

TOWN OF WHITMAN, MASSACHUSETTS

CONTRACT OF EMPLOYMENT FOR

THE TOWN ADMINISTRATOR

THIS AGREEMENT, made and entered into this 19th day of June, 2019 by and between the **TOWN OF WHITMAN**, Commonwealth of Massachusetts, a municipal corporation, acting by and through its Board of Selectmen, hereinafter referred to as “the Board”, who act hereunder in their representative capacity only and without any personal liability to themselves, hereinafter referred to as “the Employer” or “the Town”, as party of the first part, and **FRANCIS J. LYNAM**, hereinafter referred to as “the Employee” or “Lynam”, as party of the second part, both of whom understand and agree as follows:

WITNESSETH:

WHEREAS, pursuant to Massachusetts General Laws, chapter 41, §23A the Town has authorized its Board of Selectmen to appoint a Town Administrator; and,

WHEREAS, Massachusetts General Laws, chapter 41, §108N authorizes the Town, acting by and through its Board of Selectmen to establish an employment contract for its Town Administrator; and,

WHEREAS, the Town desires to continue to employ the services of said Francis J. Lynam as Town Administrator; and,

WHEREAS, it is the desire of the Town to provide certain benefits, establish certain conditions of employment and to set the working conditions for Lynam; and,

WHEREAS, it is the desire of the Town to (1) secure and retain the services of said Lynam and to provide inducement for him to remain in such employment; (2) to make possible full work productivity by assuring Lynam's morale and peace of mind with respect to future security; (3) to act as a deterrent against misfeasance, malfeasance or dishonesty for personal gain on the part of Lynam; and (4) to provide a means for terminating Lynam's services at such time as he may be and/or is unable to discharge his duties due to disability or otherwise or is not discharging his duties or when the Town may otherwise desire to terminate his employ; and,

Whereas, Lynam represents that he is qualified and capable of performing the duties and responsibilities of said position; and,

WHEREAS, Lynam desires to continue his full time employment as the Town Administrator of the Town of Whitman 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

The Town hereby agrees to employ the said Francis J. Lynam as Town Administrator of the Town of Whitman to perform the functions and related duties of said position as specified in Massachusetts General Laws, chapter 41, §23A, as amended from time to time, applicable by-laws, rules and regulations of the Town, votes of the Town Meeting, general or special laws, all of which as may be amended, rescinded and supplemented from time to time, and to perform such

other legally permissible and proper duties and functions as the Board of Selectmen or Town Meeting shall from time to time assign and/or are normally within the range of duties and responsibilities performed by a person holding the position of Town Administrator, including but not limited to those set forth in the job description attached hereto and incorporated herein by reference as Addendum A. Lynam agrees to perform such duties in a timely and efficient manner consistent with applicable professional standards.

Section 2: Term

A. Lynam agrees to remain in the exclusive employ of the Town from July 1, 2019 through June 30, 2022, and neither to accept other employment nor to become employed by any other employer or be involved in any other activity that would prevent him from performing his duties as stated herein, unless he has received the prior written approval of the Board of Selectmen, until said termination date, unless said termination date is affected as hereinafter provided.

B. The Parties agree to endeavor to meet and confer approximately seven (7) months prior to the expiration date of this Agreement for the purpose of discussing the continuation of the employment relationship and, if agreeable to continuing the employment relationship hereunder, to endeavor to negotiate the terms of a successor agreement. It is understood by the Parties that the objective of this clause is to enable the Parties to know by at least approximately six (6) months prior to the expiration of this Agreement as to whether the Parties are to continue in an employment relationship, so that each may, if necessary, have the maximum amount of advance notice if the relationship is not to

continue. To that end, each Party agrees to act in good faith in meeting the time periods in this clause; however, the Parties may agree to another time period(s). A failure to so meet or reach agreement whether or not to continue the employment relationship or as to the terms of any successor agreement shall not be construed as a breach of this Agreement or give any rights or benefits to Lynam by reason thereof.

C. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the Board to suspend and/or terminate the services of Lynam at any time, subject only to the provisions of this Agreement and the provisions of any other applicable law.

D. Nothing in this Agreement shall prevent or otherwise interfere with Lynam's right to resign at any time from his position with the Town, subject only to the provisions set forth in this Agreement and the provisions of any other applicable law.

Section 3: Salary

A. All salary and fringe benefits provided in this Agreement are subject to annual appropriation by Town Meeting. The Board of Selectmen agrees to request as part of the budget process funds sufficient to meet the obligations under this Agreement.

B. Subject to the terms and conditions of this Agreement, and while engaged in and performing the duties of Town Administrator, the Town agrees to pay Lynam for his services rendered pursuant hereto as follows:

1. Salary for the fiscal year beginning July 1, 2018 and ending June 30, 2019 is \$126,900;
2. Salary for the fiscal year beginning July 1, 2019 shall be \$128,169.
3. Future increases in salary shall be negotiated with the Board of Selectmen and subject to funding by Town Meeting.

C. Lynam recognizes and agrees that he will not be entitled to any changes in benefits otherwise accorded to other Town employees, unless the Town specifically agrees to same by a written amendment to this Agreement. To that end, the terms of this Agreement shall supersede and prevail over any terms and conditions of any By-Law of the Town or votes of Town Meeting, except where otherwise specifically provided herein.

Section 4: *Suspension, Termination and Severance Pay, Resignation*

A. *Suspension*

1. The Board may suspend Lynam with or without pay and benefits at any time during the term of this Agreement, for just cause or for a violation of the terms and conditions of this Agreement or the duties of Lynam, provided that: a majority of the Board and Lynam agree to such suspension; or, after a public hearing, the Board, with at least three (3) members voting in the affirmative, votes to suspend Lynam. Lynam shall be provided with written notice of the proposed suspension and grounds therefor at least seven (7) calendar days prior to the scheduled hearing.

2. Nothing contained herein shall prevent the Board, at a regular meeting and upon a majority vote of the members present, from placing Lynam on administrative leave with full benefits and pay and without prejudice.

B. Termination and Severance Pay

1. The Board may terminate the service of Lynam for just cause for violation of any of the terms or conditions of this Agreement or the duties of Lynam, provided that after a public hearing, the Board, with at least four (4) members voting in the affirmative, votes to terminate Lynam. Lynam shall be provided with written notice of the proposed termination and grounds therefor at least seven (7) calendar days prior to the scheduled hearing.

2. In the event that the Board votes to so terminate Lynam, he shall receive one (1) months' severance pay per year of service or part thereof. During the first month following the vote of termination, Lynam shall remain available to assist the Town in the transition caused by his separation from employment. This assistance may include Lynam reporting to work at the Town Hall or providing off-site consultation services, as determined by the Board of Selectmen.

3. In the event that the Board terminates Lynam at any time during the term of this Agreement, Lynam shall receive all accrued salary and vacation days owed to him as of the effective date of his termination.

4. The acceptance by Lynam of the severance pay and/or benefits provided hereunder shall constitute a complete and full release of any other rights, claims or causes of action, whether in law, equity or otherwise, that

Lynam may have against the Town, its officers, agents, officials or employees and shall constitute compensation to Lynam.

5. If there is a lack of funding to meet the obligations under this Agreement, and in the reasonable judgement of the Board there are no other funds available to compensate Lynam, then it shall be deemed that just cause for termination exists and to the extent legally permissible, Lynam shall be entitled to all rights and benefits provided in this Agreement for such a termination.

C. Resignation

Lynam may resign his position as Town Administrator under this Agreement by giving the Board written notice sixty (60) days prior to the effective date of resignation. Lynam shall not be permitted to utilize accrued vacation time during this notice period, unless specific permission is granted by the Board. Lynam shall be entitled to receive payment for his earned and vested but unused vacation time as of the effective date of his resignation.

Section 5: Annual Review

The Board shall annually review and evaluate the Town Administrator. Said review and evaluation shall be based on the goals and objectives developed jointly by the Board and the Town Administrator. Further, the Board shall provide the Town Administrator with a summary written statement of the evaluation findings of the Board and shall provide an adequate opportunity for the Town Administrator to discuss his evaluation with the Board. The individual evaluations of Board members and the summary evaluation shall be

part of the Town Administrator's personnel file, subject to Section 23(e) of Chapter 30A of the General Laws.

Section 6: Hours of Work

Lynam shall work at a minimum such hours as other administrative personnel of the Town work and shall, in addition thereto, devote as a minimum, such time and effort as is necessary to properly perform the duties and responsibilities of the position.

Due to the unique nature of this employment, it is understood and agreed that in order to properly perform the job required, Lynam may have to expend additional time beyond the normal work day and he agrees to do same as is required. Such additional time includes but is not limited to time required to represent the Town and/or the Board at various meetings and events, meetings with the Board and other Town boards, commissions, departments and Town Meetings, and time necessitated by emergency situations. It is acknowledged that the position is that of an Executive/Administrative nature as that term is used in the Fair Labor Standards Act, its rules and regulations. There shall be no paid overtime or additional compensation for said additional time.

Section 7: Outside Activities

Lynam shall not engage in any other employment without the prior written authorization of the Board of Selectmen. In no event shall any such employment or outside activities interfere with the obligations Lynam has to the Town or the Board or is adverse to the interests of the Town or the Board

Section 8: Benefits

A. Health, Dental, Life Insurance, and Disability Insurance

1. Lynam shall be eligible for participation under such health insurance plans provided to employees of the Town of Whitman to the same extent as any other employee of the Town.
2. Lynam shall be eligible for participation in such dental insurance plans provided to employees of the Town of Whitman to the same extent as any other employee of the Town.
3. The Town will provide Lynam with life insurance in the amount of \$100,000.00.
4. Lynam shall be eligible for participation in such disability insurance plans provided to employees of the Town of Whitman to the same extent as any other employee of the Town.
5. Recognizing the importance of physical fitness to maintaining health and its relevance to job performance and longevity, Lynam shall be eligible for an annual provision of up to \$500.00 for reimbursement of the cost of health club membership.

B. *Deferred Compensation Plans*

Lynam shall be eligible for participation in such deferred compensation plans provided to employees of the Town of Whitman to the same extent as any other employee of the Town.

C. *Vacation Time*

1. On July 1, 2019 Lynam may carry over a maximum of twenty-five (25) days of unused vacation time from Fiscal Year 2019 to Fiscal Year 2020. On or before July 1, 2019 Lynam will provide the Board with notice of the number of days he is electing to carry over under the provisions of this subsection. Any vacation days remaining from Fiscal Year 2019 in excess of the aforementioned twenty-five (25) days are voluntarily surrendered by Lynam and shall have no cash redemption value. Any Fiscal Year 2019 days carried over to Fiscal Year 2020 under the provisions of this subsection must be used by June 30, 2020 and if not used by June 30, 2020, shall be forfeited, with no cash redemption value.
2. Effective July 1, 2019 and each July 1 thereafter during the term of this Agreement, Lynam shall be granted twenty five (25) days of paid vacation to be used by the end of each fiscal year, being June 30.

3. Commencing June 30, 2020, Lynam may carry over up to five (5) days of unused vacation time from one fiscal year to the next, with advance written notice to the Board of the number of days he is electing to carry over under this subsection. Any vacation days so carried over must be used during the fiscal year, and, if not used by the end of the fiscal year shall be forfeited.
4. In the event of extraordinary circumstances, Lynam may request leave from the Board to carry over additional vacation days. Such request must be made in writing and approved by a majority vote of the Board of Selectmen.
5. Unused vacation days remaining as of June 30 of any fiscal year, except to the extent such days may be carried over pursuant to the provisions of Sections 8.C (1), (3) or (4), above, shall be surrendered and have no cash redemption value.
6. In the event that this Agreement is terminated prior to the conclusion of a fiscal year, all accrued and unused vacation time will be paid to Lynam calculated at his then current per diem rate of pay.

D. Holidays

Lynam shall be provided with time off with pay for all federal and state holidays which are provided to other Town employees.

E. Personal Days

In each year of this Agreement, Lynam shall be provided with four (4) paid personal days. Unused personal days may not accrue or be carried forward from year to year.

F. Sick Leave

Lynam shall be provided with fifteen (15) days of sick leave annually and may accrue unused days in a personal sick leave bank with said days to be carried-over from fiscal year to fiscal year to be used for the sole purpose of providing Lynam with sufficient sick days to bridge the time to the effective date of any short or long-term disability policy that may be in effect. Long-term disability insurance shall be provided for any illness or disability that renders him incapacitated from performing the essential functions of his job. There shall be no right to payment for unused sick days upon separation of employment or contract termination. Accrued sick leave as of May 7, 2019 is two hundred twenty-three and five eighths (223^{5/8}) days.

G. Bereavement Leave

1. Lynam shall be provided with five (5) days of paid leave for the death of a member of his immediate family. The term "immediate family" shall include: spouse, children, parents, parents-in-law, siblings, or siblings-in-law.

2. Lynam shall be provided with two (2) days of paid leave for the death of a relative. The term "relative" shall include: aunts, uncles or cousins.
3. Additional bereavement leave may, when necessary, be granted by the Board of Selectmen.

H. *Automobile Travel Expense Reimbursement*

Lynam shall be reimbursed at the Town rate per mile for all travel necessary or advisable for him to travel in order to perform his duties.

I. *Cellular Telephone and Pager*

The Town shall provide Lynam with a cellular telephone. Said telephone shall be considered property of the Town of Whitman to be used for Town purposes. The Town will pay for all Town-related charges on plans selected by Lynam and approved by the Board of Selectmen.

J. *Professional Memberships and License Fees*

The Town agrees to pay for all professional memberships and license fees required and approved by the Board of Selectmen.

Section 9: *Bonding*

The Town shall bear the full cost of any fidelity or other bonds required of Lynam under any law or by-law or as may be required by the Board of Selectmen.

Section 10: Other Terms and Conditions of Employment

The Board, after discussion with Lynam, shall fix any such other terms and conditions of employment as it may determine from time to time, relating to Lynam's performance, duties and responsibilities, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this Agreement. Lynam agrees to perform such duties in a timely and efficient manner consistent with applicable professional standards.

Section 11: 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:

Employer: Board of Selectmen
Town Hall
54 South Avenue
P.O. Box 426
Whitman, Massachusetts 02382

Employee: Francis J. Lynam
907 Bedford Street
Whitman, MA 02382

Alternatively, notices required pursuant to this Agreement may be served in the same manner as is applicable to civil judicial practice. Notice shall be deemed given as of the date of personal service or left at Lynam's last and usual place of abode or as of the date of deposit of such written notice in the course of transmission in the United States Postal Service. Any Party changing the address for that Party shall give prompt written notice to the other of the new address. All addresses must contain a street address.

Section 12: General Provisions

A. The text herein 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 Lynam's heirs at law and executors.

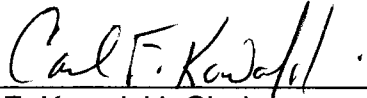
C. If any provision, or any portion thereof, contained in this Agreement is held unconstitutional, invalid or unenforceable, the remainder of this Agreement, or portion thereof, shall be deemed severable, shall not be affected and shall remain in full force and effect.

D. The failure of a Party to insist on strict compliance with a term or provision of this Agreement shall not constitute a waiver of that or any term or provision of this Agreement.

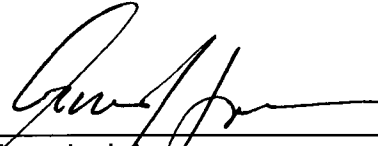
E. All benefits and obligations, except as otherwise specifically provided herein, shall be conditional upon Lynam being employed as and performing the services required of the Town Administrator of the Town of Whitman.

F. It is agreed and understood between the Parties that this contract shall replace the existing contract and shall be effective July 1, 2019 and continuing in accordance with the terms and conditions of this Agreement.

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



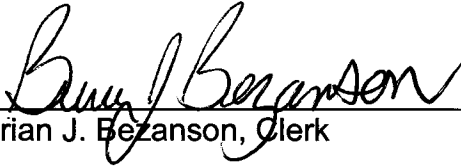
Dr. Carl F. Kowalski, Chair



Francis J. Lynam



Daniel L. Salvucci, Vice Chair



Brian J. Bezanson, Clerk



Justin Evans, Member

Randy Lamattina, Member