



BRIDGEWATER TOWN COUNCIL

Tuesday, June 19, 2012

7:30 PM

Memorial Building, 25 South Street

AGENDA – (Revised 6/19/12)

- A. APPROVAL OF MINUTES FROM PREVIOUS MEETINGS
 - a) March 6, 2012
 - b) April 24, 2012
- B. ANNOUNCEMENTS FROM THE PRESIDENT
- C. PROCLAMATIONS - None
- D. CITIZEN OPEN FORUM
- E. APPOINTMENTS - None
- F. HEARINGS
- G. LICENSE TRANSACTIONS
- H. PRESENTATIONS
 - a) Roselli, Clark & Associates – FY11 Audit
- I. TOWN MANAGER'S REPORT
- J. DISCUSSIONS
 - a) Town Council Committees (*President Colon*)
- K. SUBCOMMITTEE REPORTS
- L. LEGISLATION FOR ACTION
- M. OLD BUSINESS
 - a) Transfer #T-2012-012: Treasurer Prior Year Invoice
 - Transfer and appropriate \$762.03 to account 001-911-03-1012-517010, \$713.22 from the FY12 Benefits and Insurance budget account 001-911-01-0102-517010 and \$48.81 from the FY12 Finance budget account 001-145-01-0102-570005. This measure was referred to the Finance Committee who voted 5-0 to approve.
 - b) Resolution #R-2012-009: A Resolution To Bring Forward Hold-Over Appointments (*Sponsors: Councilors Berolini and Colón*)
 - This measure was introduced on 6/5/12 and not referred to any committee. This matter may be considered for action as 14 days has elapsed per Section XVIII of the Council Rules and Procedures.
- N. NEW BUSINESS
 - a) Ordinance #D-2012-014: Right to Farm Ordinance (*Councilor Colombotos*)
 - b) Transfer #T-2012-015: Middle School Intercom System

- c) Transfer #T-2012-016: Funding of Library Contract
- d) Transfer #T-2012-017: Funding of Collective Bargaining Agreement – USW

****The Following Orders Are Late Files and Require Council Vote to Accept****

- e) Order #O-2012-032: Contract Approval for Police Chief ****Late File****
- f) Order #O-2012-033: Contract Approval for Town Accountant ****Late File****
- g) Order #O-2012-034: Contract Approval for Fire Chief ****Late File****

O. CITIZEN COMMENTS

P. COUNCIL COMMENTS

Q. EXECUTIVE SESSION

R. ADJOURNMENT



Bridgewater Town Council

In Town Council, Tuesday, June 19, 2012

Council Transfer: T-2012-012

Updated with Finance
Committee Disposition

Introduced By: Town Manager
Date Introduced: June 5, 2012
First Reading: June 5, 2012
Second Reading: June 19, 2012
Amendments Adopted:
Date Adopted:
Date Effective:

Proposed Transfer #T-2012-012

TREASURER DEPARTMENT - PRIOR YEAR INVOICE

ORDERED that, pursuant to Section 6-4 (d) of the Town of Bridgewater Charter and M.G.L. Chapter 44 Section 64, the Town Council of Bridgewater, Massachusetts in Town Council assembled vote to transfer and appropriate \$762.03 to account 001-911-03-1012-517010, \$713.22 from the FY12 Benefits and Insurance budget account 001-911-01-0102-517010 and \$48.81 from the FY12 Finance budget account 001-145-01-0102-570005 or take any other action relative thereto.

Explanation:

The Treasurer-Collector Department has presented for payment amounts owed to State Board of Retirement for payments the state made to Annette Wheland, surviving spouse of retiree Gerald Wheland in fiscal year 2011. This obligation totaling \$762.02 was not reported to the Accounting office during the yearend encumbrance process and therefore is considered bills of a prior year.

Committee Referrals and Dispositions:

Referral(s)	Disposition(s)
• Measure referred to Finance Committee	• 6/13/12: Vote approved 5-0.



Bridgewater Town Council

In Town Council, Tuesday, June 19, 2012

Council Order: # T-2012-015

Introduced By: Town Manager *at the request of Bridgewater Raynham School District*

Date Introduced/First Reading: June 19, 2012

Second Reading:

Amendments Adopted:

Date Adopted:

Date Effective:

Proposed Transfer#T-2012-015

APPROPRIATION TRANSFER - MIDDLE SCHOOL INTERCOM SYSTEM UPGRADE

ORDERED that Order #2011-052 *Town Telephone System* appropriating \$21,984.34 AND #2011-053 *Permitting Software* appropriating \$25,000.00 are hereby rescinded.

FURTHER ORDERED that the Town Council of Bridgewater, Massachusetts in Town Council assembled vote to appropriate and transfer the sum of \$57,517.72 from account #204-123-00-2051-596100 (*Capital/Prison Mitigation*) to account #001-194-16-1020-585010 (*Upgrade Communication System*) to fund upgrade to the intercom system at the Bridgewater Middle School .

Explanation:

- The Bridgewater Middle School is in need of an upgrade to its school intercom system. The original votes for the school intercom system had an inadequate funding source and therefore were deemed invalid by the Town Accountant. Funds for the previously approved projects (*Town Telephone System and Permitting Software*) have been funded through proposed levy limit borrowing rather than through prison mitigation funds. The original votes for these two projects (*#2011-052 Town Telephone System and #2011-053 Permitting Software*) need to be rescinded so that the funds are returned to the prison mitigation fund and become available to fund the intercom system.



OFFICE OF THE TOWN MANAGER
Academy Building, 66 Central Square
Bridgewater, MA 02324

MEMORANDUM

TO: TOWN COUNCIL

FROM: RICHARD KERBEL, Interim Town Manager

DATE: June 18, 2012

SUBJECT: Employment Agreements

Consistent with the Town Council direction in the adoption of the FY 2013 Operating Budget, I am submitting to the Town Council the Employment Agreements for the Police Chief, Fire Chief and Town Accountant. These agreements were signed by my predecessor and the respective employee in February, March and April of this year. There are legal opinions that were supplied to my predecessor that indicate he had the authority to enter into these agreements. I have attached the agreements and legal opinions to this memo. The following is a brief summary of the significant points of each agreement:

Police Chief - The Police Chief's contract is a three year agreement that was signed on February 27, 2012. The agreement covers the period from July 1, 2011 through June 30, 2014. The Chief's salary will be \$125,933 in FY 12, \$130,866 in FY 13 and \$135,799 in FY 14. The contract also calls for the Chief to use the Benchmark Plan for health insurance and co-pay 20% of the health insurance premium. Other significant terms of the contract are: the Chief will receive longevity; the Chief will be paid over the next three fiscal years for his current accumulated sick leave at approximately \$25,000 per year and there will be no sick leave buyout when he retires and that the Chief will receive a 5% increase per year for the three years prior to retirement.

This is the third attempt at a contract with the Police Chief who had no employment agreement when he was appointed. The first two contracts which were rejected by the Town Council were 5 year contracts covering the period from September 2009 through June 30, 2015. Both of these rejected contracts required Town Council appropriation of funds to pay for retroactive pay. The contract being submitted to you does not call for any retroactive pay. The attached March 9, 2012 opinion from the Town Attorney states that the Town Accountant has certified that the proposed contract with the Chief does not require an appropriation for this Fiscal Year. Since the Contract did not require an appropriation from this year's budget it was not submitted for approval of the Town Council.

The opinion was written after the Contract was signed; however it is the logic of the opinion that my predecessor used to sign the contract.

Town Accountant - The Town Accountant's contract was signed March 1, 2012. It is a five year agreement covering the period from July 1, 2011 through June 30, 2016. The Town Accountant did not have a contract prior to this agreement, however there was an employment offer letter sent to the Town Accountant prior to her hire. In the letter her initial salary was \$74,589 and she is making a 25% contribution of premium for her health benefits. The contract calls for 3% per year wage increases, benefits consistent with the Steelworkers and vacation, sick and longevity based upon full municipal experience. This contract has not previously been submitted to the Town Council for approval. The Town Accountant is currently paid \$77,250. Attached is an April 5, 2012 opinion from D. M. Moschos indicating that the Town Manager has the authority to enter into an agreement subject to the approval of the Town Council where an appropriation is needed. However there was no appropriation needed for this contract.

Fire Chief – The Fire Chief's contract was signed on April 17, 2012. It is basically a three year extension of the 1st amendment to his contract. The contract expires on July 1, 2016. The original contract was signed in April 2009. The 1st amendment was signed in September 2009. The following table summarizes the compensation for the Fire Chief from all three of the contracts.

Date	Original Contract	1st Amendment	April 2012 Amendment	EMA	Longevity
			Base		
04/21/09	\$95,400				
09/02/09		\$105,400			
07/01/10	\$100,000	\$110,000			
07/01/11	\$105,000	\$115,000			12.00%
07/01/12	\$112,000	\$122,000	\$112,000	\$10,000	12.00%
07/01/13	\$115,000	\$125,000	\$115,000	\$10,000	12.00%
07/01/14			\$118,000	\$11,800	12.00%
07/01/15			\$122,000	\$12,200	12.00%
07/01/16			\$126,000	\$12,600	12.00%

Besides the separation of the Chief's pay as the EMA director and the addition of longevity, the contract calls for the Chief to use the Benchmark Plan for health insurance and co-pay 20% of the health insurance premium. There is no separate legal opinion I have found associated with this contract.

While the timing of the signing of the contracts complicates this issue, there are certain points that should be made:

- While there is debate about whether multi-year employment agreements require Town Council approval, in order to facilitate the effective teamwork of the Town Council and the Town Manager, I believe multiyear **employment** contracts should have some approval from the Town Council. The Town Manager should be responsible for negotiating the agreements and the Town Council should approve them since the contracts will have long term fiscal impact on the Town.

- These contracts were signed by both the affected employees and the Town Manager with both parties believing the Town Manager had the authority to sign the agreement.
- While the terms of the contracts may have been different if the Town Manager had consulted with the Town Council, the contracts are not that egregious. This is particularly true in the case of both Chiefs' contracts relative to the recently approved Police and Fire union contracts. In fact I am relatively sure that in the Police Chief's case there are Police Officers whose total compensation will exceed the Police Chief in coming years as they have in the past. This may also be true with the Fire Chief.
- Litigation over the validity of the contracts will not speak well for the town in terms of the ability to recruit a permanent town manager or productive relations between key Town Department Heads and the Town Council. I also believe the Town will be in a relatively weak position if litigation were initiated.

For all of these reasons, I am submitting the contracts before the Town Council and recommend the Town Council approve the contracts.



Bridgewater Town Council

In Town Council, Tuesday, June 19, 2012

Council Order: #O-2012-032

Late File

Introduced By: Town Manager

Date Introduced/First Reading: June 19, 2012

Second Reading:

Amendments Adopted:

Date Adopted:

Date Effective:

Proposed Order #O-2012-032

CONTRACT APPROVAL: POLICE CHIEF

ORDERED, in accordance with section 6-4 (a) of the Bridgewater Home Rule Charter, that the Town Council assembled vote to approve the negotiated agreement with the Chief of Police.

Explanation:

The Town Manager negotiated a three year agreement with the Police Chief that was signed on February 27, 2012. An affirmative vote of the Council will approve the contract as presented.

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ROBERT G. CLARK, JR. (1923 - 1976)
FREDERICK H. BALBONI (1939 - 1996)

Reply To **Bridgewater**

MEMO

TO: Troy B.G. Clarkson
Town Manager

FROM: Mark C. Gildea
Town Attorney

DATE: March 9, 2012

RE: Chief of Police Contract

With respect to the issue of a contract for the Chief of Police, the Town Council should be aware of the provisions of M.G.L. ch. 41, section 108O which provides that:

Any city or town acting through its appointing authority, may establish an employment contract for the salary, fringe benefits, and other conditions of employment, including but not limited to, severance pay, relocation expenses, reimbursement for expenses incurred in the performance of his duties or office, liability insurance, conditions of discipline, termination, dismissal, and reappointment, performance standards and leave for its police chief and fire chief, or a person performing such duties having a different title. In communities where said police chief and fire chief is subject to the provisions of chapter thirty-one, the provisions of chapter thirty-one shall prevail when the provisions of this section conflict with the provisions of said chapter thirty-one.

Said contract shall prevail over any conflicting provision of any local personnel by-law, ordinance, rule or regulation. In addition to the benefits provided municipal employees under chapters thirty-two and thirty-two B, said contract may provide for supplemental retirement and insurance benefits.

A copy of the statute is attached.

Sec. 4-2(15) of the Town Charter provides that the Town Manager is "to be responsible for the negotiation of all contracts with town employees over wages... Insofar as they require appropriations, contracts shall be subject to the approval of the town council.

The Town Accountant has certified that the proposed contract with the Chief does not require an appropriation for this fiscal year.

Please contact me with any questions.

PART I ADMINISTRATION OF THE GOVERNMENT
(Chapters 1 through 182)

TITLE VII CITIES, TOWNS AND DISTRICTS

CHAPTER 41 OFFICERS AND EMPLOYEES OF CITIES, TOWNS AND DISTRICTS

Section 1080 Employment contracts for police chiefs and fire chiefs

Section 1080. Any city or town acting through its appointing authority, may establish an employment contract for the salary, fringe benefits, and other conditions of employment, including but not limited to, severance pay, relocation expenses, reimbursement for expenses incurred in the performance of his duties or office, liability insurance, conditions of discipline, termination, dismissal, and reappointment, performance standards and leave for its police chief and fire chief, or a person performing such duties having a different title. In communities where said police chief and fire chief is subject to the provisions of chapter thirty-one, the provisions of chapter thirty-one shall prevail when the provisions of this section conflict with the provisions of said chapter thirty-one.

Said contract shall prevail over any conflicting provision of any local personnel by-law, ordinance, rule or regulation. In addition to the benefits provided municipal employees under chapters thirty-two and thirty-two B, said contract may provide for supplemental retirement and insurance benefits.

Nothing contained in this section shall affect the appointment powers of any city or town over its police chief and fire chief, or such person performing such duties with a different title. In the absence of any conflicting provisions in an employment contract, nothing contained in this section shall affect the removal powers of any city or town over its police chief and fire chief or such person performing such duties with a different title.

Nothing contained in this section shall grant tenure to such officer, nor shall it abridge the provisions of section sixty-seven of chapter forty-four. If there is no employment contract in force, and if the police chief or fire chief has an appointment for a term, the appointing authority shall give such chief at least one year's written notice if it decides not to reappoint said chief.

TOWN OF BRIDGEWATER
Police Chief Contract

Agreement made this 27th day of February 2012 by and between the Town of Bridgewater (hereinafter referred to as the "TOWN") and Christopher D. Delmonte of Bridgewater, Massachusetts (hereinafter referred to as the "CHIEF" or "CHIEF OF POLICE"), pursuant to M.G.L. Chapter 41, Section 108o.

WHEREAS, the TOWN is desirous of securing the services of the CHIEF in the administration of the Police Department; and

WHEREAS, the CHIEF has been the duly appointed permanent CHIEF OF POLICE under the rules and laws of Civil Service contained in Chapter 31 of the Massachusetts General Laws; and

WHEREAS, the TOWN has or hereby does recognize voluntarily, pursuant to M.G.L. ch. 150E, s. 4, and the applicable regulations of the Massachusetts Division of Labor Relations, the position of CHIEF OF POLICE as a supervisory bargaining unit, separate and distinct from all other units in the Police Department; and

WHEREAS, the TOWN recognizes the CHIEF as a one-person collective bargaining unit; 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 contract;

NOW, THEREFORE, the TOWN and the CHIEF hereby agree that the following terms and conditions shall govern the salary and fringe benefits payable under this contract, pursuant to M.G.L. ch. 41, s. 108o, to which said CHIEF shall be entitled as CHIEF OF POLICE for a three (3) year period commencing on December 1, 2011 and expiring on November 30, 2014.

1. DUTIES

The administrative control of the Police Department for the TOWN shall be the responsibility of the CHIEF OF POLICE. The Town has adopted the so-called "strong chief" law, i.e., M.G.L. Ch. 41 s. 97A. In addition, a Town Charter has been adopted to state the following: "Department heads shall have the authority to appoint, suspend and remove based upon merit and fitness alone all department subordinates and employees, except as otherwise provided by-law, collective bargaining agreements, this charter or personnel rules adopted under this charter." Town of Bridgewater, Home Rule Charter, Chapter 52 of the Acts of 2010, Section 5-2 Personnel Administration. It is further acknowledged that the CHIEF OF POLICE shall be the appointing authority for all sworn and civilian employees of the Police Department, including sworn employees recognized under the laws and rules of Civil Service, M.G.L. Chapter 31.

The Chief's duties shall also include but not be limited to the following:

- A. Supervision of the daily operation of the Police Department.
- B. Supervision of all departmental personnel.
- C. Preparation and submission of the Police Department budget.
- D. Submission of reports to the TOWN either orally or in writing when requested or required in order to ensure the proper communication between the TOWN and the Police Department.
- E. Being responsible for all departmental expenditures, as well as the receipt of funds and property in the custody of the Department.
- F. Supervision and control of all department equipment, Headquarters building and property at 220 Pleasant Street, other properties utilized by department personnel, and motor vehicles belonging to or used by police department personnel.
- G. Establishing weapons, ammunition, uniforms, equipment and vehicle specifications for the Police Department.
- H. Being in-charge of all special, auxiliary and/or reserve police officers, dispatchers, matrons, prisoner supervision staff, clerical staff, parking

enforcement officers or any other employee of the department; including but not limited to suspension, removal or lay-off.

I. Supervision and control of all training programs for department personnel and the assignment of personnel to such programs.

J. Maintaining the discipline of department personnel; the issuing of orders, rules, regulations, policies and procedures; and the assignment to shifts and duties of all departmental personnel.

K. Being available for hearings before any Board of the TOWN at which the Police Department is required to appear and before the TOWN COUNCIL when necessary.

L. Being responsible for planning, organizing, directing, staffing and coordinating police operations, including so-called "paid details", and authorized to enter into mutual aid agreements, regional task force or similar enforcement efforts, and coordination with other police agencies as the CHIEF deems it appropriate.

M. Being responsible for communications with the public, including the media, on matters related to crime, police operations and department policy.

N. Being responsible and authorized for promotional selection, appointment, or demotion.

O. Being responsible and authorized to enforce discipline as determined by the CHIEF including but not limited to suspension or removal of all sworn or civilian employees.

P. Shall serve as the designated supervisor and municipal coordinator for the town's 911 emergency telecommunications services.

2. HOURS OF WORK

A. The CHIEF agrees to devote that amount of time and energy which he determines is reasonably necessary for the CHIEF to faithfully perform the duties of CHIEF OF POLICE under this contract.

B. It is acknowledged that the CHIEF is a paid part-time Visiting Lecturer for Bridgewater State University, as well as the Massachusetts Criminal

Justice Training Committee, and will be allowed to perform in this or a similar capacity. On occasion, the hours of instruction may take place during the day, and the TOWN agrees that the CHIEF may alter his schedule to accommodate this limited activity if it is not detrimental to the operations of the department. The Town Manager has determined that this is not a conflict of interest and, in fact, is compatible with the CHIEF's duties.

C. It is recognized that the CHIEF OF POLICE must devote a great deal of time outside the normal office hours to the business of the TOWN, and to that end, the CHIEF shall be allowed to take compensatory time off as he shall deem appropriate during said normal office hours at such time which the CHIEF reasonably determines will adversely impact department operations least. The CHIEF will not be required to work on any recognized holiday, unless emergency circumstances or police business warrants otherwise, and for purposes of holiday benefits, if the holiday falls on a day during the work week it will be considered a day worked. If the CHIEF elects to receive Holiday pay, he will be compensated at time and one half (1 ½) the CHIEF's hourly rate of pay for that day. Recognized holidays shall also include national Law Enforcement Officer Memorial Day (May 15th).

3. INDEMNIFICATION

The TOWN agrees that it shall defend, save harmless and indemnify the CHIEF OF POLICE against any tort, professional liability claim or demand or other civil or criminal legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of the CHIEF'S duties as CHIEF OF POLICE of the TOWN.

4. INSURANCE

A. *Professional Liability*

The TOWN agrees to furnish upon written request from the CHIEF, copies of liability policies for the TOWN.

B. ***Disability***

Disability shall be consistent with Chapter 41, Section 111F of the Massachusetts General Laws.

C. ***Miscellaneous***

The CHIEF OF POLICE shall be eligible for all health, dental, and life insurance benefits for which other non-bargaining unit, general government employees are eligible. Upon execution of this agreement, the CHIEF agrees to contribute towards the cost of such insurance programs as follows:

CHIEF – 20% / TOWN – 80%

The health / dental insurance plan is to be selected by the CHIEF, including the option of remaining with the Mayflower Health Care Group, or other comparable insurance group selected by the CHIEF. If the CHIEF chooses not to participate in the Town's health insurance program for an entire fiscal year, he shall be paid the sum of \$4,000 for each year of non-participation.

Any and all rights and benefits currently enjoyed by the CHIEF under this article will remain in full force and effect unless otherwise negotiated with the CHIEF, or prohibited by state or federal law.

In the event state or federal law mandates a change to a specific right or benefit currently enjoyed by the CHIEF, the change will be solely to that individual right or benefit.

Unless specifically prohibited by state or federal law any change in rights or benefits covered by this article must be agreed upon by the CHIEF and the TOWN prior to implementation or change.

Any change to the rights or benefits under this article which results in any cost savings to the TOWN, shall be shared with the CHIEF at the maximum percentage/amount allowed by law.

In the event, after following the process required by Chapter 69 of the Acts of 2011, the TOWN decides to transfer health insurance coverage for the Town's employees to the Group Insurance Commission established by

Section 3 of M.G.L. 32A, the parties agree to reopen the provision of this collective bargaining agreement dealing with plan design change only. If the plan design change to the GIC will result in an increase to the CHIEF's co-pays, deductibles, or decreases coverage benefits, the CHIEF will be allowed to remain with the Mayflower Health Care Group or other comparable health care plan selected by the CHIEF.

D. *Injured on Duty*

As a sworn police officer, the CHIEF shall be entitled to injured-on-duty benefits as provided in Chapter 41, Section 111F of the Massachusetts General Laws.

5. DUES AND SUBSCRIPTIONS

The TOWN agrees to budget and to pay for the professional dues and subscriptions of the CHIEF for his continuation and participation in national, regional, state and local associations and organizations necessary and desirable for his continued professional growth and advancement, and for the good of the TOWN, including but not limited to the International Association of Chiefs of Police, the New England Police Chiefs Association, FBI – Law Enforcement Executive Development Association, the Massachusetts Chiefs of Police Association, Southeastern Massachusetts Chiefs of Police Association, Plymouth County Police Chiefs Association, and the other applicable national or regional police chief's associations, as determined by the CHIEF.

6. USE OF PERSONAL AUTOMOBILE

The CHIEF may, upon mutual agreement of both parties, use his own private automobile for his duties as CHIEF OF POLICE. In the event such agreement is reached, the TOWN shall pay for all maintenance expenses and insurance of such vehicle. The TOWN shall reimburse the CHIEF at the then-applicable IRS rate per mile when such vehicle is used by the CHIEF in

connection with the performance of his duties as CHIEF OF POLICE and for his professional growth and development.

7. PROFESSIONAL DEVELOPMENT

The TOWN recognizes its obligations to and appreciates the value of professional development of the CHIEF OF POLICE, and agrees that the CHIEF shall be given adequate opportunities to develop his skills and abilities as a law enforcement administrator; accordingly, the CHIEF will be allowed to attend the FBI – LEEDA Executive Development and International Association of Chiefs of Police training conferences each year as well as the FBI National Academy without loss of vacation or other leave, and will be reimbursed by the TOWN for all expenses (including travel expenses) incurred while attending or traveling to the aforementioned conferences and training sessions.

The TOWN also agrees to budget and pay for travel and subsistence expense of the CHIEF for courses, institutes, and seminars that, in the CHIEF's reasonable judgment, are necessary for his professional development.

8. DEATH DURING TERM OF EMPLOYMENT

If the CHIEF OF POLICE dies during the term of his employment, the TOWN shall pay to the CHIEF'S estate all the compensation which would otherwise be payable to the CHIEF up to the date of the CHIEF'S death, including, but not limited to, payment for any and all unused leave days as noted elsewhere in this agreement.

9. OPEN MEETING LAW

It is agreed that the CHIEF can be disciplined or discharged only for good and just cause, upon proper notice and only after a hearing at which the CHIEF shall have the right to be represented by counsel. The 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. The principle of progressive discipline will apply and the TOWN recognizes its obligation to provide the CHIEF with

periodic performance evaluations. The TOWN further recognizes the CHIEF as a one-person collective bargaining unit.

10. COMPENSATION

Base Salary Effective December 1, 2011: \$121,500.00

Base Salary Effective July 1, 2012: \$125,933.00

Base Salary Effective July 1, 2013: \$130,866.00

Base Salary Effective July 1, 2014: \$135,799.00

(Note: The base salary includes education as one factor among many in determining salary level, e.g. Juris Doctor. As a consequence, the CHIEF is not eligible for so-called "Quinn Bill" benefits.)

The TOWN shall provide a police vehicle for use by the CHIEF, to be selected by the CHIEF, and pay for all attendant operating and maintenance expenses and insurance. Said vehicle is to be used by the CHIEF in connection with the performance of his duties as CHIEF OF POLICE and for his professional growth and development. It may be used by the CHIEF for personal reasons since the CHIEF is "on-call" in the event of emergency.

The TOWN also agrees to furnish the CHIEF with a cellular telephone or similar device selected by the CHIEF, and pay all expenses or attendant costs of having said device. The phone being necessary for routine business or emergency communications, but may also be used for personal reasons as determined by the CHIEF.

11. OTHER BENEFITS

Annually, the CHIEF shall receive 30 days vacation leave, \$1,500 clothing allowance, \$700 cleaning allowance, and effective July 1, 2012, the CHIEF will receive \$700 annually for legal updates and professional materials. The CHIEF will be entitled to sick-time benefits as indicated elsewhere in this agreement,

longevity pay increases: 10 years: 2%; 15 years: 2%; 20 years: 2%; 25 years: 5%; and 28 years: 3%, and at least the same number of personal days, bereavement days, and all other benefits as do any other regular police officers of any rank of the TOWN.

Accumulation of sick-time shall be in accordance with the following terms: The CHIEF shall accrue sick-time at the rate of one and one-half (1 ½) days for each completed calendar month of employment. In the event that the CHIEF does not use any sick leave in a calendar year, then the CHIEF shall be credited with three (3) additional administrative days off (ADO). In the event that the CHIEF uses no more than three (3) sick days in a calendar year, then the CHIEF will be credited with two (2) additional administrative days off (ADO). In the event that the CHIEF uses no more than six (6) sick days in a calendar year, then the CHIEF shall be credited with one (1) additional administrative day off (ADO). The CHIEF will not be limited in the number of sick days that can be accrued or carried, but buy-back provisions will be limited as noted below.

Upon execution of this contract, the following limitation on sick-time buy-back provisions will be implemented. Pursuant to this agreement, the CHIEF will be allowed to buy-back up to 300 days of accumulated unused sick-time, at 50%, payable on the following schedule: August 1, 2012: 100 days; August 1, 2013: 100 days; August 1, 2014: 100 days. If the CHIEF does not retire voluntarily or dies during his tenure in office, his estate shall be entitled to 50% buy-back of any and all unused sick-time accumulated at the time of separation or death. Subject to the above specified limitation, after August 1, 2014, the CHIEF will waive all future rights to sick-time buy-back benefits. All other sick-time provisions will be in accordance with existing BPA contract terms.

Unless provided for elsewhere in this contract or prescribed by law, all compensation due under this provision of the contract will be paid on a mutually agreeable time schedule between the CHIEF and the TOWN, or within one year.

If the CHIEF makes timely notification to the TOWN of his retirement, he shall immediately receive a wage adjustment increase of five percent (5%) which will be applied to his salary at that time in order to prepare the organization for

transition and train his successors in management of the department. This benefit will only be available for a maximum of thirty-six (36) months prior to separation.

12. MODIFICATION

No change or modification of this Contract shall be valid unless it shall be in writing and signed by both of the parties.

13. LAW GOVERNING

This contract shall be construed and governed by the Laws of the Commonwealth of Massachusetts.

14. SEVERABILITY OF PROVISIONS

If any clause or provision of this contract shall be determined to be illegal by a court of competent jurisdiction, the remainder of this contract shall remain in full force and affect.

15. DISCIPLINE OR DISCHARGE

A. It is agreed that the CHIEF OF POLICE can be disciplined or discharged (which term includes non-reappointment) only for good and just cause, upon proper written notice of at least 30 days and only after a hearing at which the CHIEF shall have the right to be represented by counsel. The 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. The principle of progressive discipline will apply and the TOWN recognizes its obligation to provide the CHIEF with periodic performance evaluations.

B. The CHIEF may appeal any discipline or discharge to the Civil Service Commission or, as the law allows, at the CHIEF's option, to a committee of arbitrators consisting of three (3) persons. The three persons shall be chosen

as follows: one by the TOWN, one by the CHIEF, and one by the two so chosen. A majority of the three-member committee shall be sufficient to uphold, modify or reverse the discharge decision.

C. The CHIEF may appeal any discipline or discharge upheld by the committee of arbitrators to the district court wherein the CHIEF resides or to the superior court, each of which shall have jurisdiction to review whether any discipline was just and proper, and may order the reinstatement of the CHIEF OF POLICE if he alleges he has been improperly suspended or discharged.

D. In the event of the suspension or discharge of the CHIEF, if the committee of arbitrators, the Civil Service Commission or a court shall reverse or modify a suspension or discharge, the CHIEF shall be entitled to back pay, benefits and legal fees.

16. **LENGTH OF CONTRACT**

A. The initial term of this Contract shall be for a period commencing on December 1, 2011 and concluding November 30, 2014. However, this contract may be extended as provided by its terms.

In any event, this contract shall remain in full force and effect unless and until a new contract is executed.

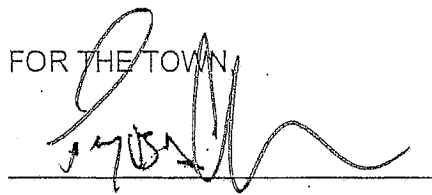
B. Unless either party provides written notice to the other of its intention to renegotiate and/or not to renew this contract no less than twelve (12) months prior to the end of its initial or any extended terms, this contract shall automatically be extended on the then applicable terms and conditions for an additional three (3) year period, subject to annual salary increases to be negotiated between the CHIEF and the TOWN.

C. Pursuant to Civil Service Law (MGL c. 31), the CHIEF may only be disciplined or discharged for good and just cause. In the event any such action is found to be without just cause, the CHIEF will be entitled to reinstatement, back pay and benefits, and legal fees.

D. In the event the CHIEF OF POLICE intends to resign voluntarily before the natural expiration of any term of employment, then the CHIEF OF POLICE shall give the TOWN thirty (30) days written notice in advance, unless the parties otherwise agree in writing. The CHIEF will be entitled to receive full-pay for any accrued but unused leave, subject to the limitations specified above.

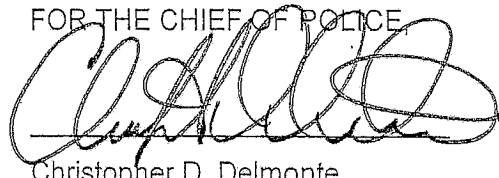
IN WITNESS WHEREOF, the parties hereunto have set their hands and seals to this instrument the date and year first above written.

FOR THE TOWN



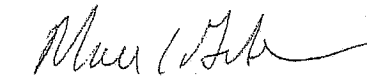
Troy B.G. Clarkson
Town Manager

FOR THE CHIEF OF POLICE



Christopher D. Delmonte
Chief of Police

APPROVED AS TO FORM:



Town Counsel

Mark C. Gildea
Attorney



Bridgewater Town Council

In Town Council, Tuesday, June 19, 2012

Council Order: #O-2012-033

Late File

Introduced By: Town Manager

Date Introduced/First Reading: June 19, 2012

Second Reading:

Amendments Adopted:

Date Adopted:

Date Effective:

Proposed Order #O-2012-033

CONTRACT APPROVAL: TOWN ACCOUNTANT

ORDERED, in accordance with section 6-4 (a) of the Bridgewater Home Rule Charter, that the Town Council assembled vote to approve the negotiated agreement with the Town Accountant.

Explanation:

The Town Manager negotiated a five year agreement with the Town Accountant that was signed on March 1, 2012. An affirmative vote of the Council will approve the contract as presented.

MIRICK O'CONNELL

A T T O R N E Y S A T L A W

D. M. Moschos
Mirick O'Connell
100 Front Street
Worcester, MA 01608-1477
dmoschos@mirickoconnell.com
t 508.860.1422
f 508.983.6282

April 5, 2012

VIA EMAIL AND FIRST CLASS MAIL

Troy B.G. Clarkson
Town Manager
Town of Bridgewater
Academy Building
66 Central Square
Bridgewater, MA 02324

Re: Town Manager's Authority to Enter into Employment Agreement with Town
Accountant

Dear Troy:

I am writing in response to the Town of Bridgewater's request for advice about whether the Town Manager has the sole authority under the Town's Home Rule Charter and Massachusetts law to enter into an employment agreement with the Town Accountant. Based on our review of the relevant provisions of the Charter and the law, the Town Manager's authority to enter into such a contract is not absolute, but is, instead, subject to the approval of the Town Council where an appropriation is needed.

M.G.L. c. 41, § 108N, which was amended to allow cities and towns to enter into employment contracts with, among others, town accountants, provides, in relevant part, as follows:

[A]ny city or town acting through its board of selectmen or city council or mayor with the approval of the city council, as the case may be, may establish an employment contract for a period of time to provide for the salary, fringe benefits, and other conditions of employment . . . for its . . . town accountants. . . .

Said contract shall be in accordance with and subject to the provisions of the city or town charter and shall prevail over any conflicting provision of any local personnel by-law, ordinance, rule, or regulation.

M.G.L. c. 41, § 108N.

MIRICK, O'CONNELL, DEMALLIE & LOUGEE, LLP

WORCESTER | WESTBOROUGH | BOSTON

www.mirickoconnell.com

MIRICK O'CONNELL

Troy B.G. Clarkson
April 5, 2012
Page 2

In Bridgewater, the Town functions under a city form of government with the Town Council serving as the legislative body and the Town Manager serving as chief executive officer of the Town. As a result, the Town Manager is the equivalent of a mayor. Under the Town Charter, the Town Manager effectively functions as the mayor for executive and administrative matters.

At issue here is whether the Town Council needs to approve the employment agreement the Town Manager entered into with the Town Accountant. As noted above, under M.G.L. c. 41, § 108N, employment contracts made by a mayor require the approval of the city council. M.G.L. c. 41, § 108N, however, is subject to the provisions of the Town's Charter.

Section 4-2 (Administrative Powers and Duties) of the Charter sets forth the powers, duties and responsibilities of the Town Manager, including, the authority "to be responsible for the negotiation of all contracts with town employees over wages, and other terms and conditions of employment." Charter, Section 4-2(15). While the Town Manager has the authority to negotiate employment contracts with Town employees, including the Town Accountant, this power is not absolute under Section 4-2(15) of the Charter. Rather, Section 4-2(15) specifically provides: "Insofar as they require appropriations, contracts shall be subject to the approval of the town council." Id. In light of this provision, to the extent the Town Accountant's contract would be subject to appropriation, it would also be subject to the approval of the Town Council.

If you have any further questions, please do not hesitate to contact me.

Sincerely,



D. M. Moschos*

DMM/

cc: Town Attorney

* By appointment of Town Manager, Special Assistant Town Attorney



THE 187TH GENERAL COURT OF
THE COMMONWEALTH OF MASSACHUSETTS

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Massachusetts Laws

General Laws

[Print Page](#)[Massachusetts Constitution](#)[General Laws](#)[Session Laws](#)[Rules](#)

PART I	ADMINISTRATION OF THE GOVERNMENT (Chapters 1 through 182)	PREV	NEXT
TITLE VII	CITIES, TOWNS AND DISTRICTS	PREV	NEXT
CHAPTER 41	OFFICERS AND EMPLOYEES OF CITIES, TOWNS AND DISTRICTS	PREV	NEXT
Section 108N	Town manager, administrator, executive secretary, or administrative assistant; employment contract	PREV	NEXT

Section 108N. Notwithstanding the provision of any general or special law to the contrary, any city or town acting through its board of selectmen or city council or mayor with the approval of the city council, as the case may be, may establish an employment contract for a period of time to provide for the salary, fringe benefits, and other conditions of employment, including but not limited to, severance pay, relocation expenses, reimbursement for expenses incurred in the performances of duties or office, liability insurance, and leave for its town manager, town administrator, executive secretary, administrative assistant to the board of selectmen, town accountants, city auditor or city manager, or the person performing such duties having a different title.

Said contract shall be in accordance with and subject to the provisions of the city or town charter and shall prevail over any conflicting provision of any local personnel by-law, ordinance, rule, or regulation. In addition to the benefits provided municipal employees under chapters thirty-two and thirty-two B, said contract may provide for supplemental retirement and insurance benefits.

Nothing contained in this section shall affect the appointment or removal powers of any city or town over its town manager, town administrator, executive secretary, administrative assistant to the board of selectmen, town accountants, city auditor or city manager, or such person performing such duties with a different title, nor shall it grant tenure to such officer, nor shall it abridge the provisions of section sixty-seven of chapter forty-four.

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TOWN ACCOUNTANT CONTRACT

Agreement made this 15th day of MARCH 2012, by and between the Town of Bridgewater (hereinafter referred to as the "Town") and Janine Smith (hereinafter referred to as the "Accountant").

WHEREAS, the Town is desirous of securing the services of the Accountant in the administration of the finances of the Town of Bridgewater; and

WHEREAS, the Accountant is willing to perform the duties of the position of Accountant according to the terms and conditions of this Contract;

NOW, THEREFORE, the Town and the Accountant hereby agree, in accordance with MGL Ch. 41, §108N, that the following terms and conditions shall govern the salary and fringe benefits payable under this contract to which said Accountant shall be entitled as Accountant.

1. DUTIES

The Accountant shall perform all duties customarily associated by statute and the Bridgewater Home Rule Charter in the management of the finances of the town, and shall be responsible to the Town Manager for all items deemed necessary in the conduct of said duties.

2. BENEFITS

The Accountant shall be eligible for benefits consistent with those agreed to between the town and the United Steelworkers Union, including, but not limited to: health insurance benefits and premium share, accumulation and use of vacation and sick time, and longevity incentives. For purposes of calculating eligibility for vacation, sick time, and longevity, the Accountant's full municipal experience shall be cumulatively calculated. If the current pending contract with the Steelworkers is not funded by the Bridgewater Town Council, the existing benefits through the Wage & Personnel Plan shall apply.

In addition, the Accountant shall be able to attend, at the town's expense, sufficient conferences and professional development events necessary to maintain her certification as a municipal accountant in Massachusetts.

3. COMPENSATION

The salary for the Accountant shall be \$75,000 per year. The Accountant is expected to frequently be available for work beyond normal working hours and is not eligible for overtime.

The salary amount shall be subject to an annual 3% increase annually on July 1 of each year of the contract.

4. LENGTH OF CONTRACT

This contract shall be binding upon its execution, with an effective start date of July 1, 2011. In accordance with MGL Ch. 41 §55, this contract shall expire five years hence, on June 30, 2016.

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

FOR THE TOWN



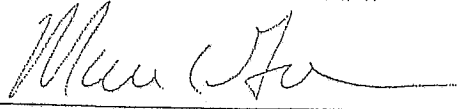
Troy B.G. Clarkson
Town Manager

FOR THE ACCOUNTANT,



Janine Smith
Town Accountant

APPROVED AS TO FORM:



Mark Gildea



Bridgewater Town Council

In Town Council, Tuesday, June 19, 2012

Council Order: #O-2012-034

Late File

Introduced By: Town Manager

Date Introduced/First Reading: June 19, 2012

Second Reading:

Amendments Adopted:

Date Adopted:

Date Effective:

Proposed Order #O-2012-034

CONTRACT APPROVAL: FIRE CHIEF

ORDERED, in accordance with section 6-4 (a) of the Bridgewater Home Rule Charter, that the Town Council assembled vote to approve the negotiated agreement with the Fire Chief.

Explanation:

The Town Manager negotiated a three year contract extension agreement with the Fire Chief that was signed on April 17, 2012. An affirmative vote of the Council will approve the contract as presented.

FIRE CHIEF CONTRACT

Agreement made this 17th day of April, 2012, by and between the Town of Bridgewater acting by and through its Town Manager (hereinafter the "TOWN") and George W. Rogers Jr. of Bridgewater, Massachusetts (hereinafter the "CHIEF" or "FIRE CHIEF").

WHEREAS, the TOWN is desirous of securing the services of the CHIEF in the administration of the Fire Department; and

WHEREAS, the CHIEF is willing to perform the duties of the position of FIRE CHIEF according to the M.G.L. Chapter 48: Sections 42, 43, 44 and conditions of this Contract;

WHEREAS, M.G.L. Chapter 41: Section 108O allows a town acting through its appointing authority to establish an employment contract for the salary, fringe benefits, and other conditions of employment, for its fire chief,

NOW, THEREFORE, the TOWN and the CHIEF hereby agree that the following terms and conditions shall govern the salary and fringe benefits and other conditions of employment payable under this Contract to which said CHIEF shall be entitled to as FIRE CHIEF:

1. DUTIES

The administrative control of the Fire Department for the TOWN OF BRIDGEWATER shall be the responsibility of the FIRE CHIEF. His duties shall include but not be limited to the following as long as the same are not in conflict with local ordinance or state law:

- A. Supervision of the daily operation of the Fire Department.
- B. Supervision of all departmental personnel.
- C. Preparation and recommendation to the Town Manager of the Fire Department budget, including the budget for any ambulance service.
- D. Submission of reports to the TOWN, either orally or in writing when requested or required in order to ensure the proper communication between the TOWN and the Fire Department.
- E. Being accountable for all departmental expenditures, as well as the receipt of funds and property in the custody of the department.
- F. Supervision and control of all department equipment and motor vehicles belonging to or used by the Fire Department.
- G. Recommendation of equipment and vehicle specifications for the Fire Department.

- H. Being in charge of all call firefighters.
- I. Supervision and control of all training programs for department personnel and the assignment of personnel to such programs.
- J. Maintaining the discipline of department personnel; the issuing of orders, rules, regulations, policies and procedures; and the assignment to shifts and duties to all departmental personnel.
- K. Being available for hearings before any board of the TOWN at which the Fire Department is required to appear and before any TOWN meeting, when necessary.
- L. Being responsible for planning, organizing, directing, staffing, and coordinating fire operations.
- M. Being responsible for communications with the public, including the media, on matters related to fire operations and department policy.
- N. Perform the duties and responsibilities of the EMERGENCY MANAGEMENT DIRECTOR.

2. HOURS OF WORK

A. The CHIEF agrees to devote that amount of time and energy which is reasonably necessary for the CHIEF to faithfully perform the duties of FIRE CHIEF under this Contract, but in no event shall the amount of time be less than 40 hours per week. The CHIEF acknowledges that he is on call 24 hours a day, seven days per week.

B. It is recognized that the Fire Chief must devote a great deal of time outside of normal office hours to the business of the TOWN, and to that end, the FIRE CHIEF shall be allowed to work altered hours whenever deemed appropriate by the Town Manager and the CHIEF jointly, at such times which will not adversely impact department operations.

3. COMPENSATION

- A. SALARY AND BENEFITS: The TOWN agrees to compensate the FIRE CHIEF at the rate one hundred twelve thousand (\$112,000.00) July 1, 2012; one hundred fifteen thousand (\$115,000.00) July 1, 2013; one hundred eighteen thousand (\$118,000) July 1, 2014; one hundred twenty-two thousand (122,000.00) July 1, 2015; one hundred twenty six thousand (\$126,000.00) July 1, 2016.
- B. The TOWN agrees to compensate the FIRE CHIEF an additional ten thousand (\$10,000) to be the Emergency Management Director in addition to the annual base pay for the FIRE CHIEF. Understanding and in consideration of additional job responsibilities as Emergency Management Director. In the final three years of this agreement, the Emergency Management Director compensation shall be calculated at ten percent (10%) of the base salary as noted above.

- C. Pursuant to the provisions of M.G.L. ch. 41, sec. 108O and M.G.L. ch. 48, sec. 57E is the entire amount to be paid by the Town to the Fire Chief for his services.
- D. The Fire Chief shall be entitled to longevity benefits as outlined in the Firefighter's contract

The Fire Chief shall be entitled to the following benefits:

-Vacation: The Town recognizes that the Fire Chief receives six (6) weeks' vacation per year. Any vacation shall be taken by the Chief at such time as in his opinion will cause the least interference with the performance of the regular work of the TOWN.

-Fifteen (15) sick days. Sick days may be accumulated. At time of retirement during the term of this Contract or of non-renewal of this Contract, the Fire Chief shall not be compensated for his unused sick days.

-Bereavement Leave. The Fire Chief shall be entitled to bereavement leave as set forth in Section 20 (or any successor section) of the Wage and Personnel Board Classification and Compensation Plan.

The Fire Chief is not entitled to any other salary or benefits.

B. AUTOMOBILE: The TOWN shall provide a vehicle for use by the FIRE CHIEF and pay for all attendant operating and maintenance expenses and insurance. Said vehicle is to be used by the FIRE CHIEF in connection with the performance of his duties as FIRE CHIEF and for his professional growth and development. Subject to the record keeping requirements of the IRS, the vehicle may be used by the CHIEF for personal reasons since the CHIEF is "on-call" in the event of an emergency.

C. PROFESSIONAL DEVELOPMENT: The TOWN recognizes its obligation to the professional development of the CHIEF, and agrees that the CHIEF shall be given adequate opportunities to develop his skills and abilities as a fire service and public safety administrator; accordingly the CHIEF will be allowed to attend the National Fire Academy, Fire Chiefs of Massachusetts, New England Association of Fire Chiefs and the International Association of Fire Chiefs conferences each year, without loss of vacation or other leave, and will be reimbursed by the Town for all expenses while attending or traveling to the aforementioned conferences as provided in the Fire Departments budget. The Town also agrees to budget and pay for travel and subsistence expense of the CHIEF for short courses, institutes and seminars that in the Chief's reasonable judgment are necessary for his professional development.

The TOWN acknowledges that the CHIEF will be elected the first vice president of the Fire Chiefs of Massachusetts in May of 2012 and president of the Fire Chiefs of Massachusetts in May of 2013. The TOWN recognizes that this is a two year commitment and will require the CHIEF to fulfill duties outside of the TOWN of Bridgewater.

- D. DUES AND SUBSCRIPTIONS: The TOWN agrees to budget and pay for professional dues and subscriptions of the CHIEF 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, and for the good of the TOWN, including but not limited to International Chiefs Association, Massachusetts Chiefs Association, and other applicable regional Fire Chief's Associations.

4. **INDEMNIFICATION**

Indemnification shall be consistent with Chapter 258 of the Massachusetts General Laws.

5. **INSURANCE**

A. Professional liability-The TOWN agrees to furnish upon written request from the CHIEF, copies of liability policies for the TOWN.

B. Disability-Disability shall be consistent with Chapter 41, Section 111F of the Massachusetts General Laws.

C. Miscellaneous-The FIRE CHIEF shall be eligible for all health and life insurance benefits for which other Town of Bridgewater Department Heads are eligible. The FIRE CHIEF shall pay twenty percent (20%) of the health insurance premiums as of the date of this agreement.

D. Injured On Duty-As a sworn firefighter, the FIRE CHIEF shall be entitled to injured-on-duty benefits as provided in Chapter 41, Section 111F of the Massachusetts General Laws.

6. **DEATH OR RETIREMENT DURING TERM OF EMPLOYMENT**

If the FIRE CHIEF dies or retires during the term of this Contract, the TOWN shall pay to the Chiefs estate or to the Chief, all the compensation which would otherwise be payable to the FIRE CHIEF up to the date of the CHIEF'S death or retirement, including but not limited to unused vacation on a proportionate basis to the amount of time served in a given year and any other payments due pursuant to this contract.

7. **DISCIPLINE OR DISCHARGE**

A. It is agreed that the FIRE CHIEF can be disciplined or discharged for just cause by the Town Manager, upon proper notice and only after a hearing at which the FIRE CHIEF shall have the right to be represented by counsel. The 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. The TOWN recognizes its obligation to provide the CHIEF with periodic performance evaluations.

B. The FIRE CHIEF may appeal any discipline or discharge to the District Court wherein the FIRE CHIEF resides or to any Superior Court having jurisdiction, each of which shall have jurisdiction of any petition for a writ of mandamus for the reinstatement of the FIRE CHIEF if he alleges he has been improperly suspended or discharged.

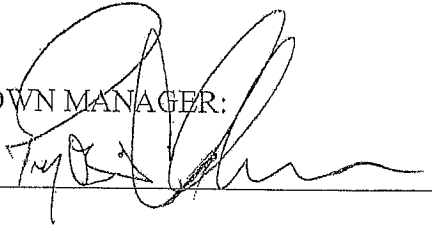
C. In the event of suspension or discharge of the FIRE CHIEF, if the District Court for the judicial district wherein the FIRE CHIEF resides, or the Superior Court shall reverse a suspension or discharge and order that the FIRE CHIEF be reinstated to duty, the FIRE CHIEF shall be entitled to back pay and benefits.

8. TERM OF CONTRACT

The term of this contract shall be for the period beginning April 17, 2012 through July 1, 2016.

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

TOWN MANAGER:

A handwritten signature in dark ink, appearing to be "Troy B. [unclear]", written over a horizontal line.A handwritten signature in dark ink, appearing to be "George W. Rogers Jr.", written over a horizontal line.
George W. Rogers Jr.

C

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