

Employment Agreement

**TOWN OF SOUTHBOROUGH
SELECT BOARD**

AND

**WILLIAM J. CUNDIFF, P.E.
SUPERINTENDENT OF PUBLIC WORKS**

Effective July 24, 2023
Through
June 30, 2026

This Agreement is made and entered into this 21st day of April, 2023 by and between the TOWN OF SOUTHBOROUGH (hereinafter called the "TOWN") a municipal corporation in Worcester County, acting by and through its Select Board (hereinafter called the "Board") with no personal liability to the Board's members, and William J. Cundiff, of Leicester, Massachusetts (hereinafter called the "Superintendent"), pursuant to the authority of Section 3-11 of the Code of the Town of Southborough, amended by Article 55 of the April 2004 Annual Town Meeting.

WHEREAS, the TOWN desires to retain the professional services of the SUPERINTENDENT for the direction and administration of the Department of Public Works (hereinafter called the "DPW"); and

WHEREAS, the SUPERINTENDENT is willing to continue to serve as SUPERINTENDENT according to the terms and the conditions of this Agreement;

NOW, THEREFORE, the TOWN and the SUPERINTENDENT hereby agree upon the following terms and conditions.

1. ESSENTIAL DUTIES OF THE SUPERINTENDENT

The TOWN hereby appoints the SUPERINTENDENT to a three-year term pursuant to the Acts of 1991, Chapter 447, Section 2, subject to appropriation. The head of the DPW for the TOWN is the SUPERINTENDENT. The SUPERINTENDENT shall be responsible to and work under the direction of the Select Board, through the Town Administrator, under applicable Massachusetts General Laws, and the Town's By-Laws and rules and regulations.

The SUPERINTENDENT's primary and essential duties shall include but not be limited to the following:

- A. Responsibility for the Direction and Administration of the daily operations of the DPW;
- B. Responsibility for indirectly or directly supervising all Department personnel;
- C. Responsibility for preparing and submitting the DPW budget;
- D. Responsibility for all Department expenditures;
- E. Responsibility for developing the DPW Capital Plan and presenting plan;
- F. Responsibility for all Department property in custody of the DPW including motor vehicles and equipment;
- G. Responsibility for submitting reports to the TOWN either orally or in writing when requested or required in order to ensure the proper communication between the TOWN and the DPW;
- H. Responsibility for maintaining books and records in such detail to furnish all information necessary for reporting to government agencies;
- I. Responsibility for all Department property in custody of the Department;
- J. Responsibility for performing such other duties as may be required in accordance with the Town's By-Laws or law; and
- K. Responsibility for such other duties as the Select Board, through the Town Administrator, shall from time to time assign.

2. HOURS OF WORK

- A. The SUPERINTENDENT warrants and agrees to devote that amount of time, effort and service which is necessary for the SUPERINTENDENT to faithfully perform the duties of SUPERINTENDENT.
- B. The SUPERINTENDENT is an exempt employee for the purpose of the Fair Labor Standards Act.
- C. The SUPERINTENDENT shall notify and coordinate with the Town Administrator if he shall be absent from duty or on leave and who shall be in control of the DPW during such absence or leave.
- D. The SUPERINTENDENT position is a full-time job. Other employment must be approved in writing by the Town Administrator, and such approval will not be unreasonably withheld provided that the nature of the other employment is part-time and will not interfere with the SUPERINTENDENT's ability to devote full-time attention to the position. If the Employee accepts other employment without prior written approval, this employment Agreement may be terminated immediately by the Town, said violation to be deemed just cause pursuant to the terms of this Agreement.

3. INDEMNIFICATION

The TOWN shall defend, save harmless and indemnify the SUPERINTENDENT against any claim, demand or other legal action arising out of an alleged act or omission occurring in the performance of his duties. The TOWN acknowledges that it has accepted Section 13 of M.G.L Ch. 258. Indemnification shall apply to the fullest extent permissible under Section 13 of M.G.L Ch. 258 as to any claim made following the expiration of the term of this Agreement or termination from employment of the SUPERINTENDENT so long as the TOWN would have been otherwise obligated to provide indemnification had the term not expired or the employment not terminated.

The TOWN may compromise and settle any claim or suit and will pay the amount of any settlement or judgment rendered thereon, as specified above, without recourse to the SUPERINTENDENT who, and as a condition of said indemnification, shall cooperate with the TOWN in all matters relating to said claim.

This provision does not allow indemnification for criminal acts nor willful violation of civil rights, or indemnification which exceeds the permissible bounds of the law.

This section shall survive the termination of this Agreement.

4. INSURANCE

A. Health Insurance

The SUPERINTENDENT shall be eligible for all health and life insurance benefits for which other Town non-collective bargaining unit employees are eligible. The TOWN shall contribute toward the cost of the premium for such insurance benefits at a rate not to exceed the rate it contributes for such Town employees.

B. *Workers' Compensation*

The SUPERINTENDENT shall be eligible for Workers' Compensation benefits as provided in Chapter 152 of the Massachusetts General Laws.

5. DUES AND SUBSCRIPTIONS

The TOWN agrees to budget and to pay, subject to appropriation, for the reasonable professional dues and subscriptions of the SUPERINTENDENT for his continuation and full participation in national, regional and state associations and organizations necessary and desirable for his continued professional growth and advancement, and for the benefit of the TOWN.

6. AUTOMOBILE

The TOWN shall provide a vehicle for use by the SUPERINTENDENT and pay for all attendant operating and maintenance expenses and insurance. Said vehicle is to be used by the SUPERINTENDENT in connection with the performance of his duties as SUPERINTENDENT and for his professional growth and development. It may be used by the SUPERINTENDENT for personal reasons because the SUPERINTENDENT is "on-call" in the event of emergency.

The SUPERINTENDENT shall be responsible for any, if applicable, tax liability resulting from the availability and use of such vehicle.

The provision of an automobile for the SUPERINTENDENT by the TOWN shall not be deemed to be compensation for the SUPERINTENDENT, but as an expense item covered for by the TOWN. If the Massachusetts statutes, however, mandate that the SUPERINTENDENT'S vehicle will be deemed to be an item of compensation under Chapter 32 of the Massachusetts General Laws, then the SUPERINTENDENT shall be responsible for any retirement contributions due under such statutory mandate.

7. PROFESSIONAL DEVELOPMENT

The TOWN recognizes its obligations to the professional development of the SUPERINTENDENT, and agrees that, with Town Administrator approval, which approval shall not be unreasonably withheld, the SUPERINTENDENT shall be given reasonable opportunities to develop his skills and abilities as the SUPERINTENDENT. Accordingly, the SUPERINTENDENT will be allowed, subject to appropriation, to attend training conferences each year without loss of vacation or other leave, and will be reimbursed by the TOWN for all reasonable and necessary expenses (including travel expenses) incurred while attending or traveling to the aforementioned conferences.

The TOWN also agrees to budget and pay, subject to appropriation, for reasonable and necessary travel and subsistence expense of the SUPERINTENDENT for short courses, institutes, and seminars that, in the SUPERINTENDENT'S reasonable judgment, are necessary for his professional development.

8. DEATH DURING EMPLOYMENT

If the SUPERINTENDENT dies during the term of his employment, the TOWN shall pay to the SUPERINTENDENT's estate all the compensation which would otherwise be payable to the SUPERINTENDENT up to the date of the SUPERINTENDENT's death, including accrued, but unused vacation leave.

9. SUSPENSION OR DISCHARGE

The SUPERINTENDENT may be suspended or terminated by the Select Board acting on behalf of the TOWN for cause during the term of this Agreement pursuant to Article II section 27-2 of the Southborough Code. During the course of an administrative investigation, the Town Administrator may place the SUPERINTENDENT on paid administrative leave, which leave shall not be deemed discipline. The Board may review this decision at its next meeting. The SUPERINTENDENT will be given a written statement of reasons for any consideration of suspension or termination and shall be afforded the opportunity to be heard consistent with the applicable provisions of Massachusetts General Laws Chapter 30A Section 18-28 as amended.

For purposes of this paragraph, the term "cause" shall mean any ground put forward by the TOWN in good faith which is not arbitrary, irrational, or irrelevant to the Town's tasks of building up and maintaining efficient town services, provided that the cause assigned is at least fairly debatable and is asserted honestly, and not as a subterfuge.

In the event the SUPERINTENDENT is terminated by the TOWN prior to the expiration of the term of this Agreement or if Town Meeting does not appropriate funds for the SUPERINTENDENT's position, the TOWN agrees that it shall pay the SUPERINTENDENT a lump sum cash payment equal to five (5) months aggregate salary within five (5) business days of the SUPERINTENDENT's execution of a mutually-agreeable form of a full and complete release of any and all rights, claims, or causes of action, both known and unknown, whether in law (inclusive of action including without limitation the Massachusetts Wage Act), equity or otherwise, that the SUPERINTENDENT may have against the TOWN, including all of its employees, elected or appointed officials, officers, agents, representatives and attorneys of such entities; provided however, that in the event the SUPERINTENDENT is terminated for cause, the TOWN shall have no obligation to pay the aggregate severance sum provided in this paragraph.

10. COMPENSATION

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

- A. An annual base salary of \$135,000 subject to applicable withholdings and deductions, effective July 24, 2023, payable in installments at the same time as other employees of the TOWN are paid.
- B. In the second year of the Agreement (effective as of July 1, 2024), the SUPERINTENDENT shall receive an increase in annual base salary of up to 3%, based on the results of a favorable performance evaluation, which shall be completed on or before July 1, 2024, for a total annual base salary of up to \$139,050, subject to applicable withholdings and deductions.

- C. In the third year of the Agreement (effective as of July 1, 2025), the SUPERINTENDENT shall receive an increase in annual base salary of up to 3%, based on the results of a favorable performance evaluation, which shall be completed on or before July 1, 2025, for a total annual base salary of up to \$143,222, subject to applicable withholdings and deductions.
- D. The TOWN will make an annual payment of 3% of base pay towards deferred compensation offered by the TOWN and selected by the SUPERINTENDENT. The SUPERINTENDENT shall notify the Town Treasurer in writing of the deferred compensation plan in which the payment is to be made.

11. LEAVE

A. Vacation

The SUPERINTENDENT shall be entitled to four (4) weeks paid vacation per fiscal year. A week shall be defined as five (5) working days. Unused vacation days may not be carried over from year to year.

B. Holidays

The SUPERINTENDENT shall receive one day's pay at his regular rate for holidays as outlined in the Salary Administration Plan.

C. Sick Leave

The SUPERINTENDENT shall receive 15 sick days per year, which may be accrued up to a maximum of the Salary Administration Plan. Absences on account of sickness in excess of that authorized shall be charged to vacation or other available paid leave. Sick leave shall be payable only in cases of genuine illness or non-work connected accidents. Sick leave is not subject to payout upon separation of service.

D. Bereavement Leave

In the event of the death of a spouse, father, mother, child, father-in-law, mother-in-law, brother, sister, grandparent, or of any other person then residing with the SUPERINTENDENT, he shall be entitled to receive three days' leave for the purpose of the funeral and disposition of the deceased. If out-of-state travel is required, the Town Administrator may authorize up to two additional days of travel time.

E. Personal Leave

The SUPERINTENDENT shall be entitled to three personal days per year which shall be granted July 1st, which shall be approved by the Town Administrator. Personal days shall not accumulate from year to year; unused personal days shall be forfeited.

12. EVALUATION

- A. The Town Administrator shall review and evaluate the SUPERINTENDENT every year prior to fiscal year end. Said review and evaluation shall be based on the goals and objectives developed jointly and mutually agreed to by the Town Administrator and the SUPERINTENDENT. Further, the Town Administrator, shall provide adequate opportunity for the SUPERINTENDENT to discuss his evaluation with the Board in compliance with the Open Meeting Law.
- B. Annually the Town Administrator and the SUPERINTENDENT shall define the goals and objectives which they determine necessary for the proper operation of the TOWN and the attainment of the Board's policy objectives, and shall further establish a general priority among those various goals and objectives, reduced to writing.
- C. The SUPERINTENDENT shall conduct, at least annually, during the term of this Agreement a complete assessment of his own performance in a written document approved in advance by the Town Administrator for this purpose, soliciting subjective feedback from individuals as determined by the Town Administrator with input from the SUPERINTENDENT. The results of this assessment may be made available to the Board.

13. NO REDUCTION OF BENEFITS

The TOWN agrees that it shall not, at any time during the term of this Agreement, reduce the salary, compensation or other benefits of the SUPERINTENDENT, except to the extent that such reduction is evenly applied across-the-board for management employees of the TOWN.

14. TERM OF AGREEMENT

- A. The initial term of this Agreement shall be for a period commencing July 24, 2023 and ending June 30, 2026. However, this Agreement may be extended as provided by its terms.
- B. The SUPERINTENDENT shall have an affirmative obligation to notify the Board six months prior to the expiration of this Agreement that said Agreement is expiring and requires renegotiation. The Board shall review this Agreement and notify the SUPERINTENDENT of its decision to renew or not to renew within 30 days of the SUPINTENDENT's notification of his intent to renew. If the Board decides to renew the Agreement, then either the SUPERINTENDENT or the Board may request that the provisions be renegotiated; otherwise, the parties may agree to a one-year extension of this Agreement upon the same terms as are current at that time.
- C. In the event the SUPERINTENDENT intends to resign voluntarily before the natural expiration of any term or employment, then the SUPERINTENDENT shall give the TOWN at least sixty (60) days written notice in advance, unless the parties otherwise agree in writing.
- D. It is expressly understood that a decision not to renew this Agreement shall not be construed as a discharge requiring a hearing under this Agreement or any other provision of law.

15. GENERAL PROVISIONS

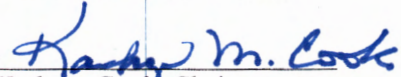
- A. The text herein shall constitute the entire Agreement between the parties.
- B. This Agreement shall be binding upon and inure to the benefit of the heirs at law and executors of the SUPERINTENDENT.
- C. This Agreement shall prevail over any conflicting provisions of the Town by-laws or rules and regulations.
- D. If any provision, or any portion thereof, contained in this Agreement is held 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.
- E. This Agreement shall be interpreted and enforced in accordance with the laws of the Commonwealth of Massachusetts.
- F. Any prior discussions or verbal agreements between the parties made prior to this Agreement shall not be binding upon the parties unless reduced to writing, dated, and signed by both parties.
- G. 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.
- H. This Agreement is the result of negotiation and compromise by and among the parties and no party shall be prejudiced as having been the drafter of this Agreement.
- I. This Agreement shall become effective when executed by both parties.

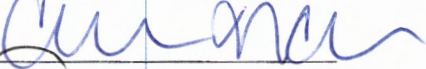
16. COMPLETENESS OF AGREEMENT

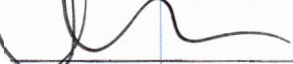
This Agreement contains the terms and conditions agreed upon by the parties as to the employment of SUPERINTENDENT with the TOWN. No other agreement, written, oral, express or implied will be considered to exist to bind to parties hereto provided, however that both parties recognize and acknowledge the reserved inherent administrative authority of the Select Board to supervise and regulate the position of SUPERINTENDENT, in the public interest, and to add to such related duties and responsibilities as necessary for the Department of Public Works and to promulgate further rules and regulations consistent with the intent and purpose of Article III section 3-11 of the Southborough Code.

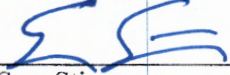
IN WITNESS WHEREOF, the parties hereunto have set their hands and seals to this instrument on the date and year set forth below.

TOWN OF SOUTHBOROUGH
BY ITS SELECT BOARD


Kathryn Cook, Chairperson



Chelsea Malinowski, Vice-Chairperson


Andrew Dennington


Sam Stivers

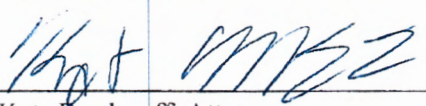
DATE: 4/25/23

SUPERINTENDENT


William J. Cundiff

DATE: 04/21/2023

ATTESTED TO BY LABOR COUNSEL:


Kate Feodoroff, Attorney

DATE: 4/21/23