

**EMPLOYMENT AGREEMENT  
BETWEEN  
TOWN OF TYNGSBOROUGH, MASSACHUSETTS  
AND  
RICHARD D. HOWE**

THIS Agreement, entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2013 by and between the Town of Tyngsborough, Massachusetts, a municipal corporation (the "Town"), acting through its Board of Selectmen (the "Board"), and \_\_\_\_\_("Howe"),

WITNESSETH:

WHEREAS the Town desires to engage the services of Howe to hold the position and perform the duties of Police Chief; and

WHEREAS Howe is willing to undertake and perform the duties of said position of Police Chief of the Town;

NOW, THEREFORE, for mutual consideration, the parties agree as follows:

1. DUTIES

- 1.1 Subject to Section 12 of this Agreement, the Town agrees to employ Howe as Police Chief of the Town for the period of July 1, 2013, until June 30, 2016 to perform the functions and duties specified in the Job Description attached hereto as Exhibit A and to perform other legally permissible and proper duties and functions as the Board from time-to-time shall assign.
- 1.2 The powers and duties of the Police Chief are guided by Massachusetts General Laws, c. 41, § 97A. Also, as a municipal employee of the Town, Howe shall act in accordance with M.G.L. c. 268A, including but not limited to section 23 of said Chapter.

2. TERM

- 2.1 Howe agrees to remain in the exclusive employ of the Town from July 1, 2013, until June 30, 2016, and not to accept other employment or to become employed by any other employer until said termination date, unless said termination date is affected as below provided. The term "employed" shall not be construed to include occasional teaching, writing, or consulting performed on Howe's time off.

- 2.2 Nothing in this agreement shall prevent, limit, or otherwise interfere with the right of Howe to resign at any time from his position with the Town, subject only to the provisions set forth in Section 12.3 of this Agreement.
- 2.3 Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the Board to terminate the services of Howe at any time, subject only to the provisions set forth in Section 12 of this Agreement.
- 2.4 If this Agreement by a 3/5ths majority vote of the Board will not be renewed upon its expiration, the Town shall provide ninety (90) days written notice to Howe. If such advance notice is not given, then the contract and the Police Chief's term of appointment shall automatically renew for a single one (1) year term.

### 3. HOURS OF WORK

- 3.1 Howe's work week shall ordinarily consist of usual Police business hours, together with whatever evening and/or weekend hours may be necessary from time-to-time in order to properly respond to the demands of the position, including police emergencies, attendance at Selectmen's meetings, Town Meetings, and other meetings at which his attendance would be beneficial to the orderly conduct of the Town's business and operations.
- 3.2 The Police Chief shall be a salaried official of the Town and, as such, shall be an exempt executive employee for the purposes of the Federal Fair Labor Standards Act, 20 U.S.C. Section 201, et seq.

### 4. SALARY

- 4.1 The Town agrees to pay Howe for his services rendered at an annual salary amount of One Hundred Thirty Thousand Dollars (\$130,000) commencing on and prorated as of July 1, 2013, which would include in said amount of \$130,000 any and all base salary increases to which Howe would be entitled to under G.L. c. 41, § 108L. Said salary would be payable in installments at the same time as other employees of the Town are paid.
- 4.2 Commencing April 1, 2014, Howe may annually request that the Board of Selectmen reopen the contract solely for the purpose of discussion of this Section; but, however, such reopening shall be in the sole and absolute discretion of the Board.

5. VACATION, SICK, AND OTHER LEAVE

5.1 The parties recognize that Howe accrued vacation time twice during Fiscal Year 2013. Therefore, Howe will not receive vacation time again until July 1, 2014. Prior to December 31, 2014, Howe shall be permitted to utilize any vacation time accrued as of the date of this contract. With the exception of vacation time earned on or after July 1, 2014, any accrued vacation time not used by December 31, 2014 shall be forfeited without compensation.

Beginning with the contract year that commences on July 1, 2014, Howe will accrue 30 days per year of service and will not be able to carry over more than 15 days into any subsequent year.

Vacation is to be taken by Howe at such time or times as shall be approved by the Chair of the Board of Selectmen.

Upon resignation, retirement, or termination, unused previously accumulated vacation days shall be paid on the basis of his final salary and shall be prorated for the portion of the contract year actually worked.

5.2 Howe will accrue sick days at a rate of one (1) day per month during the term of this Agreement. Howe shall notify, in writing, the Chairman of the Board in the event of an absence in excess of three (3) sick days. Howe shall not be paid annually for any unused sick time and shall not be paid for accrued unused sick days at the time of resignation, retirement, or termination.

5.3 Howe shall be eligible for other applicable leave benefits that are provided by Massachusetts or Federal law, or by the Town's Personnel Bylaw.

6. HEALTH INSURANCE AND OTHER BENEFITS

6.1 Howe shall enjoy all retirement, insurance, and other benefits generally available to full-time, non-union employees of the Town under the same terms and conditions, unless specifically limited or otherwise provided for under the terms of this Agreement.

6.2 The Town shall pay seventy per cent (70%) and Howe shall pay thirty per cent (30%) of the premium for the health insurance provided by the Town for Howe, unless the above contribution ratio is changed for all Town non-union employees.

6.3 If Howe is employed by the Town and does not enroll in Town-provided health insurance for the entirety of health insurance plan years June 1, 2013 through May 31, 2014; June 1, 2014 through May 31, 2015; and June 1, 2015 through May 31, 2016, and does not enroll in Town-provided health insurance for the succeeding plan year, the Town shall pay Howe \$3,000 in the payroll succeeding the end of each aforementioned respective health insurance plan year. In the event this contract is extended, this provision shall continue into succeeding years.

## 7. VEHICLE ALLOWANCE

7.1 The Town shall provide a police vehicle for unrestricted use by Howe within a one hundred fifty (150) mile radius of the Tyngsborough Town Offices at 25 Bryants Lane. Howe shall be permitted to use said vehicle beyond the 150 mile radius with prior permission from the Chair of the Board of Selectmen.

7.2 In the event that Howe is prohibited from discharging his duties due to suspension, or due to illness or injury for a period exceeding 7 calendar days, Howe shall be prohibited from using said police vehicle. Further, the Town by 3/5ths majority vote of the Board of Selectmen may require that Howe return said vehicle to the custody of the Board of Selectmen until he returns to work.

## 8. GENERAL EXPENSES

8.1 The Town recognizes that certain expenses of a non-personal and generally job-affiliated nature are incurred by Howe and hereby agrees to reimburse or to pay said general expenses according to normal Town procedures.

8.2 The Town shall provide Howe an initial clothing allowance of One Thousand Five Hundred Dollars (\$1,500). Beginning with the contract year beginning July 1, 2014, the Town shall provide Howe an annual clothing allowance of One Thousand Three Hundred Dollars (\$1,300). Receipts shall be presented for such reimbursement.

## 9. PROFESSIONAL DEVELOPMENT

9.1 The Board recognizes its obligation to encourage the professional development of Howe and agrees that Howe shall be given adequate opportunity to develop his skills and abilities as a Police Chief. Accordingly, the Town shall allow and pay for Howe to

attend courses and seminars, without loss of vacation or other leave, subject to the availability of funding and prior written approval of the Chairman of the Board.

- 9.2 The Town agrees to pay for the professional dues and subscriptions of Howe necessary for his continuation and full participation in national, regional, state, and local associations and organizations, subject to the availability of funding and approval of the Board of Selectmen.

## 10. PERFORMANCE EVALUATION

- 10.1 There shall be an annual performance evaluation of Howe by the Board of Selectmen, to be held no later than December 15<sup>th</sup> of each contract year. Failure of the Board to evaluate Howe's performance shall in no way prejudice any of the Town's rights.

- 10.2 The purpose of this evaluation is to:

- 10.2.1 Review the performance of Howe;

- 10.2.2 Determine if any improvements and/or training are required;

- 10.2.3 Determine any changes needed in the job description; and

- 10.2.4 Develop mutually agreed upon goals.

- 10.3 The Chair of the Board of Selectmen shall provide Howe with a summary written statement of the Board's findings. The Board shall provide an adequate opportunity for Howe to discuss his evaluation, and attach any written comments, before the review is made a part of Howe's personnel records. A copy of this review will be provided to the Board of Selectmen upon completion. All meetings held by the Board of Selectmen under this Subsection shall be held in Open Session to the extent required by the Massachusetts Open Meeting Law.

- 10.4 Upon the completion of a favorable evaluation of Howe, the Board may annually by 3/5ths majority vote to extend this Agreement for one year.

## 11. INDEMNIFICATION

- 11.1 To the extent allowed under M.G.L. c. 258, the Town shall defend, save harmless and indemnify Howe 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 Howe duties as Police Chief. The Town shall not be required to indemnify Howe for any claims arising out of conduct determined by a court of competent jurisdiction to be outside the scope of Howe duties or to be the result of gross negligence or willful, criminal, or malicious misconduct. The Town may compromise and settle any claim or suit for which Howe is indemnified and pay the amount of any settlement or judgment rendered thereon. The Town shall obtain the consent of Howe to settle any such claim, and such consent shall not be unreasonably withheld by Howe. The Town also shall not indemnify Howe for any costs associated with any claims or actions brought under Section 12 of this contract.

## 12. TERMINATION, SUSPENSION, AND SEVERANCE PAY

- 12.1 The Board may terminate or suspend Howe at any time during the term of this Agreement, but only if (a) 4/5ths majority of the Board and Howe agree, or (b) after a hearing, a 4/5ths majority of the Board votes to terminate or suspend Howe for just cause, provided, however, that Howe shall have been given written notice setting forth any charges at least ten days prior to such hearing by the Board members bringing such charges. The Board shall convene any hearing held pursuant to this section, and Howe shall be accorded all rights, under M.G.L. c. 30A, § 21. The Board may place Howe on paid administrative leave pending such hearing.
- 12.2 In the event that Howe is terminated by the Board before the expiration of the aforesaid term of employment, then, in that event, the Board agrees to pay Howe a lump sum cash payment equal to three months aggregate salary; provided, however, that in the event Howe is terminated because of his conviction of any illegal act involving personal gain to himself or any other intentional or willful misconduct in the office, then, in those events, the Town shall have no obligation to pay the aggregate severance sum.
- 12.3 In the event Howe voluntarily resigns his position with the Town before the expiration of the aforesaid term of his employment, then Howe shall give the Board ninety (90) days written notice in advance, unless the parties otherwise agree.
- 12.4 Upon termination, the Town agrees to provide Howe with a complete copy of his personnel file, if requested.

12.5 If Howe dies during the term of this Agreement, the employment relationship created by this Agreement will terminate, and Howe's salary shall continue to be paid to his designated beneficiary or, if none, to his estate representative through the end of the month in which his death occurs.

13. OTHER TERMS AND CONDITIONS OF EMPLOYMENT

13.1 The Board, in consultation with Howe, shall fix any other terms and conditions of employment, as it may determine from time-to-time, relating to the performance of Howe, provided such terms and conditions are not inconsistent with, or in conflict with, the provisions of this Agreement, the Town by-laws, or any other law.

14. NO REDUCTION OF BENEFITS

14.1 The Town shall not at any time during the term of this Agreement reduce the salary, compensation, or other financial benefits of Howe by a greater percentage than an applicable across the board decrease to the Town's police officers or other similarly situated management employees of the Town except that this Agreement may be amended at any time by mutual consent of the parties, except as provided in Section 16.3, below.

15. NOTICES

Any and all notices required or permitted to be given under this Agreement will be sufficient if furnished in writing, sent by registered mail to Howe's last known address, in the case of Howe, or to the Town's principal office in Tyngsborough, Massachusetts, in the case of the Town.

16. GENERAL PROVISIONS

16.1 The text herein shall constitute the entire Agreement between the parties. If any provision, or portion thereof, contained in this Agreement is held unconstitutional, invalid, or unenforceable, the remainder of this Agreement, or portion thereof, shall be deemed severable, shall not be affected, and shall remain in full force and effect.

16.2 This Agreement may be amended at any time by mutual written consent of the parties, except as otherwise provided herein.

16.3 Howe understands and agrees that all compensation and benefits provided under this Agreement are subject to appropriation from year to year by the Town Meeting. In the event that the Town

Meeting does not vote to fund the monetary provisions, the parties shall attempt to renegotiate this Agreement.

16.4 This agreement supersedes all previous contracts and agreements, which are rendered null and void upon the effective date of this contract.

IN WITNESS THEREOF, the Town of Tyngsborough has caused this Agreement to be executed in its corporate name by its Board of Selectmen, and Richard D. Howe has set his hand and seal, as of the day and year first written above.

RICHARD D. HOWE,  
Police Chief,

BOARD OF SELECTMEN

\_\_\_\_\_  
Richard D. Howe

\_\_\_\_\_  
Karyn Puleo, Chairman

\_\_\_\_\_  
Robert Jackson, Vice Chairman

\_\_\_\_\_  
Richard Reault, Clerk

\_\_\_\_\_  
Corliss Lambert

\_\_\_\_\_  
Allen Curseaden