to the Select Board on June 13, 2022

Approved by a vote of 5 In Favor, 0 Opposed, and 0 Abstained/Recused

Approved as to Sufficiency of Funds During the Current Fiscal Year

Kelli Pontbriand

Kelli Pontbriand, Interim Town Accountant

Approved as to Form

Joseph Fair

Joseph Fair, Town Counsel