

TOWN OF SHERBORN, MA

EMPLOYMENT AGREEMENT

FIRE CHIEF ZACHARY J. WARD

JULY 1, 2023-JUNE 30, 2026 (FY 2024-2026)

This Agreement pursuant to G.L. c. 41, Section 1080, is made and entered into by and between the Town of Sherborn, a municipal corporation of the Commonwealth of Massachusetts, with a usual place of business at 19 Washington Street, Sherborn, Massachusetts, 01770 acting by and through its appointing authority, the Select Board (hereinafter the "Town"), who acts in their representative capacity only and without any personal liability, and Zachary J. Ward (hereinafter "Ward", "Fire Chief" or "Chief").

WITNESSETH:

WHEREAS, the Town desires to employ the services of Zachary J. Ward as Fire Chief of the Town of Sherborn under the provisions of M.G.L. Chapter 48, Section 42; and,

WHEREAS, both the Town and Chief agree that it is appropriate to enter into this Agreement in order to provide for the salary, fringe benefits, and other conditions of employment, including but not limited to severance pay, reimbursement of expenses incurred in the performance of his duties or office, conditions of discipline, termination, and dismissal, performance standards and leave for its Fire Chief; and

WHEREAS, Ward has accepted employment as Fire Chief of the Town, and desires to execute the duties and responsibilities of that position;

WHEREAS, all of the wages and benefits provided for by this agreement are subject to annual appropriation by Town Meeting;

NOW, THEREFORE, the Select Board does hereby confirm the appointment of Ward to the position of Fire Chief in accordance with all applicable general laws, By-laws of the Town, and special acts, and, in consideration of the mutual covenants herein contained; the parties agree as follows:

1. APPOINTMENT AND TERM

The Town hereby appoints Ward to the position of Fire Chief, and Ward accepts such appointment in accordance with the terms and conditions of this Agreement. The term of this appointment and Agreement commences July 1, 2023, and ends on June 30, 2026, unless terminated sooner under the provisions of this Agreement.

2. DUTIES

As Fire Chief, Ward shall be the Chief Administrative Officer of the Fire Department. The Chief's duties shall include, but not be limited, to the following:

- a. Supervision of the daily operation of the Fire Department, which includes Emergency Medical Services (EMS).
- b. Supervise, mentor, develop and recruit all Departmental personnel.
- c. Preparation and submission of the Fire Department budget (including capital requests) to the Town Administrator and Select Board for approval prior to submitting to the Advisory Committee.
- d. Being responsible for all Departmental expenditures, as well as the receipt of funds and property in the custody of the Department; implement and oversee any relevant permits and fees.
- e. Supervision and control of all Department equipment, vehicles, and facilities.
- f. Supervision and control of all training programs for Departmental personnel and the assignment of personnel to such programs.
- g. Maintaining the discipline of Department personnel; issuing rules, regulation and orders.
- h. Being available for appearance before any Town Board at which the Fire Department is required to appear.
- i. Planning, organizing, directing, staffing, and coordinating Fire operations and responses; coordination with other Public Safety officials in Sherborn and regionally; and maintaining positive relations with other Town Staff and Departments, and neighboring municipalities.
- j. Communicating with the public on matters relating to Fire operations and Fire Department policies.
- k. Properly exercise appointing authority and other powers and duties set forth in G.L. c. 48, §§ 42-44.
- l. All duties stated or implied in the job description attached to this Agreement.
- m. Other duties as assigned by the Select Board and/ or Town Administrator, which may include appointments to various local and regional boards and/or committees, appointments to act in any other capacity on behalf of the Town of Sherborn, community outreach, or serve under any other title in order to conduct the business of the Town.

The Fire Chief shall devote his entire time to the performance of his official duties and shall not engage in outside employment without the prior approval of the Select Board. Unless on an authorized leave of absence, the Fire Chief is expected to be physically within the Town of Sherborn as soon as possible when the Fire Chief's presence is requested and appropriate. The Fire Chief must reside within a fifteen (15) mile radius of the Town of Sherborn, unless the Select Board votes to waive such requirement.

3. COMPENSATION

For the period commencing July 1, 2023, the Fire Chief's salary shall be one hundred, forty-two thousand seven hundred thirty-one dollars and no cents (\$142,731.00), subject to Town Meeting appropriation, payable in installments made at the same time as other Department Heads are paid, with an annual Cost of Living Adjustment (COLA) on July 1 of each contract year, beginning July 1, 2024, equal to 2.5% or the non-union employee COLA, whichever is higher, and is subject to the availability of funds through Town Meeting appropriation. An annual merit increase may be considered by the Select Board, taking into account the results of the annual performance evaluation and the recommendation of the Town Administrator, and is subject to the availability of funds through Town Meeting appropriation.

4. PERFORMANCE EVALUATIONS

Annually, in accordance with the Town's practice and procedure or otherwise agreed to process, the Town Administrator and the Fire Chief may define, in writing, such goals and performance objectives for the proper operation of the Fire Department and may establish a relative priority among those goals and objectives. Annual goals, objectives, and priorities may be presented to the Select Board by the Fire Chief for input and approval before being set forth for the upcoming review period. Any proposed salary adjustment as a result of a completed, annual performance evaluation is subject to the approval of the Select Board.

In addition to the annual performance evaluation, the Town Administrator may initiate an evaluation of the Fire Chief at any time for the purpose of improving performance or addressing a particular matter, and may distribute such evaluations to the Select Board. This type of evaluation will specify a goal(s) and objectives, how success will be measured, and include a mutually agreed upon time-frame for achieving the goal(s).

5. ADDITIONAL BENEFITS

The following additional benefits shall accrue to the Fire Chief:

- a. **Vacation**. The Chief shall receive 4 weeks vacation per fiscal year, which shall be accrued as earned at the rate of 1.66 days per month worked. Vacations must be taken in the fiscal year in which they accrue, except that up to ten vacation days may be carried over to the next fiscal year with the prior written approval of the Town Administrator.
- b. **Sick Leave**. The Chief shall receive sick leave in accordance with the Town's Personnel Administration Plan (PAP).
- c. **Bereavement**. The Chief shall receive bereavement leave in accordance with the PAP.

- d. **Health/Life Insurance.** Chief may participate in all health and life insurance plans to the same extent, and with the same contribution ratio, as may from time to time be made available to other Town employees.
- e. **Automobile.** The Chief's duties require that he shall have the use of an automobile provided to him by the Town, and appropriately insured and maintained by the Town, subject to the provisions of the Town's policy on Town-owned vehicles (if adopted and in effect). Personal use of the vehicle by the Chief is allowed in recognition of the Chief's need to be available and respond twenty-four (24) hours a day, seven (7) days a week. It may be used while on vacation when appropriate and approved in advance, in writing, by the Town Administrator. It is understood that this vehicle may not be used or driven by any other person other than the Chief, except a person designated by the Chief for Departmental purposes. Only Town authorized drivers may operate the vehicle.
- f. **Dues and Subscriptions.** Subject to the funds appropriated by Town Meeting, the Town agrees to pay an appropriate amount for the professional dues and subscriptions of Chief necessary for his continuation and full participation in national, regional, state, and local associations and organizations necessary and desirable for his continued professional growth and advancement.
- g. **Professional Development.** Subject to the funds appropriated by Town Meeting, the Town agrees to pay an appropriate amount for travel and subsistence expenses of the Chief for professional and official travel and meetings. This shall include, but not be limited to, short courses, seminars and institutes that are necessary for Chiefs professional development and for the good of the Town. When combined registration and travel costs may exceed \$1,000, or involves out-of-state travel, the estimated full expense must receive prior written approval from the Town Administrator before being committed or incurred.
- h. **Retirement.** Membership in the Town retirement system is mandatory for all permanent, full-time employees, including the Fire Chief.
- i. **Deferred Compensation.** The Chief is authorized to participate in and contribute to any deferred compensation program approved by the Town.
- j. **Protective Equipment.** The Town shall also provide any necessary specialized protective equipment that is needed for the Chief to perform his duties. If the equipment expense exceeds \$500, the Fire Chief must receive prior written approval from the Town Administrator before incurring the expenses. Written approval from the Town Administrator is not required for standard firefighting protective equipment.
- k. **Uniform Allowance.** The Town shall also provide any necessary uniforms and duty clothing that is needed for the Chief to perform his duties. If the total annual clothing

expenses exceed \$1,000, the Fire Chief must receive prior written approval from the Town Administrator before incurring any additional expenses.

1. **Injured on Duty.** As a sworn Fire Officer, the Chief shall be entitled to injured-on-duty benefits provided in G.L. c. 41, Section 111E.

- m. **Holidays.** This contract is subject to General Laws c. 48 § 57E:

If the Chief of a fire department of a city or Town or the Chief, Chief engineer or head of a fire department of a fire district 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.

For the purposes of this Agreement, "on duty" is understood to be physically in Sherborn performing typical duties of the Fire Chief for an extended period of time; such that carrying out these duties clearly restricts the Fire Chief from utilizing the time for personal pursuits.

The Chief shall be entitled to all holidays afforded to other Town non-bargaining employees per the Town's Personnel Administration Plan.

6. TERMINATION AND SUSPENSION

- a. **Suspension or Termination by the Town for Cause:** The Town may, by the vote of the Board, suspend or terminate this Agreement at any time for Cause following the procedures set forth herein. The Town may, by vote of the Board and by written notice to the Fire Chief, place the Fire Chief on administrative leave with full pay and benefits whenever the Board determines that circumstances warrant a hearing to determine whether Cause exists for suspension or termination of the Fire Chief. The Fire Chief shall receive notice in writing within five days of the decision to place him on administrative leave and/or of a vote to seek suspension or termination for cause without placing him on administrative leave. The notice shall include the charge(s) against him, and a brief summary of the reasons in support of the charge(s). In a 'for Cause termination' for unsatisfactory performance, prior written notice of poor performance will be given before pursuing termination, and a reasonable opportunity shall be provided to address and correct the deficiency. A majority vote of the Board shall be sufficient to suspend or terminate the Fire Chief.

- b. **Hearings**

- i. The Fire Chief may in writing request a hearing before the Board within ten days of the Fire Chief's receiving notice under Section 8(A). If the Fire Chief does not request a hearing, the Board not later than twenty days following delivery of the notice shall, unless the Fire Chief has since resigned, determine by vote if Cause exists. If the Board finds that Cause exists, then the Board may impose a suspension of the Fire Chief without pay and benefits or terminate this Agreement and employment of the Fire Chief, as decided by the Board, which vote shall be effective immediately upon notice to the Fire Chief.
- ii. Not earlier than ten days or later than twenty days following delivery of the written request for a hearing by the Fire Chief, the Board shall conduct a hearing, and the Fire Chief shall be given an opportunity to respond to the charge(s).
- iii. The hearing shall be conducted in accordance with the Massachusetts Open Meeting Law., G.L. c. 30A, §§ 20-25.
- iv. During the hearing, the Fire Chief shall have the right to be represented by counsel completely at his own expense to question, confront and cross-examine witnesses, to introduce evidence and to conduct oral arguments. The Town may also have counsel at the hearing, examine witnesses, present evidence and make arguments.
- v. In its decision, the Board shall consider only such evidence as is presented at the hearing and make findings of fact based upon such evidence to determine whether Cause exists. The Fire Chief shall be provided with a written notice of the finding of the Board and reasons for the Board's determination within ten days after conclusion of the hearing.
- vi. If the Board, by vote, shall determine that Cause exists, then the Board may impose a suspension of the Fire Chief without pay and benefits or terminate this Agreement and employment of the Fire Chief, as decided by the Board.
- vii. In the event that the Town terminates this Agreement for Cause, the Fire Chief shall be entitled to no compensation or other benefits, unless otherwise determined by the Select Board, except for salary earned but unpaid through the date of termination and any accrued but unused vacation time as of the date of termination. Such termination or suspension shall take effect immediately upon notice to the Fire Chief, unless otherwise specified by the Board.

7. RESIGNATION

The Chief may voluntarily resign or retire before the expiration date of this Agreement, in which case he shall give the Select Board at least sixty days (60) written notice prior to the effective date of his resignation, unless the parties agree otherwise in writing.

The Chief's pay and benefits shall cease on the effective date of his resignation, unless sooner terminated under the provisions of this Agreement, subject to any rights and obligations under state or federal law with respect to retirement benefits and the continuation of group health care benefits at Chiefs expense as provided by law.

8. INDEMNIFICATION

To The extent allowable by law, the Chief shall be indemnified by the Town, pursuant to and as limited by the provisions of G.L. c. 258, Sections 2, 9 and 13, other relevant provisions of law, and the by-laws of the Town, for claims made against him arising out of the performance of his duties and responsibilities as Fire Chief. Such indemnification does not extend to proceedings or appeals related to the termination of employment or other disciplinary actions brought by the Town under Section 6 of this agreement.

9. ENTIRE AGREEMENT

This writing constitutes the entire Agreement between the parties, and it may not be altered, amended or modified except by a writing signed by all parties.

10. LAW GOVERNING

This Agreement shall be construed and governed by the laws of the Commonwealth of Massachusetts.

11. SEVERABILITY

If any clause or provision of this Agreement shall be determined to be illegal by a court of competent jurisdiction, the remainder of this Agreement shall not be affected thereby.

12. NOTICES

Any notice required or permitted to be given under this Agreement to either party shall be in writing and shall be sent by certified mail, postage pre-paid, or delivered by hand to:

- a. The Town: Town Administrator, 19 Washington Street, Sherborn, Massachusetts, 01770.
- b. The Fire Chief: Zachary J. Ward, [REDACTED]

13. DEATH DURING TERM OF EMPLOYMENT

If the Fire Chief dies during the term of his employment, the Town shall pay to the Fire Chief's estate all the compensation which would be otherwise be payable to the Fire Chief up to the date of the Fire Chief's death, including, but not limited to, payment of previously accrued but unused vacation days.

14. HOURS OF WORK

The Fire Chief shall devote that amount of time and energy that is necessary to faithfully perform the duties of Fire Chief. It is recognized that the Fire Chief must devote a great amount of time outside the normal office hours of forty (40) hours per week, to business for the Town and, to that end, he shall be allowed to establish an appropriate work schedule, subject to the approval of the Town Administrator. The Fire Chief shall not be compensated for any inspection or special detail assignment. In addition, the Fire Chief may not be self-employed or employed by any other entity without the express written authorization of the Town Administrator and the Select Board. Such authorization is revocable at any time at the pleasure of the Town Administrator or Select Board if there is any question that an outside employment commitment may be interfering, or may interfere, with the ability of the Chief to deliver services to the Town; and may involve disciplinary action if outside employment is obtained without receiving proper authorization. The Fire Chief will be considered an exempt employee under the Fair Labor Standards Act (FLSA) and will not be eligible for overtime.

15. CONTINUANCE

If the Board decides not to renew this Agreement at its termination, the Board shall give the Fire Chief written notice at least six months in advance of the end of the term of this Agreement of its intent not to renew this Agreement. It shall be the duty of the Fire Chief to bring this issue to the attention of the Select Board at least two months in advance of the six month deadline of the expiration of the Agreement by requesting an agenda item to discuss the matter so that the Select Board has a reasonable opportunity to act in a timely manner on the renewal decision. Failure of the Fire Chief to bring this matter to the attention of the Board at least eight (8) months prior to the expiration of the Agreement waives any rights under this Section.

If the Fire Chief brings the renewal decision to the attention of the Board at least eight months before the expiration of the Agreement and the Board does not give written notice of non-renewal at least six months prior to the expiration of the Agreement, and the parties fail to negotiate a successor contract by the scheduled termination date of this Agreement, this Agreement and its terms and conditions shall be extended for an additional six month period. The compensation set forth herein shall be the exclusive remedy for non-renewal.

Sherborn Fire Chief Employment Agreement 2023-2026

IN WHITNESS WHEREOF, the parties have hereunto signed and sealed this Agreement and a Duplicate thereof this 2 day of March 2023.

TOWN OF SHERBORN – SELECT BOARD: ZACHARY WARD:

J.W.
Jeffrey Waldron, Chair

Dated: March 2, 2023

Marian Neutra
Marian Neutra, Vice Chair

Dated: March 2, 2023

G.M.
George Morrill, Clerk

Dated: March 2, 2023

P.D.
Paul DeRensis

Dated: March 2, 2023

E.J.
Eric Johnson

Dated: March 2, 2023

EXECUTED AGREEMENT
RECEIVED BY TOWN ADMINISTRATOR:

J.M.
Jeremy Marsette

Dated: March 2, 2023

Z.W.
Zachary Ward

Fire Chief

Dated: March 2, 2023

APPROVED AS TO LEGAL FORM:

C.J.P.
Christopher J. Petrini

Town Counsel

Dated: March 3, 2023