



TOWN OF MONTEREY

435 Main Rd. P.O. Box 308
Monterey, MA 01245

CONTRACT

On this ____ day of _____, 2023 by and between the **TOWN OF MONTEREY** ("the Town") and **BRIAN FAHEY, CHIEF OF POLICE** ("the Chief" or "Chief of Police") enter into the following contract pursuant to Massachusetts General Laws Chapter 41, section 108O, as amended.

WHEREAS, the **TOWN OF MONTEREY** is desirous of securing the services of the Chief in the administration of the Monterey Police Department ("the Department"); and

WHEREAS, the Chief wishes to perform the duties of the position of the Chief of Police as provided herein and subject hereto;

NOW, THEREFORE, the Select Board, acting as the chief executive officer of the Town, and the Chief hereby agree that the following terms and conditions as stated herein and subject to the statutory references that shall be incorporated into this contract.

LENGTH OF CONTRACT

The initial term of this Contract shall be for a three (3) year term commencing **January 1, 2023 through December 31, 2026**. Unless either party provides written notice to the other of its intention to renegotiate and/or not to renew this contract no less than nine (9) months prior the end of its initial or any extended terms, this contract shall automatically be extended on the then applicable terms and conditions for an additional one (1) year period.

COMPENSATION

The CHIEF OF POLICE, an FLSA and Massachusetts Wage Act exempt position, shall receive the sum of **\$85,089.00** as salary for the first year of this Contract, and shall receive at least the same number of sick days, vacation days, holiday pay, uniform, cleaning allowance, and all other benefits as do exempt full-time employees of the TOWN OF MONTEREY. In addition, the provisions of M.G.L. Ch. 147, Sec. 17F (attached hereto), shall apply. The CHIEF shall receive on call pay for coverage from 12:00AM-8:00AM@ the rate of \$100.00/week for each week of coverage.

In each succeeding year of this Contract, the Chief shall receive the same salary as stated above plus: (i) any annual increase approved by the Town for Department Heads / Non-Collective Bargaining Unit

Employees; or (ii) any percentage increase received by any of the regular police officers of any rank for the Town in each of said years, whichever is greater.

The CHIEF OF POLICE agrees that because this is his primary employment he will not become employed in any position which would impact in an adverse manner upon this responsibility or which would constitute a conflict of interest or violation of the ethics laws.

DUTIES

The CHIEF shall have all the powers given to him under this Agreement or otherwise assigned to him from time-to-time by the Select Board.

His duties shall include but not be limited to the following:

1. The CHIEF shall supervise the daily operation of the Police Department.
2. The CHIEF shall supervise all departmental personnel.
3. The CHIEF shall prepare the Police Department annual budget and submit the proposed annual budget to the Select Board, the Finance Committee, and the Town Administrator.
4. The CHIEF shall give reports to the Town Administrator in writing when requested, or at a minimum quarterly (four times per year).
5. The CHIEF shall be responsible for all departmental expenditures, disbursements and collected funds in accordance with the laws and statutes of the Commonwealth of Massachusetts and the Bylaws of the TOWN OF MONTEREY.
6. The CHIEF shall supervise and be in charge of all equipment and property used by the Police Department, including vehicles belonging to the Police Department of the TOWN OF MONTEREY.
7. The CHIEF shall establish uniform specifications for the Police Department. Such uniform specifications shall specify the items that constitute the uniform, as well as the grade, quality and/or number of units of each uniform item so specified.
8. The CHIEF shall establish weapons and ammunition specifications for the Police Department. The officers of the Department shall carry only those weapons and ammunition as authorized by the CHIEF OF POLICE.
9. The CHIEF shall be in charge of all fulltime, part-time, reserve/intermittent, and special police officers in the TOWN OF MONTEREY. The CHIEF shall meet with them on a regular basis.
10. The CHIEF shall be responsible for encouraging and allowing for the professional growth, development, education and training of all other police officers on the Police Department.
11. The CHIEF shall be in charge of and responsible for the carrying out of all programs sponsored or hosted by the Police Department, including but not limited to training programs for departmental personnel, safety programs for elementary-school children, and "Neighborhood Watch" programs.
12. The CHIEF shall be responsible for and have the power to maintain the discipline of the departmental personnel, the assignment to shifts and duties of all departmental personnel, and shall have all the powers as to discipline conferred upon Chiefs of Police by statute in this Commonwealth.

13. The CHIEF shall be available for hearings before any Board of the Town at which the Police Department is required to appear. The CHIEF shall attend all Annual Town Meetings, and Special Town Meetings when necessary.
14. The CHIEF shall perform the duties of the Animal Control Officer.
15. The CHIEF shall perform the duties of the Harbor master.
14. The CHIEF shall be in charge of the Black Board Connect mass notification system.

In addition to the foregoing, the duties of the CHIEF shall also include those stated in the job description of the CHIEF attached hereto as **Exhibit A** and incorporated by reference herein.

HOURS OF WORK

1. The CHIEF agrees to devote that amount of time and energy which is reasonably necessary for the CHIEF to faithfully perform the duties of the CHIEF OF POLICE under this Contract.
2. The CHIEF agrees to work at least forty hours per week for the TOWN OF MONTEREY, including his responsibilities as the on-duty patrol officer.
3. Policing is a twenty-four hour, seven day a week operation and because of the serious nature and sensitivity of the work, it is recognized that the duties of the CHIEF OF POLICE will require that he schedule himself to work those hours necessary to accomplish the responsibilities of the position. These hours will require time outside of normal office hours, and as a result, the CHIEF OF POLICE may adjust his normal office hours accordingly as he deems appropriate such that the CHIEF reasonably determines it will least adversely impact Departmental operations.

INSURANCE

The TOWN OF MONTEREY agrees to furnish at its expense professional liability insurance for the CHIEF OF POLICE with liability limits of \$1 million per occurrence/\$3 million annual aggregate.

INDEMNIFICATION

Subject to the terms and provisions of M.G.L. c. 258, § 9 and all other applicable law, the TOWN shall defend, save harmless and indemnify the CHIEF OF POLICE against any tort, professional liability, claim or demand, or other legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of his duties as CHIEF OF POLICE, even if said claim has been made following his termination from employment, provided that the CHIEF OF POLICE acted within the scope of his duties. Subject to the provisions of said statute, the TOWN shall pay the amount of any settlement or judgment rendered thereon. The TOWN may compromise and settle any such claim or suit and will pay the amount of any settlement or judgment rendered thereon without recourse to the CHIEF OF POLICE. The TOWN shall reimburse the CHIEF OF POLICE for any reasonable attorneys' fees and costs incurred by him in connection with such claims or suits involving him in his professional capacity. This section shall survive the termination of this Agreement.

PROFESSIONAL DEVELOPMENT

1. The TOWN OF MONTEREY recognizes its obligations to the professional development of the CHIEF OF POLICE and agrees that the CHIEF OF POLICE shall be given adequate opportunities to

develop his skills and abilities as a law-enforcement administrator; accordingly, the CHIEF OF POLICE will be allowed to attend the International Association of Chiefs of Police conference, the New England Association of Chiefs of Police Conference, and the Massachusetts Chiefs of Police Association conference and will be reimbursed by the TOWN for reasonable expenses incurred while attending or traveling to the conference. The TOWN also agrees to budget and pay for travel and subsistence expenses of the CHIEF OF POLICE for short courses, institutes and seminars that, in his reasonable judgment and as approved by the Select Board, are necessary for his professional development.

2. The TOWN agrees to budget and pay for professional dues and subscriptions related to the professional growth, development, education and training of the CHIEF OF POLICE, as approved by the Select Board, including but not limited to the International Association of Chiefs of Police, the New England Association of Chiefs of Police, the Massachusetts Chiefs of Police Association, and the applicable regional Massachusetts Police Chiefs Association.

AUTOMOBILE

1. The TOWN shall provide a police vehicle for unrestricted and exclusive use by the CHIEF OF POLICE and all attendant operating and maintenance expenses and insurance. This vehicle is to be used by the CHIEF OF POLICE in connection with the performance of his duties as CHIEF OF POLICE. It shall be equipped with all emergency equipment necessary and appropriate for response by the CHIEF OF POLICE to emergency calls or calls for police assistance. The CHIEF shall be permitted to use said vehicle for personal reasons, and during off-duty hours, since the CHIEF is "on call" in the event of an emergency. The CHIEF shall be exempt from being assessed a vehicle fringe benefit value pursuant to Internal Revenue Service regulations.
2. The CHIEF OF POLICE may upon mutual agreement of both parties use his own private automobile for his use as CHIEF OF POLICE. The TOWN shall pay all allowable and appropriate expenses for such vehicle use.

DISCIPLINE AND DISCHARGE

During the term of this Agreement, the CHIEF OF POLICE may only be disciplined for just cause upon proper notice and hearing. Just cause for the purposes of this Agreement means willful breach or habitual neglect of his duties, or an act of moral turpitude, gross negligence, willful misconduct, willful misfeasance, or material breach of this Contract. The principles of progressive discipline is generally applicable, but the TOWN reserves the right to terminate the CHIEF OF POLICE's employment without the imposition of prior discipline if circumstances warrant.

The TOWN may terminate the contract with the CHIEF at any time prior to the expiration of the term of the Contract and only for just cause. The TOWN shall institute discipline or removal proceedings in the following manner:

1. Termination or discipline will be by notice and hearing as required by law. At least ten (10) business days prior to any hearing, as referred to below in subparagraph 2, the CHIEF OF POLICE shall be provided in writing with the charge(s) made against him, and the evidence which supports said charges, in such specificity so that the CHIEF OF POLICE may understand and prepare his defense.

2. After ten (10) business days following delivery and receipt of the charges and specifications, as described above in subparagraph 1, on a specific date and time and at a place specified in the written notice, the Select Board will conduct a hearing, and the CHIEF OF POLICE will be given an opportunity to respond to the charges. The hearing will be public or private at the discretion of the CHIEF OF POLICE. The subject matter to be presented at the hearing shall be only those charges as were specifically detailed in the written notice to the CHIEF OF POLICE in accordance with subparagraph 1 above. During the hearing, the CHIEF OF POLICE 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. In its decision, the Select Board 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 CHIEF OF POLICE shall be provided with a written notice of the findings and decision of the Select Board and such notice shall include the relevant facts and reasons for their findings.

3. The Chief may appeal any discipline, discharge, or non-reappointment to a single arbitrator subject to the Labor Arbitration Rules of the American Arbitration Association with the cost of this arbitration to be shared equally by both parties. The Chief may appeal any decision upheld by the arbitrator to any superior court having jurisdiction. The superior court shall have jurisdiction of any petition for writ of mandamus for reinstatement of the Chief if he alleges that he has been improperly suspended or discharged. In the event of the suspension or discharge of the Chief, if the arbitrator, or the superior court shall reverse a suspension or discharge and order that the Chief be reinstated to duty, the Chief shall be entitled to back pay, benefits, and counsel fees.

Should the CHIEF OF POLICE resign his position at any time prior to the expiration of the term of this Agreement, he shall notify the Select Board in writing. If the CHIEF OF POLICE is leaving office due to retirement, he shall provide the TOWN with one year (365 days), or a lesser amount of time as determined by the Select Board, to allow the Town to consider the appointment of a replacement. Termination by the CHIEF OF POLICE for any other reason will require a minimum of ninety (90) days' prior notice, or such lesser time as is agreed to by the Select Board.

VACATION

1. The Chief is entitled to four (4) weeks of vacation time per fiscal year, a week as defined in the Employee Manual, prorated for the duration of this contract, and subject to previous vacation accrual during his employment with the Town.
2. Upon retirement of the CHIEF OF POLICE, in addition to all other benefits, the CHIEF OF POLICE shall be entitled to be paid for unused prorated vacation time in accordance with the established policy for Town employees.
3. Prior to taking any vacation leave by the CHIEF OF POLICE, the CHIEF OF POLICE shall advise the Town Administrator of the name of the Officer-in-Charge of the Police Department for the period of the vacation leave.

BEREAVEMENT LEAVE

The Chief shall be permitted up to five (5) consecutive working days of paid leave to attend the funeral of any immediate family member. Immediate family is defined as spouse, child, mother, father, brother, sister, mother-in-law, father-in-law, grandparent, grandchild, stepparent, stepchild, or significant other, subject to request for leave procedures as outlined in the Employee Manual.

PAID DETAILS

The Chief shall be allowed to work paid details under the following conditions:

- 1. The number of detail hours shall not exceed 480 hours for each year of this contract.
- 2. Details may be worked during normal time-off hours or during vacation time.
- 3. Departmental procedure for assigning details shall be followed.

MISCELLANEOUS

- 1. The text in this Agreement constitutes the entire agreement between the parties. There are no oral or external promises, representations, or understandings between the parties regarding employment of the CHIEF OF POLICE by the TOWN.
- 2. No change or modification of this Agreement shall be valid unless it is in writing and signed by both of the parties.
- 3. Notices pursuant to this Agreement shall be given either by USPS first-class mail, certified mail, or by email, addressed as follows:

TOWN: Chair of the Select Board
 435 Main Rd.
 P.O. Box 308
 Monterey, MA 01245

CHIEF OF POLICE: Brian Fahey
 [address]

- 4. This Contract shall be construed and governed by the laws of the Commonwealth of Massachusetts.
- 5. If any provision of this Contract is declared or found to be illegal, unenforceable, or void by a court of competent jurisdiction, then both Parties shall be relieved of all obligations under that provision. The remainder of the Contract shall be enforced to the fullest extent permitted by law.

SIGNED at the Town of Monterey, Berkshire County, Massachusetts, on the day and year first above written.

MONTEREY CHIEF OF POLICE:

MONTEREY SELECT BOARD:

Brian Fahey

Justin Makuc, Chair

Susan Cooper

Scott Jensen

Part I ADMINISTRATION OF THE GOVERNMENT

Title XX PUBLIC SAFETY AND GOOD ORDER

Chapter 147 STATE AND OTHER POLICE, AND CERTAIN POWERS AND
DUTIES OF THE OFFICE OF PUBLIC SAFETY AND
INSPECTIONS OF THE DIVISION OF PROFESSIONAL
LICENSURE

Section 17F POLICE CHIEFS; WORKING ON HOLIDAYS; ADDITIONAL PAY

Section 17F. If the superintendent of police in the city of Lowell, the city marshal in the cities of Newburyport and Salem, or the chief of police in any other city or town, is on duty at any time on January the first, July the fourth or Christmas day, or the day following when any of said days occurs on Sunday, or the third Monday in February, the third Monday in April, the last Monday in May, the first Monday in September, the second or fourth Monday in October or Thanksgiving day, he shall be granted an additional day's pay.