

**EMPLOYMENT AGREEMENT
BETWEEN
THE TOWN OF UPTON AND
MICHAEL MARCHAND**

WHEREAS, it is the desire of the Town Manager (the "Manager") of the Town of Upton (the "Town"), acting on behalf of the Town, to employ the services of Michael Marchand as Operational Fire Chief (hereinafter Fire Chief), in accordance with Article 17 of the Special Town Meeting of June 12, 2008 adopting M.G.L. c 48, §42A and M.G.L. c. 41, §1080.

WHEREAS, it is the desire of the Manager to negotiate for the benefits, establish certain conditions of employment and provide a just means for terminating the Fire Chiefs services at such time as he may be unable fully to discharge his duties or when the Manager may otherwise desire to terminate his employ; and

NOW, THEREFORE, be it agreed by Michael Marchand and the Manager, that the employment relationship between the Fire Chief and the Town shall be governed in accordance with the terms and conditions of this agreement ("Agreement"):

Section 1 - Duties

- A. The Town hereby agrees to employ said Michael Marchand as Fire Chief of Upton to perform, and Michael Marchand accepts such employment and agrees to perform, the functions and duties of Fire Chief as specified by M.G.L. c 48, §42A, and to perform other legally permissible and proper duties and functions as the Manager shall from time-to-time assign.

Section 2 - Term

- A. The term of this Agreement shall be effective from October 20, 2024 and shall be in full force and effect until August 31, 2027 (the "Expiration date"). The Agreement shall be subject to Section 2D and shall be binding on the Town and the Fire Chief in each year of duration.
- B. Nothing in this Agreement shall prevent, limit, or otherwise interfere with the right of the Manager to terminate the services of the Fire Chief at any time, subject only to the provisions set forth in Section 3, of this Agreement.
- C. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the Fire Chief to resign at any time from his position with the Town, or to elect not to renew this Agreement pursuant to the provisions of Section 2.D below, subject only to the provisions set forth in Section 3B of this Agreement.
- D. If the Manager decides not to renew this Agreement beyond the Expiration Date, the Manager shall give the Fire Chief written notice at least six (6) months in advance of the Expiration date of its intent not to renew this Agreement.

Section 3 - Termination of Employment

- A. The Fire Chief may be removed for just cause following a hearing. If the Fire Chief is removed for just cause, the Fire Chief shall not be entitled to any severance pay nor any compensation beyond the date of removal. If removed without cause, the Town shall provide a severance payment equal to six (6) month's salary based on the then current annual rate of pay divided by

twelve. The Fire Chief shall continue on the Town's health insurance for a period of six (6) months from the date of separation, each party continuing to contribute their respective percentage contribution. Unless otherwise agreed by the parties, this shall be paid in one lump sum, less usual and customary withholdings. The Fire Chief shall also be compensated for accrued but unused vacation time.

- B. The CHIEF may appeal any discipline or discharge to the Select Board pursuant to Section 4 (a) of the Town Manager Act, followed by an appeal to a single arbitrator subject to the Employment Arbitration Rules of the American Arbitration Association, and then the Superior Court as provided by law.
- C. The CHIEF may appeal any discipline or discharge to the Select Board pursuant to Section 4 (a) of the Town Manager Act, followed by an appeal to a single arbitrator subject to the Employment Arbitration Rules of the American Arbitration Association, and then the Superior Court as provided by law.
- D. In the event of the suspension or discharge of the CHIEF, if an arbitrator or the court shall reverse or modify a suspension or discharge, the CHIEF shall be entitled to back pay, benefits as ordered by the arbitrator or Court.
- E. In the event the Fire Chief voluntarily resigns his position with the Town before expiration of the aforesaid term of his employment, then the Fire Chief shall give the Town six (6) weeks' notice in advance unless the parties otherwise agree. During these six (6) weeks' notices period, the Fire Chief may not take vacation leave. In the event the Fire Chief voluntarily resigns, without having been requested to do so by the Manager, he shall not be eligible for severance benefits set forth in Section 3, Paragraph A, except for the lump sum payment in lieu of accumulated vacation leave.
- F. If the Chief dies during the term of his employment, the Town shall pay to the Chiefs estate all the compensation which would otherwise be payable to the Chief up to the date of the Chiefs death, including, but not limited to, payment for any accrued, unused vacation leave days

Section 4 - Salary/Benefits

- A. Effective July 1, 2025, the Town agrees to pay the Fire Chief for his services pursuant to this Agreement an annual salary of One-Hundred and Five Thousand Five Hundred dollars (\$105,500), payable in weekly installments. In each succeeding year of this Contract, the Fire Chief shall receive the same cost of living adjustment as provided to all other non-union employees.
- B. The Manager agrees to annually review the base salary of the Fire Chief and make adjustments that the Manager deems appropriate, based on market conditions, the financial condition of the Town, and the Fire Chiefs performance relative to established goals. Each year the Town Manager may recommend a merit increase of \$2,000 to the Fire Chiefs base salary upon the satisfactory performance review of annual department goals.
- C. The Fire Chief will pay the same percentage contribution towards health care premiums as is required of other non-union employees of the Town (presently 25%), as the same may be adjusted from time to time. If the Chief waives the Town health insurance coverage, the Town agrees to pay the Chief \$3,000.00 for waiving the family health insurance plan coverage. The

Town will make the above payment at a rate of \$250.00/month on or about the last pay period in each month that the employee waives the health insurance plan.

- D. The Chief shall receive an annual clothing allowance of \$1,0000.
- E. As a sworn fire officer, the Chief shall be entitled to injured-on-duty benefits as provided in Chapter 41, Section 111F of the Massachusetts General Laws.
- F. The Fire Chief shall be entitled to a longevity payment equal to the rate of payment for time in service as all non-union staff per the Town of Upton Personnel Policy and Procedures Manual. The Fire Chiefs years of part time service, commencing September 23, 2021, shall be included in his calculation of time in service for the purpose of longevity.

Section 5 - Automobile

- A. The Fire Chief may have use of a Town automobile for in State travel, unmarked and appropriate for Fire/EMS service use by the Chief. The Town shall be responsible for paying insurance for liability, property damage, comprehensive damage, and costs associated with operation, maintenance, repair, fuel, and regular replacement. The vehicle may be used in State for "de minimis" personal reasons, since the Chief is "on-call" in the event of emergency. Said vehicle is to be used by the Chief in connection with the performance of his duties as Chief and for his professional growth and development

Section 6 - Authorized Leave

- A. The Fire Chief shall accrue and have credited to his account sick leave at the same rate as other non-union employees of the Town. Sick leave buy-back provisions shall apply to the same extent that they apply to other non-union employees of the Town.
- B. The Fire Chief shall accrue on a monthly basis, and have credited to his account, vacation leave at an annual rate of five (5) - weeks per year. Up to ten (10) days unused vacation leave may be carried over from year to year on July 1st during the term of this Agreement as approved by the Manager.
- C. It is recognized that the Fire Chief must devote a great deal of time outside the normal office hours on business for the Town and needs to be available twenty- four (24) hours a day including weekend coverage; and to that end the Fire Chief shall be allowed to establish an appropriate work schedule based on the seven (7) day work week of the Fire - EMS Department.

Section 7- Expenses

- A. Subject to Town Meeting appropriation, the Town agrees to budget and pay for certifications, professional dues and subscriptions of the Fire Chief necessary for his participation in national, state, regional and local associations and organizations, as is necessary and desirable for his continued professional development and for the good of the Town. Subject to Town Meeting appropriation, the Town also agrees to budget and pay for reasonable travel, tuition and subsistence expenses for the Fire Chief for professional and official travel, meetings and occasions required by the duties of his office or for the professional development and education of the Fire Chief, said expenditures to be subject to the approval of the Manager.

Section 8 - Performance Evaluation

- A. The Manager or his/her designee shall review and evaluate the Fire Chief at least once annually during the term of this Agreement. This evaluation shall be based on goals and objectives developed jointly by the Manager and Fire Chief. Further, the Manager may provide the Fire Chief with a summary written statement of the findings of the Manager and provide an adequate opportunity for the Fire Chief to discuss his evaluation with the Manager.
- B. Annually, the Manager, in conjunction with the Fire Chief, shall define such goals and objectives which they determine necessary for the proper operation of the Town and in the attainment of the Manager's policy objectives and shall further establish a relative priority among those various goals and objectives, said goals and objectives to be reduced to writing.

Section 9 - Indemnification

- A. The Town shall defend, save harmless and indemnify the Fire Chief against any tort, professional liability, civil 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 Fire Chief, even if said claim has been made following his termination from employment, provided that the Fire Chief acted within the scope of his duties. 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 Fire Chief.
- B. The Town shall reimburse the Fire Chief for any attorneys' fees and costs incurred by the Fire Chief in connection with such claims or suits brought by third parties involving the Fire Chief in his professional capacity.
- C. This section shall survive the termination of this Agreement.

Section 10 - Residence

- A. The Fire Chief shall maintain a domicile in Upton or a town contiguous to Upton. This section is subject to amendment by the mutual agreement of the parties.

Section 11 - Retirement

- A. In addition to participating in the Worcester County Retirement System, to the extent permitted by law, the Town shall provide a voluntary §457 retirement plan. The Town shall have no obligation to contribute to this plan on behalf of the Fire Chief.

Section 12 - General Provisions

- A. The text herein shall constitute the entire agreement between the parties with regard to the matters set forth herein. There are no other understandings or agreements, verbal or otherwise, in relation thereto, between the parties except as expressly set forth herein. This Agreement may be amended or modified only by a written instrument executed by the parties hereto or by their successors and assigns.

B. All provisions of the Town's General By-Laws, and the regulations, policies and practices of the Town relating to vacation and sick leave, retirements and pensions, contributions, holidays and other benefits and working conditions as they now exist or hereafter may be amended, also shall apply to the Fire Chief as they would to other employees of the Town in addition to the benefits enumerated in this Agreement specifically for the benefit of the Fire Chief. In the event of any conflicts, the provisions of this Agreement shall prevail.

D. For the purposes of the United States Fair Labor Standards Act, the Fire Chief shall be considered an exempt employee.

F. The terms of this Agreement are subject to annual Town Meeting appropriation.

G. 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.

H. This Agreement shall be binding upon and inure to the benefit of the heirs at law and executors of the Fire Chief.

I. This Agreement is entered into in the Commonwealth of Massachusetts and shall be construed and interpreted in accordance with its laws.

J. The Town Manager agrees to prepare an article for a future Town Meeting Warrant for the extension of the Fire Chief's service beyond the age of sixty-five for the Select Board's consideration.

Section 13 - Notices

Notices pursuant to this Agreement shall be made as follows:

Town: Joseph Laydon, Town Manager
1 Main Street
Upton, MA 01568

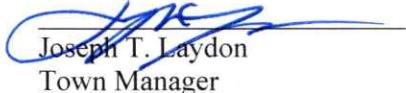
Fire Chief: Michael Marchand
21 Warren Street
Upton, MA 01568

Section 14 - No Reduction in Benefits

The Town shall not at any time during the term of this Agreement reduce the salary, compensation, or other benefits of the Fire Chief, except to the degree that such a reduction is across the board for all management employees of the Town.

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

FOR THE TOWN



Joseph T. Laydon
Town Manager

FOR THE FIRE CHIEF



Michael Marchand

Date: June 13, 2025