

**EMPLOYMENT AGREEMENT BETWEEN THE TOWN OF FOXBOROUGH AND
MR. MICHAEL P. KELLEHER**

THIS AGREEMENT, pursuant to General Laws, c. 41, §108O, made and entered into this 15th day of February, 2022, by and between the Town of Foxborough, Commonwealth of Massachusetts, a municipal corporation, acting by and through acting through its duly elected Board of Selectmen ("Board), hereinafter called "Employer", and Michael P. Kelleher hereafter called "Employee" or "Chief Kelleher." This Agreement shall supersede all prior employment agreements between the Town of Foxborough and Michael P. Kelleher.

WITNESSETH:

1. Employer desires to employ the service of Michael P. Kelleher as Fire Chief of the Town of Foxborough, as provided by the Foxborough Town Charter, a copy of which is attached hereto, and marked "Attachment A," General Laws, c. 48, and any other applicable statute or bylaw.
2. It is the desire of the Employer to describe and define the duties, to provide certain benefits, to establish certain terms and conditions of employment, and to set the working conditions of said Employee; and
3. The Employee represents that he is qualified and capable of performing the duties and responsibilities of said position; and
4. Employee desires to accept full time employment as Fire Chief of said Town and to use his best efforts, skills, abilities and training to carry out his duties and responsibilities.

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

Section 1. Duties

Employer hereby agrees to employ the Employee as Fire Chief and Fire Warden of said Town to perform the functions and related duties of said position as specified in the Foxborough Town Charter, applicable Town Bylaws, votes of the Town Meeting, general or special laws, and the

job profiles/descriptions/outlines and performance goals/objectives, as agreed upon and signed by both the Employer and the Employee.

The Employee hereby agrees to perform such duties in a timely and efficient manner consistent with applicable professional standards. The parties agree that the Fire Chief shall be the chief administrative officer of the Foxborough Fire Department reporting to the Town Manager. The Fire Chief agrees to devote all required time, attention, and energies to the performance of his duties as Fire Chief and agrees to perform his duties faithfully and to the best of his ability. The Fire Chief shall be considered a "municipal employee" for purposes of Massachusetts General Law Chapter 268A. The Fire Chief further agrees to carry out the policies and directives of the Town, acting through its Town Manager, and to provide information and documentation concerning the status of all matters for which he is responsible and the Town Manager from time to time require.

The duties of the Fire Chief shall include, and hereby delegated the full authority of, where applicable, but not be limited to, the following:

- The Fire Chief shall have cognizance and control of the governance, administration, disposition and discipline of the Fire Department and fire staff.
- The Fire Chief shall supervise all personnel and the daily operations of the Fire Department.
- The Fire Chief shall prepare the Fire Department capital and operating budgets and submit funding proposals to the Town Manager unless otherwise directed.
- The Fire Chief shall be responsible for all departmental expenditures, as well as the receipt of funds and property in the custody of the Department in accordance with federal, state and local laws and ordinances and administrative procedures promulgated there under.

- The Fire Chief shall manage and control all Department equipment and motor vehicles belonging to or used by the Fire Department. The Fire Chief shall determine equipment and vehicle specifications for the Department.
- The Fire Chief shall supervise, direct and control all of the training programs for department personnel and the assignment of personnel to such programs in accordance with the provisions of a prescribed course of study approved by the Commonwealth of Massachusetts for the fire service for recruit, in-service, and supervisory officer training at such intervals and for such periods as the chief may determine or otherwise required by law.
- The Fire Chief shall maintain the discipline of departmental personnel; the issuing of orders, rules, regulations, policies and procedures; and the assignment to shifts and duties of all departmental personnel. The Fire Chief shall have the responsibility for planning organizing, directing, staffing and coordinating fire operations subject to the provisions of applicable collective bargaining agreements. The Fire Chief shall have the authority to assign the shifts and duties of all departmental personnel, to issue orders, rules, regulations, policies and procedures and shall have the authority to discipline departmental personnel.
- The Fire Chief (or his designee) shall be responsible for communications with the public, including the media, on matters related to fire, emergency operations, fire operations and department policy.
- The Fire Chief shall give reports to appropriate town officials, fire command and fire staff, either orally or in writing when requested or required in order to ensure proper communication between the Fire Chief and town officials and fire staff. Responses to requests shall occur within a reasonable time period.

- The Fire Chief shall establish uniform/clothing specifications for firefighters within the Fire Department. Such uniform specifications shall set out the items comprising the uniform as well as grade, quality, and/or number of units of each item so specified.
- The Fire Chief shall be responsible for overall management of emergency medical services, hazardous materials incidents or emergency management and planning activities.
- The Fire Chief may delegate his authority, in whole or in part, to a person properly suited to fulfill and execute such authority.

Section 2. Term

The term of this Agreement shall be effective from July 1, 2021 through June 30, 2024, and shall remain in effect, unless sooner terminated in accordance with the provisions hereof. The Employee agrees to remain in the exclusive employ of the Employer during the term of this Agreement but may be employed in an incidental capacity as a teacher of fire services or as an evaluator for a fire promotional panel; provided that such work does not interfere with the Employees primary duties and responsibilities of the Employer. If this Agreement is not extended or renewed, the Fire Chief shall continue his employment under the terms and conditions contained in this Agreement unless or until his employment is terminated by resignation, retirement, or removal for just cause.

Six (6) months prior to the expiration of the Contract, the Fire Chief shall notify the Town Manager of his interest to enter negotiations for a new contract. The Town Manager shall notify the Board of Selectmen of the Chief's request. The Town Manager and the Fire Chief shall then schedule and pursue negotiations with the intent of trying to complete negotiations prior to the conclusion of the Contract. Nothing in this Contract shall forfeit, or in any way diminish, the protections afforded to the Fire Chief pursuant to M.G.L. Chapter 48, Sections 42-44¹ with respect to removal for just cause.

¹ MGL c. 48, §§ 42-44 was adopted by the Town under Article 16 of the Annual Town Meeting of 1931

Section 3. Salary

Subject to the terms and conditions of this Agreement, and while he is engaged as and performing the duties of the Fire Chief, the Employer agrees to pay the Employee for his services rendered pursuant hereto an annual salary as follows:

Effective July 1, 2021, the Employee's base annual salary shall be \$178,724.00

Effective July 1, 2022, the Employee shall be granted a 1.5% cost of living (COLA) increase to his base salary;

Effective July 1, 2023, the Employee shall be granted a 1.5% cost of living (COLA) increase to his base salary.

The salary referred to herein is an all-inclusive salary and the Employee recognizes and agrees that he will not be entitled to any salary increases or benefits accorded to other town employees, unless the Employer agrees to same by an amendment to this Agreement. The Employer further agrees that it shall not, at any time during the term of this Contract, reduce the salary, compensation, or other benefits of the Fire Chief, except to the extent that such reduction is evenly applied across-the-board for all employees of the Town.

Section 4. Suspension, Termination and Resignation

It is agreed that the Fire Chief can be disciplined or discharged only for just cause, and in accordance with the provisions of M.G.L. Chapter 48, section 42. If the Fire Chief is about to be removed for just cause and the cause is non-criminal in nature, he will be afforded the opportunity to resign or to retire from his position. Paid administrative leave shall not constitute a suspension within the meaning of this section. In the event that the Employee resigns or retires from his employment as Fire Chief, he shall provide written notice to the Town Manager at least sixty (60) days prior to the effective date of said resignation or retirement. The Employee shall

be entitled to receive payment for his earned and accrued but unused vacation time as of the effective date of his resignation or retirement.

Section 5. Goals and Objectives

The Employer, in conjunction with the Employee, shall define such reasonable goals and performance objectives, and the Employee's role in the attainment of such goals and objectives, which they determine necessary for the proper operation of the Town and attainment of the Employer's policy objectives. No later than June 15th of each year of this Agreement, the Town Manager shall provide the Fire Chief with a summary written statement of the evaluation findings and shall provide the Fire Chief with an opportunity to respond to the findings. The evaluations shall be part of the Fire Chiefs personnel file, subject to Section 7, clause 26(c) of chapter 4 of the Massachusetts General Laws. If such evaluation is deemed satisfactory by the Town Manager, the Fire Chief may earn up to an additional 1.5% base salary increase effective on July 1 of 2022 and 2023 respectively.

Section 6. Hours of Work

Except as otherwise authorized, the Employee shall devote, as a minimum, such time and effort as that is necessary to properly perform the duties and responsibilities of the position.

Due to the unique nature of this municipal management function, it is understood and agreed that in order to properly perform the job required, the Employee may have to expend additional time beyond the normal workday, and the Employee agrees to do same as required. It is acknowledged that the position is one of an Executive/Administrative nature with regard to how that term is used in the Fair Labor Standards Act's rules and regulations. With the exception of work performed under Section 10(H) of this Agreement, the Employee shall not be entitled to any overtime compensation. However, the Employee may temporarily adjust his schedule taking into account such additional work time, provided that such schedule adjustment does not interfere with the Employee's obligations to perform his duties. No "compensatory" time may be accrued and documented unless previously approved by the Town Manager.

If the Employee determines that a protracted adjustment to his work schedule is needed, he will notify the Town Manager of the need and a mutually acceptable adjustment will be determined

between the Employee and the Town Manager. If the Employee will be out of state or unavailable, or if he needs to take accrued leave, he shall notify the Town Manager (or designee) of such contemplated leave so that the Town Manager remains aware of his availability at all times. During his absence, he shall notify the Town Manager (or designee) of who will be in charge of the Department. It is recognized that due to the public safety nature of the fire service, the Fire Chief is considered to be on duty or on call at all times.

Section 7. Vacation, Holiday, Emergency Leave, Sick Leave and Bereavement Leave

- A. Vacation Leave: Chief Kelleher will be granted twenty-five (25) vacation days per year at the start of each fiscal year of this Agreement which may be used as individual days. Chief Kelleher may carry over a maximum of ten (10) days of unused vacation leave from one fiscal year to the next, with the approval of the Town Manager. Said approval must be requested far enough in advance for vacation to be taken if the request is not approved. At the Chief's discretion, he may sell back one week of vacation in the last pay period of the fiscal year. At the conclusion of his employment with the Town, the Chief shall be compensated for all unused vacation leave at his then usual daily rate of compensation. (Annual salary/52/40).
- B. Sick Leave: Chief Kelleher shall earn sick leave at the rate of one and three-quarter (1.75) days per month. Unused sick time may be accumulated to two hundred and sixty-four (264) days. Unused sick time in excess of two hundred and sixty-four (264) days may not accumulate from year to year. Sick leave may exceed two hundred and sixty-four (264) days during a particular year but will be reduced to two hundred and sixty-four (264) at the end of the fiscal year. Upon Retirement, with at least 20 years of continuous service with the Town, the Fire Chief shall be eligible to receive 25% of the value for all of his unused, accumulated sick leave.
- C. Personal Leave: Chief Kelleher shall be granted four (4) personal days each fiscal year of this Agreement. Personal days may not be carried over from one year to the next but may be used in hour increments. Unused personal days shall not be paid out upon retirement or resignation.

- D. Paid Holidays: The Fire Chief shall be entitled to the provisions of Chapter 48 Section 57E and shall receive the following days off with pay as Holidays: New Year's Day, Martin Luther King Day, President's Day, Patriot's Day, Memorial Day, Juneteenth, Independence Day, Columbus Day, Veteran's Day, Thanksgiving Day, Day after Thanksgiving, Christmas Day.
- E. Bereavement Leave: In the event of the death of a member of the Employee's immediate family, he shall be allowed three (3) days off without loss of pay. "Immediate family" shall be defined as a wife, husband, mother, father, child, brother, sister, grandchildren, grandparents, mother-in-law, or father-in-law.
- F. Jury Duty: In the event that the Fire Chief serves as a juror in a Federal Court or in the Court of the Commonwealth, he shall receive from the Town the difference between his salary and the compensation he received for such jury services, exclusive of any travel or other allowance; provided, however, he shall receive his full pay for his first three days of service for the Commonwealth of Massachusetts.

Section 8. Health and Other Insurance

The Employee (which term in this context under this provision shall include his dependents) shall be entitled to participate in whatever group medical, dental, life insurance and pension benefit plans are offered by or through the Town of Foxborough on the same basis as other Town employees.

Section 9. Indemnification

Employer shall provide indemnification and legal defense for the Employee in accordance with M.G.L. c. 258. Employee will be covered by an insurance policy covering town employees or department heads in an amount of not less than one million dollars. To the extent not otherwise prohibited by law said indemnification and legal defense shall include any claim made following the expiration of the term of this agreement or the termination from employment of the Employee, so long as the Employer would have been otherwise obliged to provide indemnification and legal defense had the term not expired or the employment not have been

terminated. Employee shall, as a condition of said indemnification and legal defense, cooperate with the Town, its attorneys, and agents in all matters relating to said claim.

Section 10. Other Terms and Conditions of Employment

- A. Expense Reimbursement-The Employee shall be reimbursed for any authorized expenses incurred in the conduct of Employer's business.

- B. Vehicle Use – It is expected that the Employee will respond to the needs or emergencies of the Town whenever necessary or required. As a result, the Employee will be provided with a Foxborough Fire Department vehicle, unmarked, for his exclusive and reasonable use, so that he may respond to emergencies and other matters from wherever he may be. The use of this vehicle shall be in accordance with the provisions of the Town's Vehicle Use-Policy however, due to the 24/7 nature of the Employee's position but with permission from the Town Manager, certain provisions of the vehicle use policy can be relaxed or waived. Any costs associated with the operation and maintenance of this Fire Department vehicle shall be borne by the Town.

- C. Injured on Duty-As a firefighter, the Fire Chief shall be entitled to injured- on-duty benefits as provided in General Laws, c. 41, § 111F. Approval of such a claim rests with the Town Manager.

- D. Professional Development – The Employer recognizes its obligation for the professional development of the Employee and shall provide adequate opportunities for development of his professional ability. Subject to annual appropriation for said purposes, the Employee shall be allowed to participate in professional organizations and training, including, but not limited to, the Massachusetts Fire Academy, the National Fire Academy, the Fire Chiefs Association of Massachusetts, the Norfolk County Fire Chiefs Association, the New England Fire Chiefs, and the International Association of Fire Chiefs. Costs eligible for payment by the Town or reimbursement shall include dues, subscriptions, meals, and reasonable travel and lodging expenses. Such time in the foregoing activities shall be considered as time worked.

- E. Costs Relating to Certifications: The Employer shall be responsible for all fees and costs associated with the maintenance of paramedic and/or emergency medical technician certifications, as applicable.
- F. Communications Technology-The Employer will provide, at no cost to the Fire Chief, a cell phone and a notebook computer with broadband wireless service.
- G. Life Insurance Reimbursement - For the term of this contract, the Town agrees to reimburse the Fire Chief up to \$2,000 for the cost of life insurance with a policy value not to exceed \$500,000. The Fire Chief shall be solely responsible for the procurement of said life insurance policy.
- H. Outside Activities – The Town recognizes Kelleher’s contributions to the Massachusetts Department of Fire Services and State Hazardous Materials Response Division, and the professional benefit both he and the Town receive from it. The Fire Chief may continue to serve as Hazardous Materials Technician with the State Hazardous Material Response Team and in his capacity as team coordinator, provided that these activities do not unreasonably interfere with the execution of his duties as the Fire Chief for the Town of Foxborough Fire Department. The Chief shall be entitled to any and all compensation paid by the state for services he provides in this role. Additional pay for such services shall either be outside of normal work hours or while he is on an approved leave status when such services are provided.
- I. Uniform Clothing/ Cleaning - The employer shall be responsible for costs associated to outfit the employee with all necessary uniform items and be responsible for cleaning and maintenance costs of such items.

Section 11. Notices

Notices pursuant to this agreement shall be given by deposit in the custody of the United States Postal Service, certified mail, return receipt requested, postage prepaid, addressed as follows:

1. Employer: Town Manager, 40 South Street, Foxborough, MA 02035

2. Employee: Michael P. Kelleher (Employee's address withheld from Public Record for public safety purposes but available in his personnel record).

Section 13. Gillette Stadium Management

- A. Compensation – The Town acknowledges the extraordinary responsibility and nature of the life and public safety duties performed at Gillette Stadium. The Fire Chief has the duty, authority and responsibility for the management of all Fire, Rescue, Emergency Management and Medical resources utilized during activities performed at Gillette Stadium. In lieu of an hourly paid detail, the Chief shall be paid an annual, non-pensionable stipend of \$30,000 for this responsibility. The cost of such stipend is directly reimbursable to the Employer from Gillette Stadium. Such Stipend will be paid to the employee in 26 equal disbursements (bi-weekly) to the Employee beginning with the first pay period in January of 2022.
- B. Duties – At a minimum, the Chief shall be present for all sold-out events at the Stadium including but not limited to, all NFL Football Games, Concerts, and Soccer Matches. For all other events at the Stadium, he shall remain responsible for emergency management services but may delegate the direct management of the event to a member of his senior staff. With the permission of the Town Manager the Chief may, on occasion, arrange alternative command staffing to allow for the exchange of command coverage at non-sold-out event(s) for command coverage at sold-out event(s).

Section 14. General Provisions

- A. This Agreement shall constitute the entire agreement between the Parties except to the extent that other documents are referred to herein; which documents shall be deemed to be incorporated by reference herein.
- B. This Agreement shall be binding upon and inure to the benefit of the heirs at law and executors of the Employee.

- C. This Agreement shall become effective commencing July 1, 2021.

- D. All benefits and obligations of the Employer, except as otherwise provided herein, shall be conditional upon the Employee being employed as and performing the services required of the Fire Chief of the Town.

- E. The failure of a party to insist on strict compliance with a term or provision of this Agreement shall not constitute a waiver of any term or provision of this Agreement. If any provision, or any portion thereof, contained in this Contract is held unconstitutional, invalid, or unenforceable, the remainder of the Contract, or portion thereof, shall be deemed severable, shall not be affected, and shall remain in full force and effect.

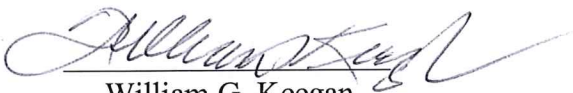
- F. The terms of this Employment Contract shall serve as the controlling document and shall be the complete agreement with respect to wages, benefits and other terms and conditions of employment between the Fire Chief and the Town. The provisions of the Town's Personnel Policies shall not be applicable to this Contract however all Fire Department Policies and Standard Operating Procedures (SOPs) shall remain applicable to the Employee at all times.

- G. Any changes, amendments and/or modifications to this Contract shall be in writing and shall be mutually agreed to and executed by both parties.

IN WITNESS WHEREOF, the Town of Foxborough, Massachusetts, has caused this Agreement to be approved by the Board of Selectmen and signed and executed on its behalf by its Town Manager, and the Employee has signed and executed this Agreement, both in duplicate, the day and year first above, written.

TOWN MANAGER

EMPLOYEE



William G. Keegan



Michael P. Kelleher

Date:

Date: 3/11/22



Finance Director – Appropriation Available



Labor Counsel-Approved As To Form