

**AMENDED EMPLOYMENT AGREEMENT
BETWEEN TOWN
OF CARVER
AND
TOWN ADMINISTRATOR
(2020)**

THIS AGREEMENT, pursuant to Chapter 41, Section 108N of the Massachusetts General Laws, made and entered into this 3rd day of March , 2020, by and between the Town of Carver, Commonwealth of Massachusetts, a municipal corporation, hereinafter called the “Town,” acting by and through its Board of Selectmen, hereinafter called “Board” and Michael R. Milanoski, hereinafter called “Town Administrator”, as follows:

WITNESSETH:

WHEREAS, the Town desires to continue to employ the services of Michael R. Milanoski;

WHEREAS, the Board, under Chapter 41, Section 108N of the General Laws and Town By-Laws may contract with the Town Administrator for such services;

WHEREAS, it is the desire of the Board to continue to contract for the salary and benefits of said Town Administrator;

WHEREAS, the Board recognizes under the Town Administrator’s guidance and working with the Board, Carver has saved and/or avoided tens of millions of dollars of cost the Town would have been otherwise exposed to;

WHEREAS, Michael R. Milanoski, continues to agree to accept employment as Town Administrator until April 17, 2020 and to accept employment as an Executive Consultant Employee of said Town after April 17, 2020.

WHEREAS, Michael R. Milanoski, and the Town wish to amend the existing employment contract

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

Section I Functions and Duties of the Town Administrator.

Mr. Milanoski shall perform the duties of Town Administrator until April 17, 2020 specified in the Town By-Laws, Massachusetts General Laws, any applicable Special Act or Legislation, and other duties as the Select Board shall from time to time legally assign to him. After April 17, 2020 he shall serve as an Executive Consultant Employee under the terms of this amended agreement.

Section II Term.

This Agreement shall be effective March 3, 2020, and shall be in full force and effect until April 16, 2022.

Section III Salary.

The Town agrees to continue to pay Mr. Milanoski for the rest of FY 20 his existing salary of \$189,777 for the remaining days of the fiscal year on a bi-weekly basis. In FY21 the Town shall pay Mr. Milanoski his salary of \$198,563 on a bi-weekly basis for the fiscal year. For the first 291 days of FY22 Mr. Milanoski shall be paid his salary of FY21 plus 2% on a bi-weekly basis.

Section IV Work Schedule.

From the period of March 3, 2020 until April 17, 2020 Mr. Milanoski shall work as Town Administrator. After April 17, 2020 and until till April 16, 2022 Mr. Milanoski shall be an Executive Consultant Employee of the Town of Carver. Mr. Milanoski shall be available on a regular and reoccurring basis as requested by the Town of Carver to provide town administrator Executive Consultant Services. The Select-Board understand that Mr. Milanoski may work for entities other than the Town of Carver.

Section V Health Insurance and Sick Leave.

A. Mr. Milanoski shall continue to receive all health care benefits for the duration of this contract as he currently is receiving.

B. Mr. Milanoski has accrued ninety-four (94) unused sick days, as of April 16, 2020, Mr. Milanoski or his estate shall be eligible for 75% buy back of unused sick days 70.5 days that will be fully paid on a bi-weekly basis in 2022.

Section VI Other Expenses.

After the term of this Amended Agreement has expired if the Town Administrator serves as a witness for the Town of Carver, he shall be paid for each day of preparation and attendance at the trial on a per diem basis based on his salary at the time of his separation from employment from the Town.

Section VII Indemnification.

To the extent allowed by G.L. c. 258, the Town shall defend, save harmless and indemnify the Town Administrator 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 Town Administrator, even if said claim has been made following his termination from employment, provided that the Town Administrator acted within the scope of his duties as Town Administrator or Executive Consultant. 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 Town Administrator.

The Town shall reimburse the Town Administrator for any attorneys' fees and costs incurred as Town Administrator or Executive Consultant for the Town of Carver in his professional capacity in connection with such claims or suits involving the Town Administrator in his professional capacity.

This indemnification shall also apply to the Town Administrator after he leaves the employment of the Town.

This section shall survive the termination of this Agreement.

Section VIII Bonding.

The Town shall bear the full cost of any fidelity or other bonds required of the Town Administrator.

Section IX Other Terms and Conditions of Employment.

All provisions of law of the Commonwealth of Massachusetts relating to retirement, health insurance and other fringe benefits shall apply to Mr. Milanoski as they generally apply to other employees of the Town at the time of his hire until April 17, 2020. After April 17, 2020 he shall continue to be eligible for retirement and health insurance benefits until April 16, 2022 as an Executive Consultant Employee.

Section X No Reduction in Benefits.

The Town shall not at any time during the term of the Agreement reduce the salary, compensation or other benefits of the Town Administrator until April 17, 2020 or as Executive Consultant Employee, except to the degree such a reduction is across the board for all other employees of the Town.

Section XI Notices.

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

1. TOWN: Chairman of Board of Selectmen 108
Main Street
Carver, MA 02330

2. TOWN ADMINISTRATOR: Michael Milanoski
171 South Main Street
Cohasset, MA 02025
michael.r.milanoski@gmail.com

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 as of the date of deposit of such written notice in the course of transmission in the United States Postal Service.

Section XII, General Provisions.

A. The text herein shall constitute the entire Agreement between the parties.

B. This Agreement shall be binding upon and inure to the benefit of the heirs at law and executors of the Town Administrator.

C. 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.

D. For the purposes of the Fair Labor Standards Act, the Town Administrator shall be an "exempt employee."

E. This agreement supercedes any prior agreements, which are now null and void.

F. Future Contact with Town. The Town agrees that any future contact from prospective employers during or after his employment has ended of Mr. Milanoski will be responded to by the Chairman of the Select Board by stating the dates of Mr. Milanoski's employment and that his employment agreement ended on April 16, 2022. The parties and the Town will make no further comment beyond the statement that is attached.

G. Return/Retrieval of Equipment and Mutual Cooperation. As of April 17, 2020 Mr. Milanoski will return to the Town all keys, and/or any other items belonging to the Town that were in his possession, custody, or control except for a new email town email account. Mr. Milanoski has provided the Town with all passcodes to computers or other town devices that were under his control, except for a new email account. . After April 17, 2020 Mr. Milanoski shall continue to have access to his new town email account to respond on a regular and reoccurring basis as requested by the Town of Carver to provide town administrator Executive Consultant services until the term of this agreement has expired and at that time the email account will be turned over will all pass codes.

H. Non-Disparagement. The Town and Mr. Milanoski mutually agree that they will make

no statement which would negatively affect the good name or reputation of the other; provided, however, that nothing in this Agreement shall prohibit either Mr. Milanoski or Town officials from making comment in a public forum on matters of public interest including the operation of Town Departments, Boards and Commissions.

I. Confidentiality. In the event either the Town or Mr. Milanoski is requested to provide a comment to the press regarding this matter, the respective party shall respond that “the matter has been resolved to the mutual satisfaction of the parties.”

Mr. Milanoski acknowledges that this Agreement is a public record and that the Town may produce a copy of the Agreement to a requester pursuant to its obligations under the Public Records Law as interpreted by the Suffolk County Superior Court Case involving the Commonwealth of Massachusetts.

J. No Admission. The execution of this Agreement does not constitute an admission of liability, fault, or wrongdoing by either party. This Agreement is entered into without precedent or prejudice to any future matters between the parties and may not be introduced in any forum except for the enforcement of its terms.

K. Representation of No Injury. Mr. Milanoski represents that he has suffered no injury while employed as of March 3, 2020 by the Town for which he has a present claim against the Town.

L. Release of All Claims and Waiver. In further consideration of the terms set forth in this Agreement, Mr. Milanoski hereby releases and forever discharges the Town and its agents, servants, and employees, individually or in their official capacities (collectively, the “Releasees”), from any and all debts, actions, causes of action, suits, accounts, covenants, contracts, agreements, damages, and any and all claims, demands and/or liabilities whatsoever of every name and nature, and whether known or unknown to, or suspected or unsuspected by, Mr. Milanoski (collectively,

“claims”), both at law and in equity up to the date of this Agreement.

The Town hereby further releases and forever discharges Mr. Milanoski, his heirs, (collectively, the “Releasees”), from any and all debts, actions, causes of action, suits, accounts, covenants, contracts, agreements, damages, and any and all claims, demands and/or liabilities whatsoever of every name and nature, and whether known or unknown to, or suspected or unsuspected by the Town (collectively, “claims”), both at law and in equity up to the date of this Agreement.

The Town further waives any and all causes of action of any kind, including but not limited to discipline, as well as before any judicial or administrative body that the Town might have against Mr. Milanoski based upon his tenure with the Town.

This release of all claims includes, but is not limited to, all claims under Chapter 31 of Massachusetts General Laws; the Massachusetts Civil Rights Act, M.G.L. c. 12, §§11H-11I; the Massachusetts Fair Employment Practices Act, M.G.L. c. 151B, §1, *et seq.*; the Massachusetts Equal Rights Act, M.G.L. c. 93, §102 and M.G.L. c. 214, §1C; the Massachusetts Labor and Industries Act, M.G.L. c. 149, §1 *et seq.*; the Massachusetts Privacy Act, M.G.L. c. 214, §1B, the Massachusetts Tort Claims Act, M.G.L. c. 258; the Massachusetts Whistleblower Act, M.G.L. c. 149, §185; the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. §621, *et seq.* (“ADEA”); the Americans with Disabilities Act, 42 U.S.C. §12101, *et seq.*, Title VII of the Civil Rights of 1964, as amended, 42 U.S.C. §2000e, *et seq.*; the Family Medical Leave Act of 1993, as amended, 29 U.S.C. §2601, *et seq.* (“FMLA”); Chapter 140, Section 131 and related sections of and related sections of Massachusetts General Laws; 42 U.S.C., §1983; the Fair Credit Reporting Act; 15 U.S.C. 211681, *et seq.*, and the Employee Retirement Income Security Act of 1974 (“ERISA”), 29 U.S.C. 1001, *et seq.*, which Mr. Milanoski has against the Releasees as of the date of this Agreement, or ever had against the Releasees from the beginning of time through the execution date of this Agreement, or any other claim

against the Town or the facts that gave rise to his claim, excluding claims concerning any pension benefits, health insurance, or claims to enforce this Agreement.

This release of all claims also includes all common law claims, including, but not limited to, claims of intentional or negligent infliction of emotional distress, wrongful discharge, claims for severance pay, interest, attorney's fees, costs, and reinstatement of employment with the Town, or any other claim arising out of, or otherwise related to, Mr. Milanoski's employment, or separation from employment, with the Town, or the facts that gave rise to his separation from employment. This Release does not include and shall not preclude (a) any rights to any vested benefits or rights under any retirement plans, health insurance, or retiree benefit plans that Mr. Milanoski is eligible for; (b) rights, if any, to defense and indemnification from the Town for actions taken by Mr. Milanoski in the course and scope of his employment with the Town; and (c) any claims arising solely after the execution of this Agreement.

A. Release of All Claims Under G.L. c. 149, §§148 and 150. Mr. Milanoski understands that his release and waiver of all claims against the Town includes any and all wage claims that he may have under M.G.L. c. 149, §§148 and 150 and that by entering into this Agreement he is expressly agreeing to waive same.

B. Waiver of Rights and Claims under the ADEA. As Mr. Milanoski is 40 years of age or older, he is hereby informed, in writing, that he has or may have specific rights and/or claims under the Age Discrimination in Employment Act of 1967, as amended (ADEA).

a. *Waiver in Exchange for Consideration.* Mr. Milanoski agrees that, in consideration for the terms of this agreement, to which he would not otherwise be entitled, he specifically and voluntarily waives any rights and/or claims under the ADEA he might have against the Releasees to the extent such rights and/or claims arose prior to the date this Agreement was executed. Mr. Milanoski also waives such rights and/or claims under the state counterpart of the

ADEA, pursuant to M.G.L. c. 151B.

b. *No Waiver of Claims Arising after Execution of Agreement.*

Mr. Milanoski understands and agrees that he is not waiving any rights or claims under the ADEA that may arise after the date of this Agreement is executed.

c. *Knowing and Voluntary.* Mr. Milanoski agrees that he has carefully read and fully understands all of the provisions of this Agreement, and he knowingly and voluntarily agrees to all of the terms set forth in this Agreement. Mr. Milanoski acknowledges that in entering into this Agreement, he is not relying on any representation, promise or inducement made by the Town or its attorneys, with the exception of those promises described in this document.

d. *Opportunity to Consult Legal Counsel.* Mr. Milanoski agrees that he has been advised, in writing, to consult with legal counsel, or any other person of his choosing, before signing the Agreement. Mr. Milanoski acknowledges that he has not been subject to any undue or improper influence interfering with the exercise of his free will in deciding whether or not to consult with counsel prior to signing the Agreement.

e. *Review.* Mr. Milanoski has waived any review period.

f. *Revocation.* Mr. Milanoski has seven (7) days from the date of signing to revoke his acceptance.

C. Completeness of Agreement. This Agreement contains all of the terms and conditions agreed upon by the parties with reference to the subject matters contained herein. No other agreement, oral or otherwise, will be considered to exist or to bind either of the parties. No representative of either party to this Agreement had, or has, any authority to make any representation or promise not contained in this Agreement, and each of the parties to this Agreement acknowledges that such party has not executed this Agreement in reliance upon any such representation or promise. This Agreement cannot

be modified, except by a written instrument signed by all parties. This agreement shall inure to the benefit of Mr. Milanoski's heirs.

D. Voluntary Execution. Mr. Milanoski acknowledges that he has thoroughly read this Agreement, that he understands it, and that he is entering into it of his own free will.

E. Interpretation and Enforcement of Agreement. This Agreement will be interpreted and construed for all purposes under the laws of the Commonwealth of Massachusetts, and enforced by the courts located in the Commonwealth of Massachusetts.

IN WITNESS WHEREOF, the Town of Carver, Massachusetts, has caused this Agreement to be signed and executed in its behalf by its Board of Selectmen and duly attested by its Town Clerk, and the Town Administrator has signed and executed this Agreement, both in duplicate.

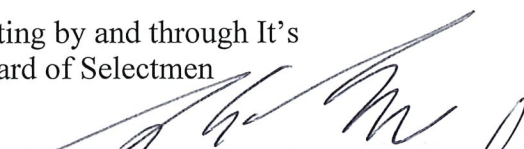
TOWN OF CARVER

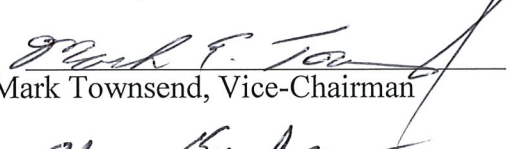
TOWN ADMINISTRATOR

Acting by and through It's
Board of Selectmen



Michael R. Milanoski



Ron Clarke, Chairman

Mark Townsend, Vice-Chairman

Alan Durham

Robert Belbin

Sarah Hewins