

## SETTLEMENT AGREEMENT AND RELEASE OF ALL CLAIMS

This Settlement Agreement and Release of All Claims (“Agreement”) is being entered into between Gerald Alston (“Mr. Alston”) and the Town of Brookline (“Brookline”). Mr. Alston and Brookline are collectively referenced herein as the “Parties.”

WHEREAS, Mr. Alston commenced litigation in the U.S. District Court for the District of Massachusetts (the “Court”) captioned *Gerald Alston v. Town of Brookline, Massachusetts et al.*, Docket No. 1:15-cv-13987-GAO (the “Litigation”) in which he asserted claims arising from his employment as a Brookline firefighter and his termination.

WHEREAS, the Massachusetts Civil Service Commission has reinstated Mr. Alston to his position as a Brookline firefighter and the Massachusetts Supreme Judicial Court has upheld Mr. Alston’s reinstatement.

WHEREAS, Brookline expresses its appreciation for Mr. Alston’s service to the Town.

WHEREAS, following decisions from the U.S. Court of Appeals for the First Circuit, Mr. Alston’s remaining claims in the Litigation are against Brookline, and against Nancy Daly, Neil Wishinsky, Bernard Greene, Ben Franco, and Nancy Heller (collectively the “Individual Defendants”).

WHEREAS, the Parties agree that it is in their mutual interest to resolve the Litigation and to fully and finally resolve all disputes related to Mr. Alston’s employment and other interactions with Brookline, including any claims Mr. Alston may have against Brookline, the Brookline Select Board, the Individual Defendants, and the Released Parties named below.

WHEREAS, the Parties acknowledge and agree that there is good, valuable and sufficient consideration for this Agreement, including but not limited to the mutual promises and obligations set forth below.

NOW, THEREFORE, in consideration of the foregoing premises and the mutual promises set forth below, the Parties agree as follows.

1. The term “Mr. Alston” includes the past, present, or future heirs, legal representatives, executors, agents and assigns of Mr. Alston.
2. The term “Execution Date” shall be the date on which this Agreement is signed by both Mr. Alston and Brookline. If Mr. Alston and Brookline sign the Agreement on two (2) different dates, the Execution Date shall be the later of the two (2) dates. Select Board Chair Heather Hamilton is authorized to sign this Agreement for Brookline.
3. The term “Effective Date” shall be the date on which Brookline obtains required approvals for the transfer, appropriation and financing of funds necessary to issue the Settlement Amount referenced in Paragraph 11, and the funds become available for distribution by Brookline. Such approvals may include, without limitation, approval of the Representative Town Meeting and the Municipal Finance Oversight Board.

4. The term “Released Parties” refers to (1) Brookline and the Brookline Select Board, and any past, present or future officers, employees, independent contractors, legal representatives, elected representatives, attorneys, successors, assigns, members, trustees, benefit plans and their administrators and fiduciaries, insurers, and reinsurers of Brookline and the Brookline Select Board, and (2) the Individual Defendants and their agents, legal representatives, attorneys, insurers, reinsurers and fiduciaries, and (3) Betsy Dewitt, Ken Goldstein, Jesse Mermell, Sandra DeBow, Stanley Spiegel, Joslin Murphy, Local 950, International Association of Firefighters, and their agents, legal representatives, attorneys, insurers, reinsurers and fiduciaries. All Released Parties shall be released from liability in both their individual and official capacities, where applicable.

5. The offer made in this Agreement will be deemed withdrawn and no longer valid unless signed by Mr. Alston and delivered to Brookline within twenty-one (21) days of the date Mr. Alston receives it unless Brookline agrees in writing to accept the signed agreement from Mr. Alston after such date.

6. Within seven (7) days of the Execution Date, but no earlier than September 14, 2021, Brookline shall file for a Special Town Meeting a warrant article authorizing funding for payment of the Settlement Amount described in Paragraph 11, with an accompanying Town Meeting motion to be made substantially in the form of Exhibit A attached hereto. Simultaneously with the filing of the warrant article, Brookline shall issue a press release, which shall state in substance that the Select Board and Mr. Alston have agreed to an \$11 million dollar settlement, that the Select Board apologizes to Mr. Alston, and that a Special Town Meeting has been scheduled to approve the funding for the settlement.

7. Timing of the Special Town Meeting. Brookline shall convene a Special Town Meeting to occur within six weeks of the Execution Date. Provided that Mr. Alston signs this Agreement on or before September 7, 2021, Brookline shall convene the Special Town Meeting no later than October 5, 2021 and, if necessary, shall waive any requirements of Sections 2.1.2 through 2.1.4 of the Brookline’s Bylaws that are inconsistent with meeting that deadline. In the event Brookline does not obtain the required approvals for the transfer, appropriation and financing necessary to issue the settlement payment within thirty (30) days of the Special Town Meeting, this Agreement and the releases contained herein and attached shall be null and void and the Parties agree to submit a joint motion for a scheduling conference in the form attached hereto as Exhibit B.

8. Upon publication of the notice of the Special Town Meeting referenced in Paragraph 6, the Parties will jointly request that the Court stay the Litigation pending Brookline’s efforts to secure the required approvals set forth in Paragraph 3.

9. Within seven (7) days of the Effective Date, Mr. Alston shall, pursuant to Federal Rule of Civil Procedure 41(a)(A)(ii), file a stipulation of dismissal with prejudice of the Litigation, as to all parties, each party bearing its own costs and waiving all rights of appeal. Mr. Alston and Brookline shall execute and deliver, and also will irrevocably authorize their attorneys to execute and deliver, any other documents that may be necessary to terminate with finality the Litigation.

10. Within seven (7) days of the Effective Date, Mr. Alston shall voluntarily resign from his firefighter position with Brookline, effective immediately, including by submitting any forms required to effectuate such resignation. Mr. Alston shall also submit a written request for a full refund of his retirement contributions and shall report to the Brookline Retirement Board and Public Employee Retirement Administration Commission that he does not seek or intend to collect any form of retirement benefits, including health insurance, in the future. Mr. Alston agrees that, as of the date of his resignation, he shall no longer be entitled to receive, and Brookline shall have no further obligation to pay him, any further wages, compensation or benefits, including retirement or health benefits or funds. Mr. Alston agrees that, following his resignation, he will not apply for, seek, or accept employment with Brookline at any time in the future.

11. Within seven (7) days of the Effective Date, Brookline shall pay to Mr. Alston a sum of eleven million dollars (\$11,000,000), which shall be allocated as set forth below to alleged lost wages and emotional distress. This sum is referred to as the Settlement Amount. The payments described below shall be made to the IOLTA account of Mr. Alston's attorney, Brooks Ames.

1) Seven-hundred sixty-five thousand, fifty dollars (\$765,050.00) of the Settlement Amount shall be allocated as payment for alleged lost wages. As such, this portion is expressed in a gross amount and will be subject to deductions required by law, including federal income taxes, state income taxes, and Medicare. Mr. Alston understands that Brookline will file a W-2 for this payment.

2) The remainder of the Settlement Amount, ten million, two hundred thirty-four thousand, nine hundred fifty dollars (\$10,234,950.00), is allocated as payment for alleged lost retirement benefits in the amount of nine-hundred three thousand dollars (\$903,000.00) and as payment for alleged personal injury (including alleged emotional distress) in the amount of nine million, three-hundred thirty-one thousand, nine-hundred fifty dollars (\$9,331,950.00). Payments described in this section are not compensation for alleged lost wages. Mr. Alston understands that Brookline will file appropriate form 1099s for this payment and will provide appropriate forms 1099s to Mr. Alston and to his attorney, Brooks Ames.

3) The above allocations and methods for payment shall not in any way be construed as a limitation on the scope of the releases set forth below. If any taxing authority determines the any portion of the Settlement Amount described in Paragraph 11(2) to be taxable as wages, Mr. Alston is solely responsible for the payment of all such taxes, including legally mandated employer contributions such as social security contribution, etcetera. Mr. Alston further agrees to fully indemnify Brookline if any taxing or other lawfully mandated authority seeks payment of additional taxes or related penalties from Brookline.

12. Mr. Alston acknowledges and agrees that this Agreement provides Mr. Alston with payments and/or benefits that are not due to Mr. Alston now, or in the future. Mr. Alston acknowledges and agrees that, as of the date of his resignation, as set forth in Paragraph 10, Mr.

Alston shall not be due any further wages, compensation, salary, commissions, profit sharing, overtime, bonuses, vacation pay, holiday pay, reporting pay, compensatory/comp time, sick pay, severance pay, expense reimbursements, incentive pay, stock, stock options, retirement benefits, or other payments or benefits whatsoever from Brookline. Mr. Alston further acknowledges that, by virtue of this Agreement, Mr. Alston will have received all non-monetary benefits to which Mr. Alston may be entitled, including any leaves of absence, meal breaks, reinstatement, reasonable accommodation, insurance coverage, or other rights or benefits.

13. Release: Mr. Alston completely remises, releases and forever discharges the Released Parties from all claims, losses, damages, liabilities, obligations, rights, remedies and causes of action of every kind, nature and character, known or unknown (“Claims”), that Mr. Alston may now have, or has ever had, against the Released Parties arising from, connected with or related to the dealings between Mr. Alston and the Released Parties up to and including the date Mr. Alston signs this Agreement. This Release applies to all Released Parties in any capacity, including their official, personal and individual capacities. Without limiting the generality of the foregoing, Mr. Alston also expressly and specifically releases the Released Parties from all Claims that have been or could have been asserted as a result of Mr. Alston’s employment with Brookline, separation from employment, or other status with Brookline, including but not limited to:

- a. All Claims that were or could have been asserted in the Litigation or in any other lawsuits against the Released Parties;
- b. Claims relating to compensation, salary, overtime, minimum wage, meal breaks, prevailing wage, deductions, reporting pay, unpaid wages, salary, commissions, bonuses, vacation pay, compensatory time, sick pay, holiday pay, severance pay, expense reimbursements, leaves, retaliation, multiple damages or attorneys’ fees, including but not limited to Claims conferred by or arising under M.G.L. c. 149, §§148 et seq. (also known as the Massachusetts Wage Act), M.G.L. c. 151 (also known as the Massachusetts Minimum Fair Wage Law), the Fair Labor Standards Act or any other state, federal or local wage and hour laws;
- c. Claims relating to any contracts of employment, express or implied;
- d. Claims for “wrongful discharge,” breach of privacy, defamation, intentional infliction of emotional distress, assault, battery, negligence, or any other tort or claim under common law;
- e. Claims for attorneys’ fees and costs;
- f. Claims relating to harassment, discrimination, retaliation, and/or civil rights; and
- g. Claims otherwise conferred by or arising under any federal, state, and/or municipal law and/or regulation including but not limited to the Title VII of the Civil Rights Act, the Equal Pay Act, 42 U.S.C. §1981, 42 U.S.C. § 1983, the Rehabilitation Act, the Age Discrimination in Employment Act (“ADEA”), the Older Workers Benefit Protection Act

("OWBPA"), the Americans with Disabilities Act, the Family and Medical Leave Act, the Families First Coronavirus Response Act as amended, and Economic Security (CARES) Act, including claims for violation of the Emergency Paid Sick Leave Act and/or the Emergency Family Medical Leave Expansion Act, the Worker Adjustment and Retraining Notification Act, the Massachusetts Fair Employment Practices Act, the Massachusetts Equal Rights Law, the Massachusetts Equal Pay Act ("MEPA"), the Massachusetts Paid Family and Medical Leave ("PFML") law, the Massachusetts COVID-19 Emergency Paid Sick Leave Law, and similar provisions under the laws and/or regulations of the Commonwealth of Massachusetts, or any other state or municipality, all as amended.

14. Covenant not to sue: Mr. Alston agrees that Mr. Alston will not file or cause to be filed any claims, actions, lawsuits or legal proceedings against the Released Parties involving any matter occurring up to and including the date Mr. Alston signs this Agreement or involving any continuing effects of any acts or practices that may have arisen or occurred before such date. This covenant not to sue does not apply to the filing of administrative claims under federal or state law, nor does it in any way bar or prohibit the contact or cooperation with or participation in any proceeding before a federal or state administrative agency, provided, however, that Mr. Alston waives any right to recover monetary damages or other personal relief in connection with any such proceeding. This covenant not to sue also does not preclude a court action, claim or other legal proceeding to challenge the validity of the release of ADEA and OWBPA claims provided for in this Agreement. If Mr. Alston files a claim, action, lawsuit, or legal proceeding in violation of this section Mr. Alston shall be obligated to return all consideration received under this Agreement and will be liable for attorneys' fees and costs incurred by Brookline or its insurer(s) in defending such claim; provided, however, that if Mr. Alston files a claim pursuant to the ADEA or OWBPA, Mr. Alston shall not be required to tender back five thousand dollars (\$5,000) of the consideration, which amount the parties agree is allocated as consideration for Mr. Alston's release of claims under the ADEA or OWBPA.

15. Mr. Alston agrees that, on or after his resignation from employment with the Town of Brookline and following the dismissal of the Litigation he shall execute and immediately deliver to Brookline a Supplemental Release of All Claims in the form attached hereto as Exhibit C.

16. This Agreement is intended to comply with the Older Workers' Benefit Protection Act of 1990 ("OWBPA") with regard to Mr. Alston's waiver of rights under the Age Discrimination in Employment Act of 1967 ("ADEA").

- a. Mr. Alston is specifically waiving rights and claims under the ADEA.
- b. The waiver of rights under the ADEA does not extend to any rights or claims arising after the date this Agreement is signed by Mr. Alston.
- c. Mr. Alston is receiving consideration in addition to what Mr. Alston would otherwise be entitled.
- d. Mr. Alston acknowledges that Mr. Alston has been advised to consult with an attorney before signing this Agreement.

e. Mr. Alston acknowledges that Mr. Alston has had a period of twenty-one (21) days to consider the decision to enter into the waiver of age discrimination claims provided for in this Agreement. In the event that Mr. Alston executes this Agreement within less than twenty-one (21) days of Mr. Alston's receipt of it, Mr. Alston acknowledges that such decision was entirely voluntary, and that Mr. Alston had the opportunity to consider this Agreement for the entire twenty-one (21) day period. By executing this Agreement prior to the expiration of said twenty-one (21) day period, Mr. Alston hereby waives any or all of the remainder of said twenty-one (21) day period. Mr. Alston agrees that any changes made to this Agreement after Mr. Alston's initial receipt of it, whether material or immaterial, shall not restart the running of this twenty-one (21) day period.

f. It is understood that Mr. Alston may revoke Mr. Alston's approval of the waiver of age discrimination claims provided for in this Agreement in the seven (7) day period following the date on which Mr. Alston signs the Agreement. Notice of revocation must be in writing, and received by Brookline within the seven (7) day period. The waiver of age discrimination claims provided for in this Agreement shall not become effective or enforceable until the eighth calendar day after the date it is signed by Mr. Alston.

17. This Agreement may be executed in counterparts. A facsimile, PDF, or electronic signature shall be acceptable as an original.

18. This Agreement shall be deemed to have been executed and delivered within the Commonwealth of Massachusetts and the rights and obligations of the parties to this Agreement shall be construed and enforced in accordance with and governed by the laws of the Commonwealth of Massachusetts.

19. This Agreement constitutes the entire agreement among the parties with respect to the subject matter of the Agreement and supersedes all prior and contemporaneous oral and written agreements and discussions.

20. If a court of competent jurisdiction finds any clause or provision of this Agreement to be unenforceable, the remainder of this Agreement will remain in full force and will not be affected.

21. This Agreement may be amended only by an instrument in writing signed by all parties to this Agreement.

22. Mr. Alston acknowledges that Brookline may have a legal obligation to report the terms of this Agreement to the federal government pursuant to Section 111 of the Medicare, Medicaid and SCHIP Extension Act of 2007 (MMSEA). Mr. Alston represents and warrants that no Medicare or Medicaid liens, claims, demands, subrogated interests, or causes of action of any nature or character exist or have been asserted arising from or related to Mr. Alston's employment with Brookline or arising from any Claim released above. Mr. Alston further agrees that Mr. Alston and not the Released Parties shall be responsible for satisfying all such liens, claims, demands, subrogated interests, or cause of action that may exist or have been asserted or that may in the future exist or be asserted.

23. This Agreement has been entered into for the purpose of avoiding controversy and litigation between Mr. Alston and Brookline. Neither the fact that this Agreement was signed nor the compliance with the terms of this Agreement will be considered as an admission by Brookline of any acts of wrongdoing of any kind whatsoever, nor shall it be deemed to render Mr. Alston the prevailing party in any legal or administrative action.

**MR. ALSTON AGREES THAT MR. ALSTON HAS CAREFULLY READ THIS AGREEMENT, THAT MR. ALSTON HAS BEEN GIVEN AMPLE OPPORTUNITY TO CONSULT WITH LEGAL COUNSEL, THAT MR. ALSTON IS RECEIVING SUBSTANTIAL BENEFITS AS A RESULT OF THIS AGREEMENT, AND THAT MR. ALSTON IS VOLUNTARILY SIGNING BY MR. ALSTON'S OWN FREE ACT. MR. ALSTON FURTHER AGREES THAT MR. ALSTON DOES NOT RELY ON ANY REPRESENTATION, PROMISE OR INDUCEMENT MADE BY BROOKLINE OR ANY OTHER PERSON OR ENTITY WITH THE EXCEPTION OF THE CONSIDERATION SET FORTH IN THIS AGREEMENT. THIS AGREEMENT CONSTITUTES A VOLUNTARY AND KNOWING WAIVER OF RIGHTS UNDER THE LAWS AND STATUTES REFERENCED ABOVE.**

Brookline and Mr. Alston have signed this Agreement under seal on the dates indicated below.

**GERALD ALSTON**

**TOWN OF BROOKLINE**



Name: Heather Hamilton

Title: Chair, Select Board

Dated: \_\_\_\_\_

Dated: 9/14/2021

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**MR. ALSTON AGREES THAT MR. ALSTON HAS CAREFULLY READ THIS AGREEMENT, THAT MR. ALSTON HAS BEEN GIVEN AMPLE OPPORTUNITY TO CONSULT WITH LEGAL COUNSEL, THAT MR. ALSTON IS RECEIVING SUBSTANTIAL BENEFITS AS A RESULT OF THIS AGREEMENT, AND THAT MR. ALSTON IS VOLUNTARILY SIGNING BY MR. ALSTON'S OWN FREE ACT. MR. ALSTON FURTHER AGREES THAT MR. ALSTON DOES NOT RELY ON ANY REPRESENTATION, PROMISE OR INDUCEMENT MADE BY BROOKLINE OR ANY OTHER PERSON OR ENTITY WITH THE EXCEPTION OF THE CONSIDERATION SET FORTH IN THIS AGREEMENT. THIS AGREEMENT CONSTITUTES A VOLUNTARY AND KNOWING WAIVER OF RIGHTS UNDER THE LAWS AND STATUTES REFERENCED ABOVE.**

Brookline and Mr. Alston have signed this Agreement under seal on the dates indicated below.

**GERALD ALSTON**



**TOWN OF BROOKLINE**

\_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Dated: \_\_\_\_\_

9/7/21  
Sept. 7, 2021

Dated: \_\_\_\_\_

**EXHIBIT A**

**SPECIAL TOWN MEETING WARRANT ARTICLE**

**Town of Brookline, Massachusetts**  
Warrant Article, Explanation, and Motion

Article

To see whether the Town shall vote to raise and appropriate, transfer from available funds, or authorize the Town Treasurer with the approval of the Select Board, to borrow by the issuance of bonds or notes under the provisions of G.L. c. 44, §7(3), or any other authority, the sum of \$11,000,000, to pay costs of a settlement in the matter of Gerald Alston v. the Town of Brookline, et al, United States District Court No. 1:15-cv-13987-GAO pertaining to Gerald Alston's employment as a Brookline Firefighter and claims he asserted against the Town and Town officials, including the payment of all costs incidental or related thereto, said funds to be expended under the direction of the Select Board, and further, that any premium received by the Town upon the sale of any bonds or notes approved by this vote, less any such premium applied to the payment of the costs of issuance of such bonds or notes, may be applied to the payment of costs approved by this vote in accordance with G.L. c. 44, §20, thereby reducing the amount authorized to be borrowed to pay such costs by a like amount; or take any other action relative thereto.

Explanation

This article seeks Town Meeting authorization to raise and appropriate, transfer from available funds, or authorize the Town Treasurer to borrow \$11,000,000 to settle all claims asserted by Mr. Gerald Alston against the Town of Brookline, Town officials, and related parties.

Submission of this article follows a Settlement Agreement entered on September 14, 2021 between the Town and Mr. Alston to resolve the ongoing litigation currently in the U.S. District Court for the District of Massachusetts (the "Court") captioned Gerald Alston v. Town of Brookline, Massachusetts et al., Docket No. 1:15-cv-13987-GAO (the "Litigation") in which Mr. Alston has asserted claims arising from his employment as a Brookline firefighter and his termination from that position.

The Massachusetts Civil Service Commission reinstated Mr. Alston to his position as a Brookline firefighter and the Massachusetts Supreme Judicial Court has upheld Mr. Alston's reinstatement. Following decisions from the U.S. Court of Appeals for the First Circuit, Mr. Alston's remaining claims in the Litigation are against Brookline and against five town officials (the "Individual Defendants").

The Parties agree that it is in their mutual interest to resolve the Litigation and to fully and finally resolve any claims Mr. Alston may have against Brookline, the Brookline Select Board, and/or the Individual Defendants named in the Litigation. The Town and Mr. Alston have therefore

entered a universal settlement agreement that includes a settlement payment to Mr. Alston of \$11 million.

Should Town Meeting fail to authorize funding for the agreed-upon settlement, the parties will resume litigation, which carries potential financial and reputational risk for the Town, and which will impose costs on the Town.

Should Town Meeting vote favorably on this Warrant Article, this matter will be concluded.

We believe a settlement, even of this magnitude, is the right thing to do and in the best interest of the Town, and we urge all Town Meeting Members to support funding it.

Motion

That the Town appropriates \$11,000,000 to pay costs of a settlement in the matter of Gerald Alston v. the Town of Brookline, et al, United States District Court No. 1:15-cv-13987-GAO, pertaining to Gerald Alston's employment as a Brookline Firefighter and claims he asserted against the Town and Town officials, including the payment of all costs incidental or related thereto, said funds to be expended under the direction of the Select Board, and that to meet this appropriation, the Treasurer, with the approval of the Select Board is authorized to borrow said amount under and pursuant to G.L. c. 44, §7(3) or any other enabling authority, and to issue bonds or notes of the Town therefor. Any premium received by the Town upon the sale of any bonds or notes approved by this vote, less any such premium applied to the payment of the costs of issuance of such bonds or notes, may be applied to the payment of costs approved by this vote in accordance with G.L. c. 44, §20, thereby reducing the amount authorized to be borrowed to pay such costs by a like amount.

**EXHIBIT B**

**JOINT REQUEST FOR SCHEDULING CONFERENCE**

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

**GERALD ALSTON,  
Plaintiff**

**v.**

**TOWN OF BROOKLINE,  
MASSACHUSETTS, ET AL.  
Defendants.**

**C.A. No. 1:15-cv-13987-GAO**

**JOINT REQUEST FOR PRE-TRIAL STATUS CONFERENCE**

Plaintiff Gerald Alston and Defendants Town of Brookline, Massachusetts, and the Brookline Select Board (the “Requesting Parties”) hereby request a status conference pursuant to Local Rule 16.3 in order to discuss the scheduling of a trial in this matter. In support of this request, the Requesting Parties report that recent attempts at resolution of this matter have not succeeded.

Respectfully Submitted,

**TOWN OF BROOKLINE AND BROOKLINE  
SELECT BOARD,**

By their attorney,

/s/ Arielle B. Kristan

Arielle B. Kristan (BBO No. 677048)

akristan@hrwlawyers.com

HIRSCH ROBERTS WEINSTEIN LLP

24 Federal Street, 12<sup>th</sup> Floor

Boston, Massachusetts 02110

Tel. (617) 348-4300 / Fax (617) 348-4343

**GERALD ALSTON,**

By his attorney,

/s/ Brooks A. Ames

Brooks A. Ames (BBO #641192)

BROOKLINE JUSTICE LEAGUE, INC.

1309 Beacon Street, 3<sup>rd</sup> Floor

Brookline, MA 02446

Brooksames1@gmail.com

(617) 763-5526

## EXHIBIT C

### SUPPLEMENTAL RELEASE OF ALL CLAIMS

This Supplemental Release of All Claims (“Supplemental Release”) is being executed by Gerald Alston (“Mr. Alston”) on or after Mr. Alston’s resignation from employment with the Town of Brookline (“Brookline”) and the dismissal of the litigation captioned *Gerald Alston v. Town of Brookline, Massachusetts et al.*, Docket No. 1:15-cv-13987-GAO (the “Litigation”).

As used below, the term “Released Parties” refers to (1) Brookline and the Brookline Select Board, and any past, present or future officers, employees, independent contractors, legal representatives, elected representatives, attorneys, successors, assigns, members, trustees, benefit plans and their administrators and fiduciaries, insurers, and reinsurers of Brookline and the Brookline Select Board, and (2) the Individual Defendants and their agents, legal representatives, attorneys, insurers, reinsurers and fiduciaries, and (3) Betsy Dewitt, Ken Goldstein, Jesse Mermell, Sandra DeBow, Stanley Spiegel, Joslin Murphy, Local 950, International Association of Firefighters, and their agents, legal representatives, attorneys, insurers, reinsurers and fiduciaries. All Released Parties shall be released from liability in both their individual and official capacities, where applicable.

Release: Mr. Alston completely remises, releases and forever discharges the Released Parties from all claims, losses, damages, liabilities, obligations, rights, remedies and causes of action of every kind, nature and character, known or unknown (“Claims”), that Mr. Alston may now have, or has ever had, against the Released Parties arising from, connected with or related to the dealings between Mr. Alston and the Released Parties up to and including the date Mr. Alston signs this Release. This Release applies to all Released Parties in any capacity, including their official, personal and individual capacities. Without limiting the generality of the foregoing, Mr. Alston also expressly and specifically releases the Released Parties from all Claims that have been or could have been asserted as a result of Mr. Alston’s employment with Brookline, separation from employment, or other status with Brookline, including but not limited to:

- a. All Claims that were or could have been asserted in the Litigation or in any other lawsuits against the Released Parties;
- b. Claims relating to compensation, salary, overtime, minimum wage, meal breaks, prevailing wage, deductions, reporting pay, unpaid wages, salary, commissions, bonuses, vacation pay, compensatory time, sick pay, holiday pay, severance pay, expense reimbursements, leaves, retaliation, multiple damages or attorneys’ fees, including but not limited to Claims conferred by or arising under M.G.L. c. 149, §§148 et seq. (also known as the Massachusetts Wage Act), M.G.L. c. 151 (also known as the Massachusetts Minimum Fair Wage Law), the Fair Labor Standards Act or any other state, federal or local wage and hour laws;
- c. Claims relating to any contracts of employment, express or implied;

- d. Claims for “wrongful discharge,” breach of privacy, defamation, or any other tort or under common law;
- e. Claims for attorneys’ fees and costs;
- f. Claims relating to harassment, discrimination, retaliation, and/or civil rights; and
- g. Claims otherwise conferred by or arising under any federal, state, and/or municipal law and/or regulation including but not limited to the Title VII of the Civil Rights Act, the Equal Pay Act, 42 U.S.C. §1981, 42 U.S.C. § 1983, the Rehabilitation Act, the Age Discrimination in Employment Act (“ADEA”), the Older Workers Benefit Protection Act (“OWBPA”), the Americans with Disabilities Act, the Family and Medical Leave Act, the Families First Coronavirus Response Act as amended, and Economic Security (CARES) Act, including claims for violation of the Emergency Paid Sick Leave Act and/or the Emergency Family Medical Leave Expansion Act, the Worker Adjustment and Retraining Notification Act, the Massachusetts Fair Employment Practices Act, the Massachusetts Equal Rights Law, the Massachusetts Equal Pay Act (“MEPA”), the Massachusetts Paid Family and Medical Leave (“PFML”) law, the Massachusetts COVID-19 Emergency Paid Sick Leave Law, and similar provisions under the laws and/or regulations of the Commonwealth of Massachusetts, or any other state or municipality, all as amended.

This Supplemental Release is intended to comply with the Older Workers’ Benefit Protection Act of 1990 (“OWBPA”) with regard to Mr. Alston’s waiver of rights under the Age Discrimination in Employment Act of 1967 (“ADEA”).

- h. Mr. Alston is specifically waiving rights and claims under the ADEA.
- i. The waiver of rights under the ADEA does not extend to any rights or claims arising after the date this Supplemental Release is signed by Mr. Alston.
- j. Mr. Alston has received consideration in addition to what Mr. Alston would otherwise be entitled.
- k. Mr. Alston acknowledges that Mr. Alston was advised to consult with an attorney before signing this Supplemental Release.
- l. Mr. Alston acknowledges that Mr. Alston has had a period of twenty-one (21) days to consider the decision to sign this Supplemental Release. In the event that Mr. Alston executes this Supplemental Release within less than twenty-one (21) days of Mr. Alston’s receipt of it, Mr. Alston acknowledges that such decision was entirely voluntary, and that Mr. Alston had the opportunity to consider this Supplemental Release for the entire twenty-one (21) day period. By executing this Supplemental Release prior to the expiration of said twenty-one (21) day period, Mr. Alston hereby waives any or all of the remainder of said twenty-one (21) day period. Mr. Alston agrees that any changes made to this Supplemental Release after Mr. Alston’s initial receipt of it, whether material or immaterial, shall not restart the running of this twenty-one (21) day period.

m. It is understood that Mr. Alston may revoke Mr. Alston's approval of the waiver of age discrimination claims provided for in this Supplemental Release in the seven (7) day period following the date on which Mr. Alston signs the Supplemental Release. Notice of revocation must be in writing and received by Brookline within the seven (7) day period. The waiver of age discrimination claims provided for in this Supplemental Release shall not become effective or enforceable until the eighth calendar day after the date it is signed by Mr. Alston.

**MR. ALSTON AGREES THAT MR. ALSTON HAS CAREFULLY READ THIS RELEASE, THAT MR. ALSTON HAS BEEN GIVEN AMPLE OPPORTUNITY TO CONSULT WITH LEGAL COUNSEL, THAT MR. ALSTON IS RECEIVING SUBSTANTIAL BENEFITS AS A RESULT OF THE SETTLEMENT AGREEMENT TO WHICH THIS RELEASE IS AN EXHIBIT (THE "AGREEMENT"), AND THAT MR. ALSTON IS VOLUNTARILY SIGNING BY MR. ALSTON'S OWN FREE ACT. MR. ALSTON FURTHER AGREES THAT MR. ALSTON DOES NOT RELY ON ANY REPRESENTATION, PROMISE OR INDUCEMENT MADE BY BROOKLINE OR ANY OTHER PERSON OR ENTITY WITH THE EXCEPTION OF THE CONSIDERATION SET FORTH IN THE AGREEMENT. THIS RELEASE CONSTITUTES A VOLUNTARY AND KNOWING WAIVER OF RIGHTS UNDER THE LAWS AND STATUTES REFERENCED ABOVE.**

**GERALD ALSTON:** \_\_\_\_\_

**Date:** \_\_\_\_\_