

EMPLOYMENT AGREEMENT

BETWEEN THE TOWN OF UPTON AND KENNY COSTA

WHEREAS, it is the desire of the Town Manager (the “Manager”) of the Town of Upton (the “Town”), acting on behalf of the Town, to employ the services of Kenny Costa as the Finance Director/Town Accountant (hereinafter Finance Director).

WHEREAS, it is the desire of the Manager to negotiate for the benefits, establish certain conditions of employment and provide a just means for terminating the Finance Director services at such time as he may be unable fully to discharge his duties or when the Manager may otherwise desire to terminate him employ; and

NOW, THEREFORE, be it agreed by Kenny Costa and the Manager, that the employment relationship between the Finance Director and the Town shall be governed in accordance with the terms and conditions of this agreement (“Agreement”):

Section 1 – Duties

- A. The Town hereby agrees to employ said Kenny Costa as the Finance Director of the Town of Upton to perform, and Kenny Costa accepts such employment and agrees to perform, the functions and duties of Finance Director, and to perform other legally permissible and proper duties and functions as the Manager shall from time to time assign.

Section 2 – Term

- A. This Agreement shall become effective January 1, 2022 and shall be in full force and effect until December, 31 2026 (the “Expiration date”). The Agreement shall be subject to Section 2D, and shall be binding on the Town and the Finance Director in each year of duration.
- B. Nothing in this Agreement shall prevent, limit, or otherwise interfere with the right of the Manager to terminate the services of the Finance Director for cause and with due process that is subject only to the provisions set forth in Section 4, Paragraphs A and B of this Agreement.
- C. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the Finance Director to resign at any time from his position with the Town, or to elect not to renew this Agreement pursuant to the provisions of Section 2.D below, subject only to the provisions set forth in Section 4, Paragraph C of this Agreement.
- D. If the Manager decides not to renew this Agreement beyond the Expiration Date, the Manager shall give the Finance Director written notice at least six (6) months in advance of the Expiration date of its intent not to renew this Agreement.

Section 3 – Suspension

- A. The suspension of the Finance Director shall be governed by the Town's Personnel Policy and Procedure Manual.

Section 4 – Termination and Severance Pay

- A. The removal of the Finance Director shall be governed by the Personnel By-Law. If the Finance Director is removed for cause, the Finance Director shall not be entitled to any severance pay nor any compensation beyond the date of removal. If removed without cause; the Town shall provide a severance payment equal to nine (9) months of salary based on the then current annual rate of pay divided by twelve, the Town shall provide nine (9) months of health insurance benefits based on the current Town health benefit program. Unless otherwise agreed by the parties, this shall be paid in one lump sum, less usual and customary withholdings.
- B. In the event the Finance Director voluntarily resigns his position with the Town before expiration of the aforesaid term of his employment, then the Finance Director shall give the Town six (6) weeks' notice in advance unless the parties otherwise agree. During this six (6) weeks' notice period, the Finance Director may not take vacation leave. In the event the Finance Director voluntarily resigns, without having been requested to do so by the Manager, he shall not be eligible for severance benefits set forth in Section 4, Paragraph A, except for the lump sum payment in lieu of accumulated vacation leave.
- C. Subsections A and B of this Section shall survive any termination of this Agreement.

Section 5 – Salary

- A. Effective July 1, 2022, the Town agrees to pay the Finance Director for his services pursuant to this Agreement a prorated salary based on an annual base of \$50,256.55 (Fifty Thousand Two Hundred Fifty-six Dollars and Fifty-Five Cents) payable in weekly installments.
- B. The Manager agrees to annually review the base salary of the Finance Director and make any adjustments that the Manager deems appropriate, based on market conditions, the financial condition of the Town, and the Finance Director performance relative to established goals.
- C. It is recognized that the Finance Director must devote a great deal of time outside the normal office hours of business for the Town and the majority of job responsibilities are conducted at a remote location determined by the Finance Director. The Finance Director is not required to establish office hours at Town Hall; and to that end the Finance Director shall be allowed to establish a permanent appropriate remote work schedule.

Section 6 – Expenses

- A. Subject to Town Meeting appropriation, the Town agrees to budget and pay for professional dues and subscriptions of the Finance Director necessary for his participation in national, state, regional and local associations and organizations, as is necessary and desirable for his continued professional development and for the good of the Town. Subject to Town Meeting appropriation, the Town also agrees to budget and pay for reasonable travel, tuition and subsistence expenses for the Finance Director for professional and official travel, meetings and occasions required by the duties of his office or for the professional development and education of the Finance Director, said expenditures to be subject to the approval of the Manager.
- B. The Town shall make an annual payment of \$7,000.00 (Seven Thousand Dollars) to the Finance Director for opting out of Town's Medical Insurance. The opt-out payments will be subject Federal, State, and Medicare taxes.
- C. The Town will reimburse the Finance Director for the monthly cost to carry a cell phone for work purposes up to seventy-five dollars (\$75.00) per month.

Section 7 – Authorized Leave

- A. The Finance Director shall accrue on a monthly basis, and have credited to his account, paid time off (PTO) at an annual rate of three (3) weeks per year. PTO will begin to be earned starting on the first working day of the calendar month. PTO credits must be taken during the year earned and cannot be cumulative except due to unusual circumstances authorized by the Town Manager. PTO shall be the period of July 1 to June 30, inclusive.

Section 8 – Performance Evaluation

- A. The Manager shall review and evaluate the Finance Director at least once annually during the term of this Agreement. This evaluation shall be based on goals and objectives developed jointly by the Manager and Finance Director. Further, the Manager may provide the Finance Director with a summary written statement of the findings of the Manager and provide an adequate opportunity for the Finance Director to discuss his evaluation with the Manager.
- B. Annually, the Manager, in conjunction with the Finance Director, shall define such goals and objectives which they determine necessary for the proper operation of the Town and in the attainment of the Manager's policy objectives and shall further establish a relative priority among those various goals and objectives, said goals and objectives to be reduced to writing.

Section 9 – Indemnification

- A. The Town shall defend, save harmless and indemnify the Finance Director against any tort, professional liability, civil 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 Finance Director, even if said claim has been made following his termination from employment, provided that the Finance Director acted within the scope of his duties. The Town shall pay the amount of any settlement or judgment rendered thereon. The Town may compromise and settle any such claim or suit and will pay the amount of any settlement or judgment rendered thereon without recourse to the Finance Director.
- B. The Town shall reimburse the Finance Director for any attorneys' fees and costs incurred by the Finance Director in connection with such claims or suits brought by third parties involving the Finance Director in his professional capacity.
- C. This section shall survive the termination of this Agreement.

Section 10 – General Provisions

- A. The text herein shall constitute the entire agreement between the parties with regard to the matters set forth herein. There are no other understandings or agreements, verbal or otherwise, in relation thereto, between the parties except as expressly set forth herein. This Agreement may be amended or modified only by a written instrument executed by the parties hereto or by their successors and assigns.
- B. For the purposes of the United States Fair Labor Standards Act, the Finance Director shall be considered an exempt employee.
- C. This Agreement shall be deemed effective as of January 1, 2022.
- D. If any provision, or any portion thereof, contained in this Agreement is held unconstitutional, invalid, or unenforceable, the remainder of this Agreement, or portion thereof, shall be deemed severable, shall not be affected, and shall remain in full force and effect.
- E. This Agreement shall be binding upon and inure to the benefit of the heirs at law and executors of the Finance Director.
- F. This Agreement is entered into in the Commonwealth of Massachusetts and shall be construed and interpreted in accordance with its laws.

Section 11 – Notices

Notices pursuant to this Agreement shall be made as follows:

Town of Upton:

Derek Brindisi
Town Manager
Town of Upton
1 Main Street, Box 1
Upton, MA 01568

Finance Director:

Kenny Costa
17 Parker Lane
Haverhill, MA 01832

The Town Manager of the Town of Upton and Kenny Costa have caused this Agreement to be signed and executed this 1st day of January, 2022.

The Town of Upton,
By its Town Manager



Kenny Costa



Derek S. Brindisi