

TWO-YEAR LETTER OF COMMITMENT (SAMPLE)

1. Term of Letter of Commitment.

This Letter of Commitment shall commence on the date of Employee's execution of this Letter of Commitment and terminate on **August 31, 2024**.

2. Eligibility Criteria. *

To be eligible for the Retention Bonus, Employee must, at time of open enrollment sign-up:

(a) be employed in a full-time commissioned officer with **MPD**; *or*

(b) be employed as full-time commissioned personnel with MFD; *or*

(c) be employed as a paramedic with MFD; *or*

(d) be employed as a full-time dispatcher or full-time operator with MPD or MFD, and have successfully completed his/her probationary period; *or*

(e) be employed in any position recognized and represented by the International Association of Firefighters, Local 1784, and have successfully completed his/her probationary period.

amount equivalent to 9% of Employee's annual salary, as outlined in the City's pay plan, and exclusive of incentives, at the time of payment. The City will pay Employee's Retention Bonus in one payment, to be paid during the first pay period in the month of August or September in each calendar year ("Retention Payment"). This payment is considered a bonus and will be treated by the City as bonus income for tax reporting purposes to be taxed at the employee's regular tax rate and will be considered compensation as defined by the pension ordinance.

(b) As consideration for payment of the Retention Bonus, Employee commits to remain employed in service with MPD or MFD, as applicable to Employee, in one of the positions designated in Sections 2(a)-(d) herein through at least August 31, 2024. If Employee fails to remain so employed in service with MPD or MFD through at least August 31, 2024, Employee shall be subject to the terms and conditions outlined in Sections 4 and 5, as applicable.

(c) Payment of the Retention Bonus will be made to Employee annually, during the term of this Letter of Commitment, provided Employee continually meets all Eligibility Criteria, as outlined in Section 2, above; and, provided that Employee remains employed in service with MPD or MFD, as applicable to Employee, through at least August 31, 2024.

4. Postponement/ Termination of Retention Payment.

The City's payment of a Retention Payment to Employee for any given Payment Period will be postponed or terminated under the following conditions:

(a) If Employee is under criminal indictment at the time of disbursement, Employee's Retention Payment will be postponed until resolution of the criminal charges. If Employee is terminated from employment for reasons arising from the resolution of the criminal charges, Employee's Retention Payment shall be terminated.

(b) If Employee is placed on administrative leave without pay, Employee's Retention Payment will be postponed until the Employee is reinstated. The reinstatement must occur before June 30, 2024, or Employee's Retention Payment shall be terminated.

(c) If Employee is terminated for violating MPD or MFD rules and/or regulations, as applicable to Employee, or is otherwise terminated from employment for cause before receiving a Retention Payment for the year in which he/she is terminated, Employee will not receive a Retention Payment. If Employee is so terminated after receiving a Retention Payment for the year in which he/she is terminated, Employee will be subject to the Repayment Provisions set forth in Section 5 herein.

(d) Employees enrolled in the DROP prior to August 31, 2022 are eligible to enter into this Letter of Commitment, provided that he/she can meet the service commitments outlined in this Letter of Commitment. Payments made under this Letter of Commitment will not count toward Employee's pension calculation.

i) If Employee enrolls in the DROP after entering into this Letter of Commitment, he/she will not be subject to the Repayment Provisions set forth in Section 5 herein, unless Employee is unable to meet the requirements under this Letter of Commitment.

ii) Payments made under this Letter of Commitment after Employee enters the DROP will not count toward Employee's pension calculation.

(e) If Employee fails to meet all Eligibility Criteria during the term of this Letter of Commitment, but before receiving a Retention Payment for the year in which he/she fails to meet Eligibility Criteria, Employee will receive no Retention Payment for that year, and will be subject to the Repayment Provisions set forth in Section 5 herein. If Employee fails to meet all Eligibility Criteria during the term of this Letter of Commitment, but after receiving a Retention Payment for the year in which he/she fails to meet Eligibility Criteria, he/she will be subject to the Repayment Provisions set forth in Section 5 herein.

(f) In the event of Employee's death, the Agreement shall be deemed terminated but there shall be no repayment owed as set forth in Section 5.

5. Repayment by Employee.

(a) If Employee fails to remain continuously employed by MPD or MFD through **August 31, 2024**, or otherwise becomes ineligible under the circumstances outlined in Section 4, Employee shall return to the City all Retention Payments paid to Employee. Additionally, Employee will not be ineligible to receive Retention Payments from the City.

(b) To reimburse the City for previously-paid Retention Payments, Employee may either make a lump-sum payment to the City in the amount of said previously-paid Retention Payments, or may set up a payment plan with the City. Arrangements for repayment must be made with Human Resources or its designee. Employee must repay any Retention Payment balance owed to the City within one year of becoming ineligible for Retention Payments as outlined in Section 5(a), unless an alternative arrangement is approved by the City's Chief Human Resources Officer, Chief Financial Officer and Chief Legal Officer.

(c) If Employee is required to repay Retention Payments under this Section based on termination

of employment but fails to either fully repay the City for previously-paid Retention Payments or set up a payment plan prior to the City's issuance of the Terminated Employee's final check, the City is authorized to deduct the amount of said previously-paid Retention Payments from any amount(s) otherwise due under Employee's final paycheck from the City. Employee expressly authorizes the City to make said deductions for previously-paid Retention Payments from Employee's regular salary or hourly pay and/or accrued leave pay such as sick, accumulated or vacation pay. In the event such deductions are insufficient to reimburse the City for the full amount of previously paid Retention Payments, Employee shall remain personally liable for the remaining balance and may be subject to an action to collect the debt.

(d) The provisions of this Section 5 apply whether Employee's termination from MPD or MFD was voluntary (includes resignation) or involuntary, where applicable, unless Employee is deemed disabled or retires (ordinary disability or line of duty disability) as defined in the City's Pension Ordinances.

i) If Employee's separation arises from extenuating circumstances, the provisions of this Section 5 may be waived upon recommendation of Employee's Division Director and upon approval of the City's Chief Human Resources Officer or designee.

6. Governing Law, Jurisdiction and Venue.

This Letter shall be governed by, and construed in accordance with, the laws of the State of Tennessee.

The parties hereby submit and consent to the exclusive jurisdiction of any state court located in Shelby County, Tennessee and irrevocably agree that all actions or proceedings relating to this Letter of Commitment, other than any action or proceeding required to be submitted to arbitration, will be litigated in such courts, and each of the parties waives any objection which it may have based on improper venue or *forum non conveniens* to the conduct of any such action or proceeding in such court.

7. Amendment and Waiver.

The provisions of this Letter of Commitment may be amended or waived only with the prior written consent of the City and Employee, and no course of conduct or course of dealing or failure or delay by either party hereto in enforcing or exercising any of the provisions of this Letter of Commitment shall affect the validity, binding effect or enforceability of this Letter of Commitment or be deemed to be an implied waiver of any provision of this Letter of Commitment.

8. Severability.

If any term(s) or provision(s) of this Letter of Commitment are held to be illegal, invalid or unenforceable as a matter of law, such term(s) and provision(s) shall be fully severable, and the remaining provisions of this Letter of Commitment shall remain in full force and effect. Further, the parties may negotiate in good faith to replace any such term(s) and provision(s) with a valid, legal and enforceable term or provision that most closely approximates the Parties' original intent.

9. Mutually Binding.

This Letter of Commitment contains terms and conditions which constitute a binding legal agreement, for which either party may be subject to a claim for enforcement by the other. This Letter of Commitment, together with its attachments, contains the entire understanding between the Parties. All prior and contemporaneous negotiations and agreements between the Parties related to the matters contained in this Letter are expressly merged into and superseded by this agreement.

10. Employee Representations.

Employee hereby represents to the City that:

(a) Employee has entered into this Letter of Commitment of Employee's own free will and for no consideration other than that as referred to herein.

(b) Employee's execution, delivery and performance of this Letter of Commitment does not and shall not conflict with, breach, violate or cause a default under any other contract, letter of commitment, instrument, order, judgment or decree to which Employee is a party or by which Employee is bound; and

(c) Employee has had the opportunity to consult with independent legal counsel regarding Employee's rights and obligations under this Letter of Commitment and Employee fully understands the terms and conditions contained herein.

11. Extension

Employee may have the ability to extend the term of this Letter of Commitment for up to 3 years in 2024. More information regarding open enrollment for the extension will be available in early 2024.

RECRUITS

Police and Fire Recruits are not eligible for this program.