

Town of Concord, Massachusetts
CONTRACT EMPLOYMENT AGREEMENT
for
Chief of Police

This Agreement is made this 1st day of July 2023, pursuant to Massachusetts General Laws, Chapter 41, Section 108O, by and between the TOWN of CONCORD, a municipal corporation organized and existing under the laws of the Commonwealth of Massachusetts, acting through its Town Manager and Chief Executive Officer Kerry A. Lafleur (hereinafter the "TOWN"), and Thomas M. Mulcahy of Sudbury, Massachusetts (hereinafter the "EMPLOYEE" or "CHIEF" or "CHIEF OF POLICE").

WHEREAS, the TOWN wishes to secure the services of the CHIEF in the administration of the Concord Police Department ("Department"); and

WHEREAS, the CHIEF is willing to perform the duties of the position of CHIEF OF POLICE according to the terms and conditions of this Agreement and in accordance with Massachusetts law and applicable regulations;

NOW, THEREFORE, the TOWN and the CHIEF hereby agree that the following terms and conditions shall govern the CHIEF'S employment as CHIEF OF POLICE for the Town for the duration of this Agreement.

1. DUTIES

- a) The TOWN agrees to employ, and the EMPLOYEE agrees to accept employment with the TOWN in the position of Chief of Police of the Concord Police Department for the duration of this Agreement pursuant to the authority granted to the TOWN in accordance with the provisions of the Town Charter. The EMPLOYEE agrees to faithfully and dutifully perform the duties of the position of Chief of Police, which shall include, but not be limited to, the following:
 - i. Combat crime and maintain public safety and good order in the Town of Concord;
 - ii. Supervision of the daily operations of the Department;
 - iii. Supervision and assignment of officers of the Department;
 - iv. Supervision and assignment of all other departmental personnel, including secretarial and dispatch personnel;
 - v. Preparation and submission of the annual police budget;
 - vi. Submission of oral and written reports as directed by the Town Manager, and attendance at periodic Town meetings as may be requested, to ensure proper communication between the Town and the Department;
 - vii. Responsibility for all departmental expenditures, as well as the receipt of funds on behalf of the Town Treasurer and all property in custody of the Department;
 - viii. Supervision, maintenance, and control of all department equipment and vehicles belonging to, or used by the Department;

- ix. Establishing and ensuring compliance of weapons, ammunition, uniform, equipment, and vehicle specification policies for the Department;
 - x. Supervision and control of all training programs for department personnel and the assignment of personnel to such programs;
 - xi. Maintaining the discipline of the Department personnel; the issuing of orders, rules, regulations, policies and procedures; and the assignment of shifts and duties of all departmental personnel;
 - xii. Being available for hearings before the Town at which the Police Department or the Chief is required to appear, and attend all Town Meetings;
 - xiii. Being responsible for planning, organizing, directing, staffing, and coordinating police operations;
 - xiv. Being responsible for communications with the public, including the media, on matters relating to crime, police operations, and departmental policies;
 - xv. Maintain the policies and procedures manual for the Department;
 - xvi. Apply for alternative sources of funding (grants, etc.) and implement and administer awarded programs as necessary or appropriate, and report on expenditures as required;
 - xvii. Recommend employee appointments, suspensions, and terminations to the Town Manager; appraise individual performance of department personnel; address employee complaints; and resolve personnel problems;
 - xviii. Perform police officer duties as are necessary for public safety; and
 - xix. Perform other such duties as are consistent with the duties of a Police Chief and as may be required in accordance with the direction of the Town Manager, state and federal law, the Town's By-laws, the Police Department Rules and Regulations, and the Town Charter.
- b) The EMPLOYEE recognizes the authority of the Town Manager under the Town Charter, and the Town Manager shall assign day-to-day oversight of the Concord Police Department to the EMPLOYEE subject to the Town Manager's general supervision. Appointment, promotion, and suspension/termination authority shall remain with the Town Manager.
- c) The TOWN and the EMPLOYEE agree that by virtue of this Agreement, the EMPLOYEE is not subject to the Town's Personnel Bylaw and related policies. However, by mutual agreement, the EMPLOYEE shall be granted all of the rights normally afforded to management personnel within said documents unless otherwise specifically modified, addressed or changed by the terms of this Agreement.
- d) The EMPLOYEE will normally work a minimum of forty (40) hours per work week. The EMPLOYEE agrees to devote that amount of time and energy that is reasonably necessary to perform faithfully the duties of Chief of Police under this Agreement.

2. DURATION OF AGREEMENT

- a) The parties agree that the appointment of the EMPLOYEE as Chief of Police shall be for a three (3) year term from July 1, 2023 through June 30, 2026. The TOWN reserves the right to terminate the EMPLOYEE from the position of Police Chief during the term of this Agreement in accordance with the provisions of this Agreement.
- b) The EMPLOYEE may request an extension of this Agreement for additional three (3)- year terms, and the Agreement may be extended upon mutual agreement of the parties, including agreement on the terms for such extension.
- c) If the Town elects not to extend this Agreement, the Town agrees to provide the EMPLOYEE six (6) months prior written notice of such non-renewal. In the event the Town fails to give six (6) months' notice of non-renewal prior to the expiration of the Agreement, the term of the Agreement shall be extended so as to provide the EMPLOYEE six (6) months' notice.
- d) If the Town offers to extend the Agreement, the EMPLOYEE shall notify the Town in writing of his intention to accept or reject such extension within two (2) weeks of receipt of notice of same.
- e) A non-renewal of this Agreement and/or non-reappointment of the EMPLOYEE shall not constitute a termination of the EMPLOYEE but rather a conclusion of the Agreement and the EMPLOYEE'S appointment as Chief of Police. Such decision is not subject to appeal or other challenge.

3. SALARY

- a) The Town shall pay the EMPLOYEE a weekly base salary of \$3,281.19 (\$170,622 divided by 52 weeks) plus an educational incentive of twenty-five percent reflecting that the EMPLOYEE holds a Master's Degree in Criminal Justice, and \$600 longevity pay reflecting more than twenty years of service with the Town.
- b) The EMPLOYEE shall be eligible for annual salary increases based on his prior year's performance and consistent with increases available to other senior managers.
- c) The EMPLOYEE shall not be entitled to overtime or compensatory time. The position of Police Chief is an exempt position under the Fair Labor Standards Act. The EMPLOYEE shall be eligible for longevity pay on the same basis such compensation is available to other senior managers of the Town.

4. VACATION LEAVE AND OTHER BENEFITS

- a) In recognition of the EMPLOYEE'S considerable prior experience in law enforcement, the Town agrees to provide the EMPLOYEE five (5) weeks of paid vacation leave during each year of service, accrued and payable under the same terms and conditions as other senior management employees of the Town. The EMPLOYEE shall also be entitled to such personal days, holiday pay, bereavement leave, and other benefits available to, and under the same terms and conditions as, the Town's other management staff. The Town shall provide

at no cost to the employee uniforms and equipment commensurate with that provided to other members of the Concord Police Department. The Town agrees not to reduce any benefit for the EMPLOYEE during the term of this agreement unless such reduction is applied to all other senior management staff of the Town.

- b) In recognition of the time demands placed on the EMPLOYEE, the Town agrees to buy back up to five (5) days of accrued vacation from the EMPLOYEE on an annual basis, consistent with the Town's Personnel Policy and Procedure #13 governing administration of vacation leave. All vacation days are to be paid based on the annual base salary and shall be added to base pay as regular compensation when paid.
- c) The EMPLOYEE shall be eligible to participate in the Town's group health, dental, life and long-term disability insurance programs under the same terms and conditions as other management employees of the Town.
- d) The Town agrees to budget and pay an appropriate amount for the professional dues and subscription of the Chief of Police for his continued participation in State and national professional organizations, including but not limited to the International Association of Chiefs of Police, the Police Executive Research Forum, the New England Association of Chiefs of Police, the Massachusetts Chiefs of Police Association, and the applicable regional Massachusetts Police Chiefs Association.

5. INSURANCE AND INDEMNIFICATION

The Town agrees to provide Police Professional Liability insurance with liability limits of at least one million dollars. Moreover, it is noted that the Town has voted to accept section 13 of Chapter 258 of the Massachusetts General Laws which provides that the Town shall indemnify and save harmless municipal officers, elected or appointed, from personal financial loss and expense including reasonable legal fees and costs in an amount not to exceed one million dollars arising out of any claim, demand, suit or judgment by reason of any official act or omission. This provision shall survive any termination of this Agreement with respect to act or omissions while serving as the Chief.

6. AUTOMOBILE

The duties of the Chief of Police require that the EMPLOYEE have exclusive and unrestricted use of a police vehicle at all times during his employment with the Town. The Town shall provide a police vehicle, outfitted with emergency equipment at the Town's expense for use by the EMPLOYEE. Said vehicle use is provided incident to the law enforcement duties of the Chief enabling the EMPLOYEE to report directly to crime scenes and emergency situations. The Town shall be responsible for paying for liability, property damage, and comprehensive insurance and for the purchase, operation, maintenance, repair, and regular replacement of said vehicle. The EMPLOYEE shall be permitted to use said vehicle for personal reasons, and during off-duty hours, since the EMPLOYEE is "on call" in the event of an emergency, provided, however, the vehicle is not used for vacations or recreational trips. The EMPLOYEE shall be

exempt from being assessed a vehicle fringe benefit value pursuant to Internal Revenue Service regulations.

7. CARRYING OF GUN

The EMPLOYEE agrees to carry a gun when on duty.

8. WEARING UNIFORM

- a) The EMPLOYEE agrees to wear the appropriate uniform of the Concord Police Department from time to time, as appropriate, to establish the authority of the Chief of Police. When not wearing a uniform, the EMPLOYEE will wear appropriate professional attire.
- b) The Town shall provide the EMPLOYEE with uniforms as mutually agreed with the Town Manager as needed to meet the Town's requirements.
- c) The Town shall provide the EMPLOYEE a cleaning allowance of \$1,000 per year intended to cover the cost of cleaning uniforms and other work clothes.

9. LAW ENFORCEMENT CERTIFICATIONS

During the term of his appointment, the EMPLOYEE agrees to maintain all required certifications and licenses required to enforce law and carry a gun in Massachusetts.

10. PROFESSIONAL DEVELOPMENT

The Town wishes to support the professional development of its Police Chief and therefore agrees to allow the EMPLOYEE to attend each year, without loss of pay or paid leave time, the Massachusetts Chiefs of Police Association Conference, the FBI National Academy Associates Conference, New England Chiefs of Police Conference and the International Chiefs of Police Conference and further agrees to reimburse the EMPLOYEE for reasonable expenses related thereto. Additionally, upon prior approval by the Town Manager, the Town shall pay for the EMPLOYEE'S travel and subsistence expenses for short courses, institutes and seminars that, in the EMPLOYEE'S reasonable judgment, are necessary for professional development. All such professional development expenses are subject to the Department's budget.

11. ANNUAL PERFORMANCE REVIEW

- a) Annually, the Town Manager and EMPLOYEE shall jointly develop specific goals and objectives that are necessary for the proper operation and welfare of the Police Department and shall further jointly establish a relative priority among those various goals and objectives, said goals and objectives to be reduced to writing. They shall generally be attainable within the time limitations as specified and the annual operating and capital budgets and appropriations provided.
- b) The Town Manager shall review and evaluate the performance of the EMPLOYEE on a formal basis at least once annually under the terms and conditions of this Agreement. Said review and evaluation shall include, but not be limited to – (1) the EMPLOYEE'S progress and performance on the annual

goals and objectives as described above in this section; (2) budgetary/financial administration; (3) personnel administration; (4) supervisor/leadership; (5) staff development; (6) public relations; (7) employee and labor relations; (8) policy execution; and (9) interaction with the Town Manager as well as other governmental officials, departments, boards and committees.

- c) Such review and evaluation of performance of the EMPLOYEE shall be done in conformity with the specific performance goals, objectives and criteria established by the above method. The Town Manager shall provide the EMPLOYEE with a written evaluation report after each formal review and evaluation and shall provide the EMPLOYEE with an opportunity to discuss the review and evaluation. If the EMPLOYEE disputes any portion of the evaluation, then the EMPLOYEE shall be permitted to memorialize this dispute in writing, detailing the nature of the dispute, and such document shall be attached to and incorporated into the evaluation form, and become a part of the EMPLOYEE'S personnel file.

12. DISCIPLINE and DISCHARGE

- a) Disciplinary proceedings. It is agreed that the EMPLOYEE may be disciplined or discharged only for just cause, upon proper notice and only after a hearing conducted by the Town Manager or her designee and consistent with the terms included in this section and consistent with the terms of this section.
 - 1) The EMPLOYEE shall have the option of choosing whether any such hearing shall be closed to the public or be held as an open or public hearing.
 - 2) The term "proper notice" as it appears in this section means that written notice of the hearing must be given to the EMPLOYEE at least ten (10) business days prior to the date of the hearing and must set forth the following: (i) the date, time and location of the hearing; (ii) the reason for the hearing; (iii) the charges alleged and a summary of the evidence in support thereof; and (iv) the range of discipline considered.
 - 3) The subject matter to be presented at the hearing shall be only those charges as were specifically detailed in the written notice to the EMPLOYEE.
 - 4) During the hearing, the EMPLOYEE shall have the right to be represented by a representative of his choosing, to question, confront and cross-examine witnesses, to introduce evidence and to conduct oral arguments.
 - 5) In its decision, the Town Manager shall consider only those facts which were presented at the hearing and shall make its findings of fact based upon a preponderance of the evidence presented.

The Town Manager shall issue a written decision within thirty (30) days of the close of the hearing. If the Town Manager's designee conducts the hearing, the designee shall submit their report to the Town Manager within thirty (30)

days of the close of the hearing. The Town Manager will then render a decision in writing within seven (7) days of receipt of the designee's report.

b) Right of appeal. With respect to any such proceedings instituted under this section, the following right of appeal shall apply:

- 1) **Personnel Board.** The EMPLOYEE may appeal any discipline or discharge, to the Personnel Board pursuant to the Town of Concord Personnel Policy and Procedure #25 (Date Issued: September 11, 1992). During such appeal process, the same procedures as enumerated in Section 12(a) will apply, except with respect to the Personnel Board, and further that any such discipline, discharge, will only be upheld by a unanimous vote of the Personnel Board.

13. RESIGNATION AND TERMINATION OF AGREEMENT

The EMPLOYEE agrees to provide the Town not less than ninety days prior notice of plans to resign the position of Chief of Police during the term of this Agreement, unless the parties agree otherwise. Until the effective date of resignation, and as determined by the Town Manager, the EMPLOYEE shall continue to perform his duties and shall, if requested, cooperate with the Town in the search for his successor.

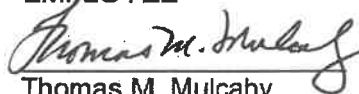
This Agreement and the EMPLOYEE'S employment may also be terminated at any time by mutual consent of the parties.

Termination of the EMPLOYEE'S employment shall terminate this Agreement.

14. GENERAL PROVISIONS

- a) No modification of the Agreement shall be valid unless it shall have been made in writing and executed by both parties. This Agreement contains all of the terms and conditions agreed upon by the parties. No other agreement, either oral or written, will be considered to exist or to bind the parties to this Agreement.
- b) This Agreement shall be construed and governed by the Laws of the Commonwealth of Massachusetts as to interpretation and performance, and by the Town Charter of the Town of Concord.
- c) If any clause or provision of this Agreement is determined to be illegal or void, the remainder of the Agreement shall not be affected thereby.
- d) The parties have set their hands to this instrument this 1st day of July, 2023.

EMPLOYEE



Thomas M. Mulcahy
Chief of Police

for the TOWN



Kerry A. Lafleur
Town Manager