

**PROFESSIONAL SERVICES AGREEMENT
BY AND BETWEEN
THE TOWNS OF WEST BOYLSTON AND STERLING
AND**

THIS AGREEMENT, made on the 6th day of August 2008 by and between the Towns of West Boylston and Sterling, Massachusetts, acting by and through their respective Boards of Selectmen, hereinafter referred to as the TOWNS, and
|
hereinafter referred to as the Building Inspector.

WITNESSETH THAT:

WHEREAS, the Towns are desirous of securing the services of the Building Inspector;
and

WHEREAS, it is the desire of the Towns to: (1) establish certain conditions of employment and working condition for the Building Inspector, (2) secure and retain the services of the Building Inspector and to provide inducement for him to remain in such employment, (3) to make possible full work productivity by encouraging the Building Inspector's morale and peace of mind with respect to future security, (4) to act as a deterrent against malfeasance, misfeasance, nonfeasance, and dishonesty for personal gain on the part of the Building Inspector, and (5) to provide a just means for terminating the Building Inspector's services at such time as he may be unable to fully discharge his duties, or when the Town may desire to otherwise terminate his employment; and

WHEREAS, the Towns and the Building Inspector recognize and acknowledge the provisions of local and state law with respect to the duties and obligations of the Building Inspector, the Town Administrator, and the Building Inspector, as the same may change from time to time, including, but not limited to Massachusetts General Laws, Chapter 23 of the Acts and Resolves of 1995, and the General Bylaws of the Town of West Boylston, hereinafter collectively referred to as Laws or any bylaws or regulations of the Town of Sterling;

NOW, THEREFORE, in consideration of the covenants contained herein the parties agree as follows:

SECTION 1 – DUTIES

The Towns hereby agrees to employ said Building Inspector to perform the functions and duties specified in the Laws, and other legally permissible and proper duties and functions as the Town, acting by and through the Town Administrators, shall from time to time assign.

The Building Inspector acknowledges and accepts the duties and responsibilities contained in the Building Inspector Job Description, a copy of which is attached.

SECTION 2 – TERM

The Towns shall appoint the Building Inspector for a term commencing on August 1, 2008 and ending on July 31, 2009.

Nothing in this Agreement shall prevent, limit, or otherwise interfere with the right of the Town to terminate the services of the Building Inspector at any time by action of either Town Administrator, subject to the provisions set forth in the Laws and contained herein.

Nothing in this Agreement shall prevent, limit, or otherwise interfere with the right of the Building Inspector to resign at any time from his position with the Town, subject to the provisions set forth in Section 3 of this Agreement.

By mutual agreement of all parties, this contract may be extended one year at a time, for a total of 5 years, with the stipulation that the salary remain unchanged.

The Building Inspector shall pass all tests to become a licensed building commissioner in the timeframe established by state law.

SECTION 3 – TERMINATION AND SEVERANCE PAY

Either Town may terminate the services of the Building Inspector for cause on account of malfeasance, misfeasance or nonfeasance in office, or for violation of any of the terms or conditions of this Agreement. One or both Towns shall provide the Building Inspector with written notice of its intent to terminate his services and the reasons therefore, a minimum of thirty (30) days in advance of such action being officially taken. Such action shall not be taken, unless a public hearing is held at which the reasons for cause of malfeasance, misfeasance or nonfeasance shall be set forth, and at which the Building Inspector shall be entitled to be heard. Said public hearing shall take place no sooner than fourteen (14) days after the Building Inspector receives the aforementioned written notice. The Building Inspector may at his sole discretion waive his right to a public hearing, provided written notification of such waiver is given to the Town.

Nothing in this Agreement shall prevent, limit, or otherwise interfere with the right of either or both Towns to not reappoint the Building Inspector to subsequent terms.

In the event that one town decides to terminate the professional services agreement with the Inspector, the other town remains free to enter into a new professional services agreement with the Inspector.

For the purposes of discipline or termination of employment, the definition of 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 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.

- (D.) Violation of the General Laws of the Commonwealth of Massachusetts, or the bylaws of the Town.
- (E.) Irreconcilable public policy differences.

In the event the Building Inspector voluntarily resigns his position, or in the event the Building Inspector elects not to seek reappointment, the Building Inspector shall provide the Towns with forty-five (45) days notice from the last effective date of employment, unless the Towns and the Building Inspector otherwise agree. If the Building Inspector voluntarily resigns, he shall receive payment for all accrued benefit leave time available to him as provided for in Section 6. Under the terms of this contract, the Building Inspector is not entitled to severance pay.

SECTION 4 – SALARY

The Towns agree to compensate the Building Inspector for his services rendered pursuant hereto an annual salary, subject to annual appropriation by Town Meeting, payable in biweekly installments as follows:

August 1, 2008 through July 31, 2009

\$83,000

In addition, the Town of Sterling agrees to provide the Building Inspector with the use of a municipal vehicle for performance of his official duties within Sterling. Beginning February 1, 2009, the Towns agree to provide the Building Inspector with the use of a municipal vehicle for travel to and from his place of residence and performance of his official duties in both towns, as well as for professional training, etc. The Towns agree to insure and maintain said vehicle. The Building Inspector agrees not to take the Town vehicle out of state, except for business purposes, without the written permission of the Sterling Town Administrator, whose Town will provide the vehicle.

SECTION 5 – HOURS OF WORK

The Building Inspector 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 Town of West Boylston Building Department and the Town of Sterling Building Department, and the departments and employees under his supervision. The Building Inspector's workweek shall ordinarily consist of a five-day week, Monday through Friday, or fifty (50) hours, including evening and/or weekend hours that may be necessary from time to time in order to properly discharge his duties or as approved by the Town Administrators.

The Building Inspector is to be available to the Towns at all times of the day throughout the entire year, except during periods of serious illness, and shall provide the Towns with efficient means of communication and contact when the Building Inspector is either off duty, or out-of-town for any and all reasons.

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It is recognized that the Building Inspector must devote a great deal of his time outside normal office hours to the business of the Town, and to that end the Building Inspector will be allowed a flexible work schedule, subject to the approval of the Town Administrators. Such flexible schedule will require the prior approval of the Town Administrators.

SECTION 6 – LEAVE POLICY

The Building Inspector shall be entitled to twenty (20) workdays of benefit leave during each year of the term of this Agreement. Leave may be used for vacation, sick, and personal purposes. The Building Inspector is hereby granted an additional ten (10) sick days as a sick leave bank.

The Towns may grant extended sick leave without compensation for up to forty-five (45) days at the sole discretion of the Town Administrators. Nothing in this section shall be construed as limiting any leave to which the Building Inspector may qualify pursuant to the Family Medical Leave Act of 1993.

SECTION 7 – OTHER BENEFITS

The Towns agree to provide the Building Inspector with the same group health and life insurance benefits available to the other municipal employees of the Town of West Boylston in conformity with the provisions of Massachusetts General Laws, Chapter 32B. The Building Inspector may participate in the Town's disability insurance program that is available to the other municipal employees.

The Building Inspector shall be eligible to participate in the State or successor to the Worcester County Retirement System. The Building Inspector may participate in the deferred compensation program offered by the Town of West Boylston at no cost to the Towns.

SECTION 8 – HOLIDAYS

The Building Inspector shall be entitled to the same holidays granted to the other municipal employees under the Bylaws of the Town of West Boylston. Said holidays include:

New Year's Day,
Martin Luther King, Jr. Day,
President's Day,
Patriot's Day,
Memorial Day,
Independence Day,
Labor Day,
Columbus Day,
Veterans' Day,
Thanksgiving Day, and
Christmas.

SECTION 9 – OUTSIDE EMPLOYMENT

The Building Inspector must receive prior written approval by the Town Administrators of both Towns to undertake outside employment, subject to approval by the Boards of Selectmen.

SECTION 10 – PROFESSIONAL DEVELOPMENT

The Towns hereby agree to budget for and to pay the reasonable travel and subsistence expenses of the Building Inspector for professional development, to include, but not limited to: short courses, seminars, and meetings that are necessary for his professional growth for the good of the Towns and the West Boylston and Sterling Building Departments. During the term of this contract, the provisions of the West Boylston Board of Selectmen's Policy On Employee Education And Training shall not be offered to the Building Inspector. The Building Inspector agrees to notify the Town Administrators in advance of confirming attendance at such courses, seminars, and meetings, and such meetings are subject to the approval of the Town Administrators and the availability of appropriated funds for such expenses.

SECTION 11 – DUES AND SUBSCRIPTIONS

The Towns jointly agree to budget and to pay for the professional dues and subscriptions for the Building Inspector necessary for his continuation and participation in national, region, state and local associations and organizations necessary and desirable for his continued professional participation, growth and advancement for the good of the Town, subject to the approval of the Town Administrators and the availability of appropriated funds for such expenses.

SECTION 12 – INDEMNIFICATION

The Towns shall defend, save harmless and indemnify the Building Inspector 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 the Building Inspector's duties. The Towns will comprise and settle any such claim or suit and pay the amount of any settlement or judgment rendered thereon. The Town Administrator from the community in which the complained of action took place will attempt to resolve the matter, **and any claims or litigation arising from such hearings will be filed with that community's liability insurance.** Willful torts and criminal acts are excluded from this indemnification. This section shall survive any termination of this Agreement.

SECTION 13 – PERFORMANCE EVALUATION

The Towns, acting through the Town Administrators, shall review and evaluate the performance of the Building Inspector on a formal basis at least twice during the year under the terms and conditions of this agreement. The first performance evaluation will be conducted in December and is due by December 31, 2008. The second shall be in June and due by June 30, 2009. Said reviews and evaluations shall include, but not be limited to: (1) Building Inspector's progress and performance on the annual goals and objectives, (2) Satisfactory review of performance expectations on Building Inspector's job description.

Such review and evaluation of the performance of the Building Inspector shall be done in conformity with the specific performance goals and criteria developed by the Towns for the Building Inspector. The Towns shall provide the Building Inspector with a written evaluation report after each formal review and evaluation, and shall provide the Building Inspector with an opportunity to discuss his review and evaluation with the Town Administrators in a workshop session.

SECTION 14 – GENERAL PROVISIONS

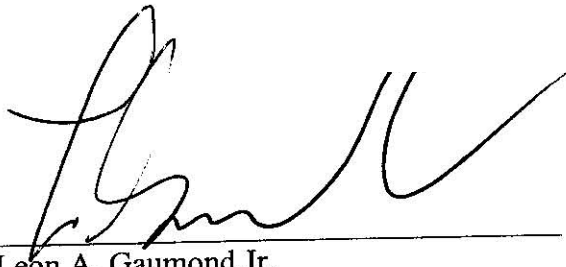
If any provision, or any portion thereof, contained in this Agreement is held unconstitutional, invalid, or unenforceable, the remainder of this Agreement, or portion thereof, shall be deemed severable, shall not be affected, and shall remain in full force and effect.

This Agreement may be modified or amended at any time by mutual consent of the Towns and the Building Inspector, except as otherwise provided for herein.

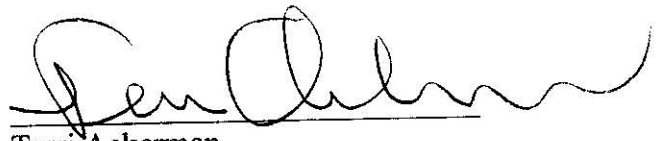
The laws of the Commonwealth of Massachusetts and the Towns of West Boylston and Sterling shall govern this Agreement.

This Agreement shall continue in full force and in effect from its expiration date until a successor agreement has been mutually agreed upon, approved, and signed.

IN WITNESS WHEREOF, the Towns of West Boylston and Sterling have caused this Agreement to be signed and executed in its behalf and by its Board of Selectmen, the Town Administrator and the availability of appropriated funds for such expenses, and the Building Inspector, and duly attested by its Town Clerk, and approved to form by Town Counsel. This Agreement signed and executed in duplicate, the day and year first above written.



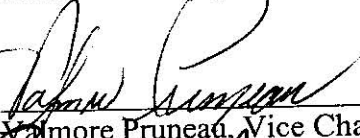
Leon A. Gaumond Jr.
West Boylston Town Administrator



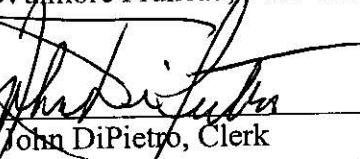
Terri Ackerman
Sterling Town Administrator



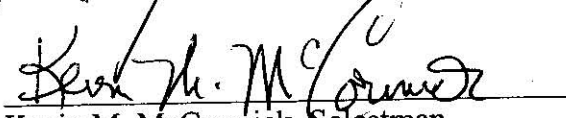
Allen R. Phillips, Chairman



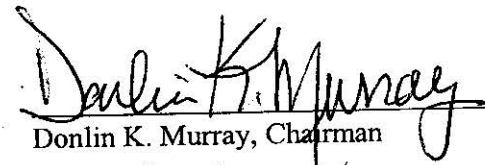
Valmore Pruneau, Vice Chairman



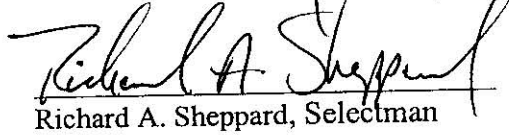
John DiPietro, Clerk



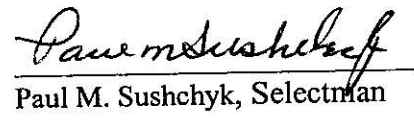
Kevin M. McCormick, Selectman



Donlin K. Murray, Chairman



Richard A. Sheppard, Selectman



Paul M. Sushchik, Selectman

Christopher Rucho, Selectman

Date signed by all parties: _____

Certification of the Availability of Funds:

As Town Accountant of the Town of West Boylston, Massachusetts, I hereby certify that there is a duly authorized appropriation with adequate, unobligated funds available to fund the compensation provisions of this Agreement.

Michael Daley, Town Accountant

ATTEST:

Kim D. Hopewell
Kim D. Hopewell, Town Clerk