

**EMPLOYMENT CONTRACT BETWEEN**  
**THE TOWN OF TOWNSEND**  
**AND**  
**JAMES KIRK**

On this 28<sup>th</sup> day of February 2024, the Town of Townsend (“Town”) by the Board of Selectmen and James Kirk (“Assistant Fire Chief”) enter into the following contract.

WHEREAS, the Town is desirous of securing the services of the Assistant Fire Chief in the service of the Townsend Fire Department (“the Department”); and

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

NOW, THEREFORE, the Town and the Assistant Fire Chief hereby and hereinafter agree to the following terms and conditions as stated herein and subject to the statutory references that shall be incorporated into this Contract.

**Section 1. APPOINTMENT**

The Town hereby and hereafter appoints the Assistant Fire Chief pursuant to and in accordance with all applicable Massachusetts General Laws and local bylaws, as amended.

**Section 2. TERM**

- 2.1 Term. Subject to annual appropriation by Town Meeting, the term of this Contract shall be for a three (3) year term commencing on **March 4, 2024** and ending on **March 3, 2027**, unless sooner terminated pursuant to the terms of this Agreement.
- 2.2 Nothing in this agreement shall prevent, limit or otherwise interfere with the right of the Select Board to place the Assistant Fire Chief on paid administrative leave, pending an investigation, or to suspend and/or terminate the services of the Assistant Fire Chief at any time, subject only to the provisions set forth in this Agreement, and any other applicable law.
- 2.3 The Assistant Fire Chief shall have an affirmative obligation to notify the Select Board six (6) months prior to the expiration of this Agreement that said Agreement is expiring and requires renegotiation. If the Select Board decides to renew the Agreement, then either the Select Board or Assistant Fire Chief may

request that the provisions be renegotiated; otherwise, the parties may agree to a one-year extension of this Agreement upon the same terms as set forth in this Agreement.

It is expressly understood that a decision not to renew this Agreement shall not be construed as a dismissal or require a hearing.

### Section 3. COMPENSATION & BENEFITS

- 3.1 **Salary.** The Town and the Assistant Fire Chief agree that effective March 4, 2024, the FY24 base salary of the Assistant Fire Chief shall be Grade PS, Step 1 on the Town's Compensation and Classification plan. In each succeeding year, the salary shall be increased by one step in the Town's approved Compensation and Classification plan, as may be amended from time to time.
- 3.2 The Town and the Assistant Fire Chief agree that the Town shall pay the Assistant Fire Chief in equal installments pursuant to the Town's payroll cycle, less lawful withholdings and deductions. The Assistant Fire Chief agrees to receive this compensation via direct deposit.
- 3.3 If there is no performance evaluation conducted, the Assistant Fire Chief's performance shall be considered to have been proficient.
- 3.4 **Enumeration of benefits.** The Assistant Fire Chief shall receive, and be entitled to, the following benefits:
  - (a) **Vacation leave.** The Assistant Fire Chief shall accrue 1.67 vacation days per month for a total of twenty (20) days of vacation leave per fiscal year. In the event that the Assistant Fire Chief desires to take vacation in excess of that accrued, he may borrow vacation days in anticipation of his vacation accrual, provided that if the Assistant Fire Chief separates from service with a deficit of vacation days, said deficit shall be deducted from his final paycheck. In recognition of the demands serving as Assistant Fire Chief, with approval of the Town Administrator, the Assistant Fire Chief may carry over up to ten (10) days of unused vacation time annually. Any accrued vacation time which is not used by June 30 of each fiscal year, unless carried over pursuant to this section, shall be forfeited and may not be carried over to the following year. Unused vacation shall be paid in full to the Assistant Fire Chief upon separation of service for any reason.
  - (b) **Sick leave.** The Assistant Fire Chief shall accrue fifteen (15) sick days per year cumulative to a maximum of 150 days. Further, this

contract acknowledges that sick time has no monetary value, and as such, any sick time remaining at the time of the Assistant Fire Chief's retirement will be forfeited at no cost to the Town. If the Assistant Fire Chief is sick for three (3) or more days, the Town Administrator may require a doctor's certificate at the Town's expense.

- (c) **Personal leave.** The Assistant Fire Chief shall be entitled to four (4) personal days per fiscal year to be taken at the Assistant Fire Chief's discretion. Unused personal days may not be carried over into the next fiscal year.
- (d) **Bereavement leave.** In the event of the death of a spouse, son, daughter, father, mother, stepson, stepdaughter, stepfather, stepmother, brother, sister, grandparent, father-in-law, mother-in-law, son-in-law, daughter-in-law, grandchild or any person not classified above, but who permanently resides with the family of the Assistant Fire Chief, the Assistant Fire Chief shall be granted 3 days off, and in the event of a death in the Assistant Fire Chief's family for a relative other than those herein enumerated, the Assistant Fire Chief shall be granted 1 day off as bereavement leave within a reasonable amount of time, without loss of pay for the purpose of attending funeral services, arranging for burial, and as a period of bereavement. Leave without loss of pay under this section will not be deducted from sick, personal or vacation leave.
- (e) **Uniform allowance.** The Assistant Fire Chief shall receive reimbursement for an annual allowance of \$1,100.00 each fiscal year for the purchase and maintenance of uniforms.
- (f) **Stipend.** The Assistant Fire Chief shall receive an annual allowance of \$1,600.00 each fiscal year for certification as an Executive Fire Officer.

- 3.5 Benefits not addressed. For all benefits not specifically mentioned herein, the Assistant Fire Chief shall receive at least the same benefits as granted to any other non-union department heads of the Town, whichever is greater, including, without limitation, any such benefit adopted, amended or modified by the Town during the Term. Such benefits shall include, without limitation, health, dental, life, disability insurance, sick leave, and retirements benefits.

#### Section 4. DUTIES

- 4.1 Enumeration of duties. The head of the Fire Department for the Town shall be the Fire Chief. The Assistant Fire Chief shall report to the Fire Chief. The duties of the Assistant Fire Chief shall include, but not be limited to, those stated in the job description of the Assistant Fire Chief attached hereto as **Exhibit A** and incorporated by reference herein.
- 4.2 The Assistant Fire Chief diligently and timely shall perform the duties specified in the Massachusetts General Laws and the Town Bylaws, which are incorporated herein by reference, and such other duties as the Select Board may from time to time legally assign to the Assistant Fire Chief.
- 4.3 The Assistant Fire Chief shall, whether on or off duty, act in the best interest of the Town and in accordance with his duty of loyalty to the Town as a Town employee.
- 4.4 The Assistant Fire Chief shall at all times in performing services under this Agreement comply with federal, state and local law, including but not limited to G.L. c. 268A. The Assistant Fire Chief has access to an extensive amount of confidential information relating to the Town of Townsend, the disclosure of which may cause repercussions and which the Assistant Fire Chief shall keep confidential.
- 4.5 The Assistant Fire Chief warrants he has no public or private interest and shall not acquire directly or indirectly any such interest, which would conflict with performing his job duties as such.
- 4.6 Both parties recognize and acknowledge the reserved inherent administrative authority of the Select Board to supervise and regulate the Assistant Fire Chief, in the public interest, and to add to such duties and responsibilities as necessary for the public welfare and to promulgate further rules and regulations consistent with the intent and purpose of Massachusetts General Laws, the Town's bylaws, and this Agreement.

## **Section 5. HOURS OF WORK**

- A. Generally. The Assistant Fire Chief shall devote full time, attention and energy to the faithful performance of the duties of the Assistant Fire Chief and will not engage in any other business within the Town of Townsend, or any other business that may create a conflict with State Ethics requirements.
- B. For the purposes of the Fair Labor Standards Act, 29 U.S.C., Section 201, *et seq.*, the Assistant Fire Chief shall be an "exempt employee." There shall be no compensatory time, no paid overtime, and no additional compensation for additional time spent working beyond the prescribed or regularly scheduled operating hours.

**Section 6. INDEMNIFICATION & INSURANCE**

6.1 To the extent permitted pursuant to G.L. c. 258, the Town shall defend, save harmless and indemnify the Assistant Fire Chief 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 Assistant Fire Chief, even if said claim has been made following his separation from employment, provided that the Assistant 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 Assistant Fire Chief.

The Town, or its designee/insurer, shall select the Assistant Fire Chief's attorney and determine if separate counsel is required. The Town shall be responsible to remit payment for any attorneys' fees and costs incurred by the Assistant Fire Chief in connection with such claims or suits involving the Assistant Fire Chief in his professional capacity. Notwithstanding the foregoing, if the Assistant Fire Chief refuses counsel selected by the Town, indemnification may be denied.

The Town shall not be required to indemnify or hold harmless the Assistant Fire Chief for an intentional violation of the civil rights of any person or if he acted in a grossly negligent, willful, malicious manner, or outside the scope of his authority.

The Town shall not be required to indemnify or pay legal expenses or costs incurred for any proceeding, hearing, or appeal related to any action brought by either party to enforce this agreement.

This Section shall survive the termination of this Agreement.

**Section 7. INJURED ON DUTY**

7.1 The Assistant Fire Chief shall be entitled to injured-on-duty benefits as provided in Chapter 41, Section 111F of the Massachusetts General Laws. In the event the Assistant Fire Chief takes a leave of absence under Section 111F, sick and vacation days shall not accrue during this leave period.

**Section 7. DEATH OR INCAPACITATION DURING TERM OF EMPLOYMENT**

7.1 If the Assistant Fire Chief dies during the term of his employment, the Town shall pay to the Assistant Fire Chief's estate all the compensation which would

otherwise be payable to the Assistant Fire Chief up to the date of the Assistant Fire Chief's death, including, but not limited to, unused vacation leave.

If the Assistant Fire Chief is permanently incapacitated or is otherwise unable to perform his duties because of sickness, accident, injury, mental incapacity or other failure of health, for a period of four (4) successive weeks beyond any accrued sick leave and vacation leave, or beyond the requisite Family Medical Leave Act period, whichever is greater, the Town shall have the right, then or at any time during the period of incapacity, to terminate this Agreement, without prejudice to the Assistant Fire Chief's rights to disability benefits from any source. The Assistant Fire Chief shall be paid through the date of termination and shall be entitled to receive pay for any unused vacation leave.

## **Section 8. DISCIPLINE, DISCHARGE & NON-REAPPOINTMENT**

8.1 Disciplinary proceedings. It is agreed that the Assistant Fire Chief may be disciplined or discharged for just cause, which shall include, but not be limited to the following: inefficiency, namely the inability to complete assignments in a timely manner on a routine basis in accordance with principals of reasonable care; neglect, namely failure to perform the duties of the Assistant Fire Chief in a reasonably competent manner; insubordination; conduct unbecoming; misconduct; or for other cause shown., upon proper notice and only after a hearing conducted by, and by majority vote of, the Board of Selectmen and consistent with the terms included in this section.

- (a) The Assistant Fire Chief shall have the option of choosing whether or not any such hearing shall be closed to the public or be held as an open or public hearing.
- (b) The term "proper notice" as it appears in this section means that written notice of the hearing must be given to the Assistant Fire Chief at least forty-eight (48) hours prior to the date of the hearing and must set forth the following: (i) the date, time and location of the hearing; (ii) the charges alleged and the evidence in support thereof in such specificity so that the Assistant Fire Chief may understand and prepare his defense; and (iii) the range of discipline considered.
- (c) The subject matter to be presented at the hearing shall be only those charges as were specifically detailed in the written notice to the Assistant Fire Chief.
- (d) During the hearing, the Assistant Fire Chief shall have the right to be represented by a representative of his/her choosing, to question,

confront and cross-examine witnesses, to introduce evidence and to conduct oral arguments.

- (e) In its decision, the Board of Selectmen 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.
- (f) The Assistant Fire Chief shall be provided with a written notice of the findings and decision of the Board of Selectmen and such notice shall include the relevant facts and reasons for their findings.
- (g) The principles of progressive discipline will apply.

8.2 The Assistant Fire Chief shall be paid through the date of termination and shall be entitled to receive pay for any unused vacation leave.

## **Section 9. RESIGNATION**

9.1 Voluntary resignation: In the event the Assistant Fire Chief intends to resign voluntarily before the natural expiration of any term of employment, then the Assistant Fire Chief shall give the Town thirty (30) days written notice in advance, unless the parties otherwise agree in writing. A copy of said resignation shall be filed with the Town Clerk. During said notice period, the Assistant Fire Chief may not take vacation leave unless approved by the Select Board. During this period, the Assistant Fire Chief shall continue to perform the duties of the position in a professional and competent manner and shall, if requested, cooperate with the Select Board in a search for a successor. However, the Town, in its sole and unfettered discretion, may elect to accept the Assistant Fire Chief's resignation, effective immediately, and upon such election, the Assistant Fire Chief shall be paid through the date of acceptance. The Assistant Fire Chief shall be paid through the date of resignation or acceptance of resignation, and upon resignation, the Assistant Fire Chief will be entitled to receive pay for any unused vacation leave.

## **Section 13. NOTICES**

Notices pursuant to this Contract shall be given by deposit in the custody of the United States Postal Service, postage prepaid, addressed as follows:

TOWN                                      Chairperson of the Select Board  
    Town of Townsend  
    272 Main Street  
    Townsend, MA 01469

ASST. FIRE CHIEF James Kirk

53 Wyman Rd.  
Groton, MA 01450

TOWN COUNSEL Adam Costa  
Mead, Talerman & Costa, LLC  
730 Main Street Suite 1F  
Millis, MA 02054

unless either party hereinafter informs the other party in writing of a change of address. Alternately, notices required pursuant to this Contract may be personally served. Notice shall be deemed as given as to the date of personal service or as to the date of deposit of such written notice in the course of transmission in the United States Postal Service.

**Section 14. NO REDUCTION OF BENEFITS**

The Town agrees that the Town shall not at any time during this Contract reduce the salary, compensation or other benefits of the Assistant Fire Chief, except to the extent that such reduction is evenly applied across-the-board for all non-union department heads in the Town.

**Section 15. MISCELLANEOUS PROVISIONS**

15.1 Law governing. This Contract shall be construed and governed by the laws of the Commonwealth of Massachusetts.

15.2 Severability. 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.

Benefits subject to appropriation. For any clause of this Contract which provides that a certain benefit to the Assistant Fire Chief shall be subject to appropriation, the Town understands and acknowledges that it shall be responsible to budget and support any such appropriation and the terms of this Contract at any and all town meetings. The Assistant Fire Chief understands and agrees that all compensation and benefits provided in this Agreement are subject to annual Town Meeting appropriation. In the event Town Meeting fails to sufficiently appropriate funds to fully fund this Agreement, the parties shall attempt to renegotiate it.

15.3 Amendments & modifications. No amendment or modification of this Contract shall be valid unless it shall be in writing and signed by both Parties.



- 15.4 Entire agreement. The Parties executing this Contract agree that the recitals herein constitute the entire agreement between the parties. No other agreement, including any other written, oral or other agreement, will be considered to exist or to bind the parties to this Agreement. No representative of any party to this Contract, had, or has any authority to make any representation or promise not contained in this Contract, and each of the parties to this Contract acknowledges that such party has not executed this Contract in reliance upon any such representation or promise.
- 15.5 No Waiver. No waiver of satisfaction of a condition or nonperformance of an obligation under this agreement will be effective unless it is in writing and signed by the party granting the waiver.
- 15.6 Exempt Employee. For the purposes of the Fair Labor Standards Act, the Assistant Fire Chief shall be an “exempt employee.”
- 15.7 Negotiated Agreement. This Employment Agreement is the result of negotiation and compromise by and among the parties and no party shall be prejudiced as having been the drafter of the Employment Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Contract as of the date first above written.

For the Town of Townsend  
By: the Board of Selectmen



Chaz Sexton-Diranian, Chairman



Joseph Shank, Vice-Chairman



Theresa A. Morse

For the Assistant Fire Chief



James Kirk