

**CONTRACT
BETWEEN
TOWN OF BOXBOROUGH
AND
JOHN KIVLAN
BOXBOROUGH FIRE CHIEF**

Contract made effective as of the 24th day of June, 2024 between the Town of Boxborough (hereinafter the "Town"), a duly authorized municipal corporation in Massachusetts in the County of Middlesex and John Kivlan (hereinafter "KIVLAN" or "Fire Chief"). References to "employees of the Town" exclude those employed by the School District and union employees.

WHEREAS, the Town wishes to appoint KIVLAN as the Fire Chief of the Town; and,

WHEREAS, KIVLAN has agreed to accept the appointment as Fire Chief of said Town; and

WHEREAS, it is the desire of the Board to establish the conditions of employment and set the compensation and benefits of said Fire Chief such as to secure the services of the Fire Chief and to provide inducement for him to remain in the Town's employ; and

WHEREAS, KIVLAN is willing to undertake and perform the duties of Fire Chief of said Town; and

NOW THEREFORE, the Town and KIVLAN hereby agree that the following terms and conditions shall govern the employment of KIVLAN and the salary and benefits to which KIVLAN shall be entitled as Fire Chief pursuant to M.G.L. Chapter 48 § 42 and any successive Acts. KIVLAN will be deemed an exempt employee as defined by the Fair Labor Standard Act (FLSA).

1. DUTIES AND HOURS OF SERVICE:

The Fire Chief shall perform the duties as prescribed by statute, the Town's By-Laws, the job description attached hereto, and as lawfully assigned, directed or delegated by the Board and/or the Town Administrator.

The Fire Chief shall devote that amount of time and energy which is reasonably necessary to faithfully perform the duties of Fire Chief under this contract. KIVLAN will devote full time and attention to the business of the Town for no less than forty (40) hours per week and will not engage in any other business during office hours, except with the approval of the Town Administrator. A timecard must be submitted only for weeks in which paid leave is taken. It is recognized that the Fire Chief must devote a great deal of time outside the normal office hours to the business of the Town, and to that end the Fire Chief will be allowed to take reasonable time off as he shall deem appropriate during said normal office hours, provided reasonable notice is given to the Town Administrator.

During the term of this contract, the Fire Chief will remain in the exclusive employ of the

Town of Boxborough, however, with written pre-approval of the Town Administrator, and not to interfere or conflict with any duties or operations in Boxborough, the Fire Chief may participate in third-party compensated duties. Outside duties may include State Hazardous Material Team training & response, State Fire Academy instructing, and other similar work for example, as may be approved.

The Fire Chief shall attend all Annual and Special Town Meetings, and such other meetings that may be required in the performance of his duties as the Fire Chief of the Town.

2. COMPENSATION:

The Town shall pay KIVLAN, subject to such statutory deductions as are required and any voluntary contributions and/or deductions desired by the Fire Chief, on the same schedule as all other Town employees are paid. The Fire Chief shall receive an annual salary of one hundred forty-five thousand dollars (\$145,000.00) for the period of July 1, 2024 through June 30, 2025 (with pro-rated deduction for starting after July 1, 2024). The Fire Chief shall be eligible to receive an annual salary of one hundred fifty thousand dollars (\$150,000.00) for the period of July 1, 2025 through June 30, 2026, and an annual salary of one hundred fifty-five thousand dollars (\$155,000.00) for the period of July 1, 2026 through June 30, 2027.

The above FY2026 and FY2027 salary increases shall be contingent upon the Fire Chief receiving a performance review of at least "proficient" for the one-year period that precedes the date that the increase is to take effect on. Said performance review shall be completed within thirty (30) days of the end of the performance year to be measured.

The Fire Chief shall be paid all monetary compensation and reimbursement under this Agreement through direct deposit.

In the event the performance review is not conducted as provided above, the Fire Chief's compensation shall be adjusted as if a "proficient" review rating had been achieved.

Starting in December of 2024 and in six (6) month intervals thereafter for the remainder of this contract, the Town shall contribute a sum of two thousand five hundred dollars (\$2,500.00) to the Fire Chief's deferred compensation plan. The Fire Chief shall notify the Town Treasurer in writing of the deferred compensation plan in which the payment is to be made.

3. FIRE CHIEF EVALUATION:

The Town Administrator shall review and evaluate the Fire Chief annually within 30 days of the end of the fiscal year. Said review and evaluation shall be based on the goals and objectives developed jointly and mutually agreed to by the Town Administrator and the Fire Chief.

4. TRAVEL AND COMMUNICATIONS:

It is expected that the Fire Chief will respond to the needs and emergencies of the Town when necessary or required. As a result, the Fire Chief will be provided with an unmarked Town Fire Department vehicle for his use so that he may respond to emergencies and other matters from wherever he may be. Such a vehicle may also be used for personal reasons, incidental to the performance of his duties, since he is considered on duty at all times. The costs associated with the operation and maintenance of this vehicle shall be borne by the Town.

The Fire Chief will be provided with a paid Town cell phone for ease of timely and continual communications.

5. BENEFITS:

The Fire Chief shall be entitled to the following benefits:

Vacation: The Fire Chief shall be entitled to accrue up to five (5) weeks' vacation per contract year. A vacation week shall be defined as five (5) working days. Vacation time shall accrue at the rate of sixteen and sixty-seven hundredths (16.67) hours per month. During the first twelve (12) months of this contract, vacation days may be used in advance of accrual. No more than eighty (80) hours of vacation leave may be carried forward into a new contract year.

The Fire Chief shall be allowed to use vacation in half-day increments. Vacation time shall not be accrued during any unpaid Leave of Absence.

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

Holidays: The Fire Chief shall receive the following paid holidays, and is not expected to report to work on:

New Year's Day	Independence Day
Martin Luther King Day	Labor Day
President's Day	Indigenous Peoples Day
Patriots Day	Veterans Day
Memorial Day	Thanksgiving Day
Juneteenth	Christmas Day

Each holiday will be observed by the Town on the day designated by State law.

Bereavement Leave: In the event that the spouse/partner, child, foster child, step-child, grandchild, father, mother, step-parent, sister, brother, grandparent, father-in-law, mother-in-law, son-in-law or daughter-in-law of the Fire Chief shall die, the Town Administrator shall grant the Fire Chief a leave of absence with pay for a period not to exceed five (5) working days.

Jury Duty: If the Fire Chief is called to serve on jury duty, the Fire Chief shall be paid the difference between his compensation for serving on jury (excluding reimbursement for out-of-pocket expenses) and the compensation provided for the Fire Chief's salary. The Fire Chief shall make every reasonable attempt to report for work on the days on which he serves. Reasonable documentary proof of actual service of jury duty must be presented for this compensation to be paid.

Family Medical Leave: The Fire Chief is eligible for leave under the Family and Medical Leave Act (FMLA), consistent with the provisions for all other employees of the Town.

Personal Leave: The Fire Chief shall be entitled to three (3) personal days per fiscal year starting in fiscal year 2025. Personal leave may be used for personal reasons and such leave shall be taken with the prior approval of the Town Administrator. Such approval shall not be unreasonably withheld.

Unused personal leave can never be used during another fiscal year, nor can it be converted to pay or compensation of any kind.

Sick Leave: The Fire Chief shall be entitled to ten (10) days of sick leave per fiscal year, and may accrue up to a maximum of 180 days. Sick leave shall accrue at the rate of six and sixty-seven hundredths (6.67) hours per month. The Fire Chief shall also be entitled to join the Sick Leave Bank in accordance with the policies that govern enrollment and use. Sick time shall not be accrued during any unpaid Leave of Absence.

Injured on Duty: If the Fire Chief is incapacitated from duty because of injury or illness sustained in the performance of his duty, he is entitled to injured on duty leave (IOD) without loss of pay in accordance with MGL Chapter 41, Section 111F Massachusetts General Laws.

The Chief shall maintain and carry over to the new contract year, any and all unused vacation and sick leave that he accrued at the time of the injury. Additionally, during periods in which the Fire Chief is on injured on duty leave, he shall continue to accrue vacation and sick leave during the first six (6) consecutive months of such leave, but shall cease accruing said leave during the period of any injured on duty leave that exceeds six (6) consecutive months.

Medical Insurance: The Fire Chief is eligible to enroll in the Town's health insurance plan under the same benefit conditions and percentage of premiums paid as other non-union employees of the Town.

Absences: The Fire Chief shall notify the Town Administrator of any absences. Any use of vacation time in excess of three (3) days shall be pre-approved, with said approval not to be unreasonably withheld, by the Town Administrator.

Absences Pre-Planned at the Time of Contract Execution: August 6-15, 2024 approved.

6. PROFESSIONAL DEVELOPMENT, DUES AND SUBSCRIPTIONS:

The Town recognizes its obligations to the professional development of the Fire Chief. The Town agrees to pay up to a maximum of four thousand dollars (\$4,000.00) annually for dues, subscriptions, registration, travel and subsistence expenses of the Fire Chief for memberships, conferences, short courses, institutes and seminars that are necessary for his professional development, as approved by the Town Administrator, including without limitation, to the International Association of Fire Chiefs and the Fire Chiefs Association of Massachusetts. Time spent in professional development activities shall not be deducted from vacation leave.

7. GENERAL EXPENSES:

The Fire Chief shall be reimbursed for any reasonable and necessary expenses incurred in the performance of his duties, or as an official representative of the Town, including attendance by him at civic or social events.

8. RESIDENCY

Reserved

9. UNIFORMS AND EQUIPMENT

The TOWN shall pay for an annual uniform allowance for the Fire Chief in the amount of \$1,500.00 in year one of this contract, and \$950 per year in the second and third years of this contract. Uniform allowances will be free of tax deductions when purchased through Town procurement with appropriate receipts. The Fire Chief will be issued complete turnout gear, and all other protective equipment, commensurate with other members of the Fire Department.

10. TAXATION OF CERTAIN ITEMS

Reserved

11. INDEMNIFICATION AND LITIGATION

The Town shall defend, save harmless and indemnify, without limitation, the Fire Chief 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 his duties as Fire Chief, even if said claim is brought/filed following his separation from employment. The Town (and/or its insurer) shall pay the amount of any settlement or judgment rendered thereon, and further, the Town (and/or its insurer) may compromise and settle any such claim or suit and pay the amount of any settlement or judgment rendered thereon without recourse to the Fire Chief.

In connection with those claims or suits involving the Fire Chief in his professional capacity and covered above, the Town, at its sole option, shall either retain and pay for an

attorney to represent the Fire Chief (including all fees and costs) or reimburse the Fire Chief for any attorneys' fees and costs incurred by the Fire Chief in connection with same, provided the Fire Chief submits proper invoices and evidence of payment of same.

In the event the Fire Chief has left the service of the Town, but has been called upon to provide a deposition, testimony, document review, or advice as an expert witness or party in litigation on behalf of the Town, the Town shall compensate the Fire Chief on a per diem basis of Seven Hundred Fifty Dollars and No Cents (\$750.00) for such services. In addition, the Town shall pay the ordinary and necessary expenses of air and ground transport, lodging, meals, fees and sundry items relative thereto.

The provisions of Section 11 shall not apply to disputes between the Fire Chief and the Town regarding his employment or concerning any of the terms and provisions of the Agreement.

This Section shall survive the termination of this Agreement

12. INSURANCE:

The Town agrees to furnish, at its own expense, public officials and general liability insurance for the Fire Chief with liability limits of one million (\$1,000,000.00) dollars.

The Town shall pay the full premium of a ten thousand dollar (\$10,000.00) Accidental Death and Dismemberment Insurance Policy for the duration of this Agreement.

The Town shall pay fifty percent (50%) of the premium for Disability Insurance or equivalent that is presently in effect, should the Fire Chief elect to enroll.

13. DISCIPLINE AND DISCHARGE:

Except as otherwise set forth in the "Severance" section below, during the term of this contract, the Town may discipline or discharge the Fire Chief only for just cause upon a majority vote of the duly elected Select Board. The Fire Chief shall have the right to a pre-disciplinary or pre-discharge hearing and he shall be entitled to receive written notice of the charges against him at least 14 calendar days prior to the hearing. The Fire Chief shall have the option of choosing whether or not any such hearing shall be closed to the public or shall be held as an open or public hearing. The Fire Chief shall have the right to be represented by counsel or a representative of his choosing.

For the purpose of discipline or discharge, the definition of just cause includes, but is not limited to, the following:

- a) Malfeasance – defined as wrongdoing or misconduct by a public official or the commission of an act that is positively unlawful.
- b) Misfeasance – defined as the doing of a lawful act in an unlawful or improper manner so that there is an infringement on the rights of others.

- c) Nonfeasance – defined as the failure to do what duty requires to be done.

14. SEVERANCE:

In the event the Board of Selectmen wishes to terminate this Agreement prior to the end of its term for other than just cause, the Town shall pay the Fire Chief a lump sum equal to his annual base salary, plus any unused accrued vacation he may have at the time of termination, and an additional amount equal to seventy five percent (75%) of the Town's portion of his health and life insurance benefits for a twelve (12) month period following termination. This section shall survive the termination of this agreement.

15. TERM:

- a. The term of this Contract shall begin July 15, 2024 and terminate on June 30, 2027 ("Termination Date") unless sooner terminated in accordance with Section 13 or 14.
- b. Unless either party provides written notice to the other of its intention to renegotiate and/or not to renew this contract no less than six (6) months prior to June 30, 2027 it shall automatically be extended, on the then applicable terms and conditions, for an additional year.
- c. Nothing in this Contract shall prevent, limit or otherwise interfere with the right of the Town to terminate the services of the Fire Chief at any time, subject only to the provisions set forth in Sections 13 and 14 of this Contract.
- d. In the event the Fire Chief wishes to resign his position with the Town during the term of this Agreement, he shall provide the Town with a minimum of ninety (90) days' written notice of such intent.

16. NOTICES:

Notices pursuant to this Contract shall be given personally in hand, by email 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:

Select Board
Boxborough Town Hall
29 Middle Road
Boxborough, MA 01719
selectboard@boxborough-ma.gov

FIRE CHIEF:

John Kivlan



Notice shall be deemed as given as of the date of email, personal service or as the postage

mark of such written notice as sent by first-class mail.

17. RIGHTS IN DEATH:

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

18. 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.

19. 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.

20. INTERPRETATION OF CONTRACT:

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

21. 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.

22. DELEGATION OF AUTHORITY

Reserved.

23. ANNUAL APPROPRIATION:

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

This Contract is executed as a sealed instrument this 24th day of June, 2024

Town of Boxborough
Acting by and through its Select
Board


John Kivlan

Date: 6/27/24


Chair, Select Board

Date: 6/27/24

Attest to Signature:


Town Clerk

Date: 6/27/24

Approved as to Legal Form by:
Account


Town Counsel

Date: 06/27/2024

Certified that there is appropriation in
150,250 _____, to fund this Contract.


Town Accountant

Date: 06/27/2024

