

**TOWN OF BOXBOROUGH
PUBLIC WORKS DIRECTOR CONTRACT**

Agreement made this 27TH day of February, 2020, by and between the Town of Boxborough, Massachusetts (hereinafter "TOWN") and Edward A. Kukkula (hereinafter "Kukkula"). As used in this Agreement, the term "employees" refers to non-union employees covered by the Town's Personnel Plan.

Whereas, the TOWN wishes to secure the services of KUKKULA in the administration of the Public Works Department; and

Whereas, KUKKULA is willing to perform the duties of the position of Public Works Director according to the terms and conditions of this contract;

Now, therefore, the TOWN and KUKKULA hereby agree that the following terms and conditions shall govern the terms, conditions, salary and benefits of KUKKULA's employment with the Town.

TERM - The term of this contract shall be for a period of three years, commencing on July 1, 2020 and ending on June 30, 2023.

Unless either party provides written notice to the other of its intention to renegotiate and/or to not renew this contract no less than six (6) months prior to June 30, 2023, it shall automatically be extended, on the then applicable terms and conditions, for an additional year.

In the event KUKKULA wishes to resign his position with the Town during the term of this Agreement, he shall provide the Town with a minimum of thirty (30) days' written notice of such intent.

APPROPRIATION – The terms of this Agreement shall be subject to annual appropriation by Town Meeting.

COMPENSATION – KUKKULA's annual salary during FY 2021 (July 1, 2020 - June 30, 2021) shall be one hundred four thousand eight hundred seventeen dollars (\$104,817). KUKKULA shall receive the sum of one hundred seven thousand nine hundred sixty-two dollars (\$107,962) as salary for the period July 1, 2021 to June 30, 2022 and shall receive the sum of one hundred eleven thousand two hundred one dollars (\$111,201) for the period July 1, 2022 to June 30, 2023. The increases in salary that are set forth in this section shall be contingent upon KUKKULA receiving a performance review of at least "proficient" for the fiscal year that immediately precedes the fiscal year for which the new salary amount is to be effective.

In addition, the TOWN agrees that it shall not at any time during this contract reduce the salary, compensation, or other benefits for KUKKULA, except to the extent that such reduction is evenly applied across-the-board for all employees of the Town.

KEY RESPONSIBILITIES are set forth in the Public Works Director job description that may be amended, as necessary, by the Select Board. The Public Works Director shall perform the duties specified in the job description and such other duties as the Select Board shall from time to time legally assign to the Public Works Director.

HOURS OF WORK - KUKKULA agrees to devote that amount of time and energy which is reasonably necessary to faithfully perform the duties of Public Works Director under this contract. KUKKULA will devote full time and attention to the business of the Town and will not engage in any other business during office hours, except with the approval of the Town Administrator. A time card must be submitted only for weeks in which paid leave is taken. It is recognized that KUKKULA must devote a great deal of time and effort outside normal hours to the TOWN. Accordingly, KUKKULA will be allowed to take reasonable amounts of time off during said normal hours, provided 48 hours advance notice is given to the Town Administrator. KUKKULA may not take more than two days compensatory time in any week.

INDEMNIFICATION - The TOWN agrees, to the extent permitted by law, to defend, save harmless and indemnify KUKKULA against any tort, professional liability claim or demand, or other civil legal action, whether groundless or otherwise, arising out of any alleged act or omission occurring in the performance of his duties as Public Works Director for the Town of Boxborough, even if said claim has been made following his termination from employment, provided that the Public Works Director acted within the scope of his duties. The TOWN may compromise and settle any such claim or suit and will pay the amount of any settlement or litigation costs, incidental expenses, and judgments rendered thereon without recourse to KUKKULA.

This section shall survive the termination of this agreement.

INSURANCE - The TOWN agrees to furnish at its expense, professional liability insurance for KUKKULA with liability limits of One Million Dollars (\$1,000,000.00).

HEALTH INSURANCE, DISABILITY INSURANCE, VACATION, HOLIDAYS, SICK LEAVE, and OTHER PAID LEAVE

KUKKULA shall be eligible for a health insurance policy, similar to other Town employees. The Town shall pay the same percent of the premiums as it does for other Town employees and KUKKULA shall pay the remaining percentage.

The Town shall provide a supplemental life insurance policy of \$10,000 for KUKKULA, similar to other Town employees. The Town shall pay the same percent of the premiums as it does for other Town employees and KUKKULA shall pay the remaining percentage.

The Town shall provide a long-term disability insurance policy for KUKKULA, similar to other Town employees. The Town shall pay the same percentage of the premiums as it does for other Town Employees and KUKKULA shall pay the remaining percentage.

VACATION, SICK & OTHER LEAVE - KUKKULA shall be entitled five weeks paid vacation per fiscal year. Vacation shall accrue at the rate of sixteen and sixty-seven one-hundredths (16.67) hours per month. KUKKULA may borrow up to eighty (80) hours of vacation leave on or after July 1, however, KUKKULA must repay time taken that was not accrued if employment is voluntarily terminated. No more than one hundred sixty (160) hours of vacation leave may be carried forward into a new fiscal year. Payment for accrued vacation leave will be made upon termination, resignation, disability, or death.

HOLIDAYS – KUKKULA shall receive the following paid holidays:

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|------------------------|------------------|
| New Year’s Day | Labor Day |
| Martin Luther King Day | Columbus Day |
| Presidents’ Day | Veterans Day |
| Patriots’ Day | Thanksgiving Day |
| Memorial Day | Christmas Day |
| Independence Day | |

Whenever any of the holidays listed above falls on Saturday, the preceding Friday shall be observed as the holiday; whenever any of the holidays above falls on Sunday, the following Monday shall be observed as the holiday.

In addition KUKKULA shall receive ten (10) days sick leave per fiscal year and any other leave granted by the TOWN in amounts not less than the highest amount available to other employees of the Town under the then effective Personnel Administration Plan. Unused sick leave remaining at the expiration of this Agreement shall carry over, in accordance with Town policies, and be credited to KUKKULA if this Agreement is extended.

KUKKULA shall receive three (3) personal leave days each fiscal year.

KUKKULA shall receive bereavement leave, jury duty leave, military leave, court appearance leave, FMLA and Small Necessities leave under the same allowances provided for other Town employees in the Town Personnel Plan.

UNIFORM ALLOWANCE - The Town shall pay for an annual clothing allowance for the Public Works Director in the amount of \$950.

PROFESSIONAL DEVELOPMENT - The TOWN shall pay reasonable amounts for dues and attendance at professional development meetings, including those sponsored by the Massachusetts Highway Association, recycling related programs, Baystate Roads Programs, and other applicable programs, all within department professional-development budgeted amounts as approved annually by Town Meeting. Travel outside New England must be approved during the budget process.

VEHICLE – The TOWN shall provide KUKKULA a vehicle chosen by the Town and pay for all attendant operating and maintenance expenses and insurance. The vehicle is to be used by KUKKULA in connection with performance of his duties as Public Works Director and/or for his professional growth and development. Since the Public Works Director is always on call, KUKKULA may drive the vehicle for personal reasons. The vehicle may NOT be used for vacation, or during periods that KUKKULA would NOT be reasonably expected to respond to an incident or event.

DISCIPLINE OR DISCHARGE - During the term of this contract, the TOWN may discipline or discharge KUKKULA only for just cause upon the majority vote of the duly elected Select Board. KUKKULA 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. KUKKULA shall have the option of choosing whether or not any such hearing shall be closed to the public or be held as an open or public hearing. The principles of progressive discipline will apply, and the TOWN recognizes its obligation to provide KUKKULA with periodic performance evaluations at least once per year.

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.

SEVERANCE - In the event the Select Board wishes to terminate the agreement prior to the end of the term, for other than just cause, the TOWN shall pay KUKKULA a lump sum equal to six months of his base salary, any unused accrued vacation he may have at the time and the Town's portion of his health and life insurance benefits for a six (6) month period following termination.

MODIFICATION - No change or modification of this contract shall be valid unless it shall be in writing and signed by both the parties.

NOTICES – Notices pursuant to this Agreement shall be given by deposit in the custody of the United States Postal Service, postage prepaid, addresses as follows:

TOWN: Chair of the Select Board
 29 Middle Road
 Boxborough, MA 01719

Public Works Director: Edward A. Kukkula

Alternatively, notices required pursuant to this Agreement may be personally served. Notice shall be deemed as given as of the date of personal service, or the U.S. postmark on written notice.

LAW GOVERNING - This Contract shall be construed and governed by the laws of the Commonwealth of Massachusetts.

SEVERABILITY OF PROVISIONS - If any clause or provision of this contract shall be determined to be illegal by a court of competent jurisdiction, the remainder of the contract shall not be affected thereby.

IN WITNESS WHEREON, the parties hereunto have set their hands and seals to the instrument the date and year first above written, and have executed this Agreement in duplicate.

Edward A. Kukkula
Edward A. Kukkula

Date: 2/28/2020

Attest to Signature:

Ed A. Martineau
Town Clerk

Date: 2/28/2020

Approved as to Legal Form by:

NA
Town Counsel

Date: NA

Town of Boxborough
Acting by and through its Select Board

Maria E. Keyland
Chair, Select Board

WR 7
MD J. [unclear]

Date: 2/27/20

Certified that there is appropriation in Account 427, to fund this Contract.

Jeff Burt
Town Accountant

Date: 6/30/20