

## EMPLOYMENT AGREEMENT

### 1. Preamble

This Agreement is entered into between the Police Commission, City of Portsmouth, New Hampshire (hereinafter called "Commission") and Mark Newport (hereinafter called "Employee"). This Agreement is null and void unless approved by the Portsmouth City Council.

### 2. Term And Domicile Requirement

The Commission agrees to employ the Employee and the Employee agrees to accept employment in the position of Chief of Police of the City of Portsmouth, New Hampshire for a term commencing on the date that this Agreement is approved by the Portsmouth City Council and ending on January 31, 2024. The parties may, by written agreement executed by both parties and approved by the Portsmouth City Council, agree to extend the term of this Agreement.

The parties intend this Agreement to replace and supersede the October 5, 2020 Employment Agreement Interim Chief of Police currently in place between the parties.

The Commission and the Employee acknowledge that this is a full-time, year-round position including extensive obligations in the evenings and on weekends. The Employee agrees to devote all of his professional efforts to the successful fulfillment of the responsibilities of Chief of Police as described by New Hampshire Statute, the Charter of the City of Portsmouth, the rules and regulations of the Portsmouth Police Department, and as reasonably directed by the Commission.

The Employee will be required to maintain a domicile in Portsmouth, New Hampshire throughout the term of this Agreement. The Employee's failure to comply with this requirement may, at the sole option of the Commission, be considered grounds for termination for cause, as per the provisions of Section 5 below. The Commission agrees to reimburse the Employee up to a total of \$5,000.00 for properly documented moving expenses.

### 3. Salary

Commencing on the date that this Agreement is approved by the Portsmouth City Council, the Employee will be placed on Grade 28, Step G of the City of Portsmouth Non-Union Salary Schedule and paid an annual base salary of \$148,557.55, subject to such deductions as may be authorized by the Employee and/or as may be required by law.

Effective July 1<sup>st</sup> of 2021, 2022 and 2023, a COLA to the Employee's base salary shall be computed which shall not be less than 2% nor more than 5%. The COLA shall be

determined by taking the 10 year average of the CPI-U for the Boston-Cambridge-Newton—MA-NH all items index as computed by the Bureau of Labor Statistics of the US Department of Labor for the most recent 10 calendar years preceding the July 1 adjustment. BLS's calendar year for this index is November through November, it is not published on a December to December basis. The reference base is 1982-1983 equals 100 until BLS updates the reference base at which time the parties agree to adopt the official reference base as used by BLS.

The Commission and the Employee shall annually define such performance objections as they may determine necessary for the proper operation of the Department and in attainment of the Commission's policy objectives and shall further establish a relative priority among those various objectives, these objectives to be reduced to writing. The objectives shall generally be attainable within the time limitations as specified and the annual operating and capital budgets and appropriations provided. At the completion of the review and evaluation, the Commission shall provide the Employee with a summary written statement of its findings and provide adequate opportunity for the Employee to discuss the review and evaluation with the Commission. The parties may, by written addendum executed by both parties and approved by the Portsmouth City Council, agree to provide additional compensation to the employee in recognition for his accomplishment of the performance objectives identified by the Commission.

#### **4. Certification**

During the term of this Agreement, the Employee will be required to maintain certification as a full-time police officer as required by the New Hampshire Police Standards and Training Council.

#### **5. Termination for Cause**

This Agreement may be terminated by the Commission at any time for cause, i.e., failure on the part of the Employee to comply with any term or condition of this Agreement, the laws, rules and regulations of the State of New Hampshire, or the rules and regulations of the Commission, or the City of Portsmouth; or malfeasance, misfeasance, nonfeasance, or insubordination in carrying out the responsibilities of the position as specified in the Municipal Charter of the City of Portsmouth or as directed by the Commission.

Termination for cause shall take place only following written notification specifying the reasons for termination. Unless the Employee submits to the Commission, within twenty (20) days of receipt of such notification, a written request for a hearing before the Commission, the Agreement shall be considered terminated as of the date which falls thirty (30) days after the Employee's receipt of notification. If the Employee requests a hearing, the Commission shall hold this hearing within twenty (20) days after receipt of such request. The Commission shall render a written decision to the Employee within ten (10) days of the hearing. In the event of a termination for cause, the Employee shall receive no severance and no further compensation beyond the last day worked.

Nothing in this paragraph will limit the Employee's rights under the provisions of NH RSA 105:2-a.

**6. Termination with Severance Payment**

If at any time the Commission in its discretion shall so determine, the Commission may, without cause and with or without prior notice, relieve the Employee of his duties under this Agreement. In such event, the Employee shall be entitled to severance benefits. Such severance benefits shall – be equal to 12 months' salary or the balance of the salary remaining under the term of the Agreement, whichever amount is less. As set forth above in Section 5, if the termination is for cause, the Employee shall not be entitled to severance benefits. Severance benefits shall not be paid upon the voluntary resignation of the Employee.

**7. Termination by Mutual Consent/Voluntary Resignation**

This Agreement may be terminated at any time by mutual consent of the Commission and the Employee or by voluntary resignation of the Employee. In the event the Employee voluntarily resigns before the expiration of the term of this Agreement or any renewal thereof, the Employee shall give the Commission thirty (30) days written notice in advance of such resignation. In the event of voluntary resignation, the Employee shall not be eligible for severance benefits.

**8. Severance Constitutes Release**

The acceptance by the Employee of the severance benefits provided under this Agreement shall constitute a full and complete release of any other rights, claims, or causes of action whether in law, equity or otherwise, that the Employee may have against the Commission, the City of Portsmouth, and the employees, elected or appointed officials, officers, agents, representatives and attorneys of such entities, including any rights that the Employee may have under NH RSA 105:2-a.

**9. Benefits**

Except as otherwise provided herein, the Employee's fringe benefits shall be established by the collective bargaining agreement currently in place between the City of Portsmouth and the Professional Management Association ("the PMA CBA"). The exceptions shall be described in detail in Section 10 below.

**10. Exception to Benefits in Section 9**

In lieu of or in addition to the compensation enumerated in Section 9, the Employee shall also be entitled to the following:

- a. The Employee will maintain the following fringe benefits consistent with the terms of the Portsmouth Police Ranking Officers CBA and not the PMA CBA: workers' compensation insurance; liability insurance; and the Employee's level of clothing allowance, vacation accrual and personal day accrual as of the date of this Agreement.
- b. The Employee will maintain the paid leave that he has currently accrued. With respect to his accrued vacation leave, beginning on January 1, 2022, the Employee will be required to comply with the cap for vacation accrual included in the PMA CBA. With respect to his accrued sick leave, the Employee will continue to have his total accrual capped at 226 days, and he will remain entitled to a payout of up to 90% of 150 days upon his retirement as per the terms of the Portsmouth Police Ranking Officers CBA.
- c. During the second year of this Agreement, the Commission will work with the Employee to schedule his attendance at the FBI Academy.
- d. The Employee shall be provided with a suitable automobile for use in the performance of his duties under this Agreement. Recognizing that the Chief of Police is on-call at all times, it is understood that the automobile may also be used for personal business.
- e. Subject to budgetary constraints, the City agrees to cover the cost of tuition and textbooks for courses and/or other classes that would provide for improved job performance as part of a career development program. Prior approval by the Commission of any and all courses is required. If the Employee fails to successfully complete the course and/or class with a final passing grade, he will be required to reimburse the City for the entire cost of tuition and textbooks.
- f. The City recognizes that certain expenses of a non-personal and generally job-related nature will be incurred by Employee, and hereby agrees to reimburse or to pay said general expenses upon receipt of duly executed expense vouchers, receipts, statements or personal affidavits, subject to budgetary authorization to be approved by the Commission as an element of the annual Department budget.
- g. The City hereby agrees to pay, within budgetary constraints and subject to the prior approval of the Commission, the professional dues and subscriptions of the Employee necessary for his continuation and full participation in national, regional, state and local associations and organizations, necessary and desirable for his continued professional participation, growth and advancement.

**AGREED:** The parties below acknowledge that this Agreement is subject to the approval of the Portsmouth City Council without which approval this Agreement is without force and effect.

Approved by The Police Commission:

[Signature]

1/19/2021  
Date

[Signature]

1-19-21  
Date

Ther. P. Her

1/19/21  
Date

Employee:

[Signature]

1/20/21  
Date

Approved by The City Council:

January 25, 2021

1/26/2021  
Date

Certified by The City Clerk:

Kelli L. Barnaby

1/26/2021  
Date