

1210



Township Council
1 Municipal Plaza
Bloomfield, NJ 07003

Louise M. Palagano
Municipal Clerk

http://www.bloomfieldwpnj.com

Meeting: 08/10/15 07:00 PM

2015 RESOLUTION APPROVAL

AGREEMENT WITH THE POLICE DIRECTOR

WHEREAS, the Township of Bloomfield desires to enter into a contract with the Bloomfield Police Director; and

WHEREAS, the Finance Director has certified funding is available.

NOW, THEREFORE, BE IT RESOLVED, that the Mayor is hereby authorized to sign and the Clerk to attest and affix the seal of the Township of Bloomfield to an agreement between the Township of Bloomfield and the Bloomfield Police Director.

......*

I hereby certify that the above resolution was duly adopted by the Mayor and Council of the Township of Bloomfield at a meeting of said Township Council held on August 10, 2015.

Louise M. Palagano
Municipal Clerk of the Township of Bloomfield

Michael J. Venezia
Mayor of the Township of Bloomfield

✓ Vote Record – Resolution						
		Yes/Aye	No/Nay	Abstain	Absent	
<input type="checkbox"/> Adopt						
<input type="checkbox"/> Deny						
<input type="checkbox"/> Withdrawn						
<input type="checkbox"/> Table						
<input type="checkbox"/> Not Discussed						
<input type="checkbox"/> First Reading						
<input type="checkbox"/> Table with no Vote						
<input type="checkbox"/> Approve						
<input type="checkbox"/> Veto by Mayor						
<input type="checkbox"/> Discussion						
<input type="checkbox"/> Defeated						
<input type="checkbox"/> Discussion No Vote						
	Elias N. Chalet	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
	Nicholas Joanow	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
	Carlos Bernard	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
	Wartyna Davis	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
	Joseph Lopez	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
	Carlos Pomares	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
	Michael J. Venezia	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

APPROVED AS TO FORM AND PROCEDURE
ON BASIS OF FACTS SET FORTH

Samuel J. Garcia
DIRECTOR OF LAW/TOWNSHIP ATTORNEY

EMPLOYMENT AGREEMENT

BETWEEN

THE TOWNSHIP OF BLOOMFIELD, NJ

AND

SAMUEL A. DeMAIO

TO SERVE AS POLICE DIRECTOR

EMPLOYMENT AGREEMENT

This Employment Agreement (hereinafter, the "Agreement") is made by and between the Township of Bloomfield, Essex County, New Jersey and Samuel A. DeMaio, who resides at _____, East Hanover, New Jersey, _____, both individually and in his capacity as an employee (Acting Director of Police and any other position to which he may have a claim) for the Township of Bloomfield, Essex County, New Jersey.

PARTIES

"DeMaio" as used herein shall mean Samuel A. DeMaio, who resides at _____, East Hanover, New Jersey _____, individually and in his capacity as an employee (Acting Director of Police and any other position to which he may have a claim) for the Township of Bloomfield, Essex County, New Jersey, his heirs, representatives, privies, executors, administrators, assigns, successors-in-interest and predecessors-in-interest.

"Bloomfield" as used herein shall mean the Township of Bloomfield, Essex County, New Jersey, its elected officials, employees, attorneys, affiliates, former or current directors, officers, officials, administrators, representatives, associates, partners, servants, agents, trustees, supervisors, legal representatives, insurers, any and all benefit plans, and successors and assigns, and each of them and their successors, whether in their individual or official capacities, and all other persons, firms, corporations, associations, partnerships or any other entity connected therewith and all predecessors, successors and assigns of any and all of them.

DeMaio and Bloomfield are collectively referred to herein as the "Parties."

BACKGROUND

WHEREAS, on or about September 16, 2014, DeMaio was appointed as the Township's Acting Director of Police; and

WHEREAS, said appointment to the position of Acting Director of Police terminates on August 21, 2015, unless otherwise extended by the Township Council; and

WHEREAS, Police Director James Behre has placed the Township on notice of his intent to retire from his employment effective August 21, 2015; and

WHEREAS, DeMaio has indicated his willingness to perform the duties of the position of Police Director; and

WHEREAS, the Finance Director has indicated funding is available for this appointment; and

WHEREAS, the Mayor and Council desire to make this appointment as a multi-year appointment with a definitive termination date of December 31, 2018, unless otherwise extended by action of the full Township Council; and

WHEREAS, the Parties believe that it is in their best interest and desire to outline the terms and conditions of DeMaio's appointment and employment with the Township.

NOW, THEREFORE, in consideration of the mutual promises contained herein and for other good and valuable consideration, and intending to be legally bound, the Parties agree as follows:

ARTICLE I

MANAGEMENT RIGHTS

The Township hereby retains and reserves unto itself all powers, rights, authority, duties, and responsibilities conferred upon and vested in it prior to the signing of this Agreement by the Laws and Constitution of the State of New Jersey and of the United States, except those limited by the specific and express terms of this Agreement, and then only to the extent that such specific and express terms hereof are in conformance with the Constitution and the laws of New Jersey and of the United States.

ARTICLE II

RIGHTS, DUTIES, AUTHORITIES AND RESPONSIBILITIES OF THE POLICE DIRECTOR

Pursuant to N.J.S.A. 40A:14-118, the Ordinances of the Township and the regulations and policies established by the Township, the Police Director shall be designated as the "Appropriate Authority".

SECTION 1:

The Police Director shall:

- (a) Report directly to the Township Administrator, or his designee, as to the operation or the Police Force;
- (b) Be the Chief Executive Officer (CEO) of the police department;
- (c) Have executive management and administrative control of the Police Department, its personnel, properties, facilities and all other functions;
- (d) Be responsible for the hiring of all employees subject to the Council approval, budget restrictions and provision of law, and be responsible to determine their qualifications and conditions for continued employment, assignment, promotion and transfer;

- (e) Suspend, demote, discharge or take other disciplinary action against any member of the department for good and just cause according to Civil Service rules and regulations and other applicable laws and terms and conditions of negotiated agreements;
- (f) Have control of the executive management and administrative management of the Police Department by economical and efficient selection, utilization, deployment and disposition of all equipment and personnel, notwithstanding any other provisions of this Agreement;
- (g) Delegate his authority, but not responsibility, at his discretion;
- (h) Be responsible for the adoption and enforcement of policies, rules, regulations and other practices;
- (i) Determine and prepare the table of organization of the police department for approval by the Mayor and Council.
- (j) Be allowed the use of judgment and discretion in connection with the administration and operation of the Police Department, which shall be limited only by the terms of this Agreement and then only to the extent such terms hereof are in conformance with the Constitution, the laws, rules and regulations of New Jersey and the United States.

SECTION 2:

Nothing contained in this Article shall be construed to deny or restrict the Township or the Police Director of its rights, responsibilities and authority under N.J.S.A. 40; 40A and 11 or any other national, state, county or local laws or ordinances as amended from time to time.

ARTICLE III

WORKWEEK

DeMaio shall spend sufficient time at his job to insure the smooth and responsible operation of the Police Department. DeMaio shall work an average of forty (40) hours per work week from Monday to Friday, and he shall adjust the days and hours to meet the needs of the agency and the Township.

ARTICLE IV

SALARY

Effective August 22, 2015, DeMaio shall have the base salary of \$195,000 to perform the duties and responsibilities of Police Director. DeMaio shall be provided a 2% increase on January 1, 2017, and his base salary shall be increased to \$198,900. DeMaio shall be provided a further increase of 2% to his base salary on January 1, 2018, and his base salary shall be increased to \$202,878.

ARTICLE V

LONGEVITY

DeMaio's entitlement to longevity payments, if any, is defined and outlined in the Agreement between the Township of Bloomfield and the Superior Officers Association of the Bloomfield Police Department as amended from time to time. For the purposes of entitlement to longevity DeMaio's hire date shall be considered September 16, 2014.

ARTICLE VI

CLOTHING ALLOWANCE/AMMUNITION ALLOWANCE

DeMaio shall be entitled to clothing allowance/ammunition allowance as defined and outlined in the Agreement between the Township of Bloomfield and the Superior Officers Association of the Bloomfield Police Department as amended from time to time.

ARTICLE VII

AUTOMOBILE

1. The Township agrees to supply DeMaio with a late model, unmarked automobile with confidential plates to be used for police work and for his personal use.

2. The automobile shall be equipped with such equipment as is needed for police work. There shall be no limit on the use of the automobile for police work or anything associated with police work, such as attending meetings, school outings, trips, conferences, and any other traveling needed to carry out the duties of the Police Director.

2. DeMaio shall be permitted to use the automobile for personal use within a 100 mile radius of the Township. When using the automobile for personal use DeMaio is permitted to have family members and other non-law enforcement passengers. However, the automobile shall not be operated by anyone other than the Police Director or other law enforcement personnel that the Police Director may designate, as appropriate, to use the automobile for a specific police purpose.

3. The Township shall pay all expenses for the operation and upkeep of the automobile, such as car insurance, tires, gas, oil changes, and any other necessary repairs.

ARTICLE VIII

EDUCATIONAL PROGRAMS/LAW ENFORCEMENT CONFERENCES

1. DeMaio shall be permitted to attend and be compensated for, at his regular salary, any school, seminar or retraining session conducted or sponsored by the International Association of Chiefs of Police, New Jersey State Association of Chiefs of Police, The Essex County Chiefs of Police Association, The New Jersey State Police, Federal Bureau of Investigations, or any other educational program of a management or supervisory nature. All expenses, such as travel, room, food, tuition, special clothing, books, or any other charges connected with the educational program shall be borne by the Township. In no event shall the Township be required to pay or reimburse the Police Director for expenses of any class, course, school, or educational program unrelated to police activities.

2. The Township agrees to grant time off, including travel time, and pay all associated and reasonable expenses for DeMaio to attend the annual New Jersey State Association of Chiefs of Police Conference and the annual International Association of Chiefs of Police Conference. If DeMaio attends a conference at the Township's expense, he shall provide the Township with proof of expenses for attending such conference, by way of receipts or vouchers.
3. The Township also agrees to pay for DeMaio's dues for membership in the County Chiefs of Police Association, the International Association of Chiefs of Police, and the Police Executive Research Forum.
4. The Township agrees to grant time off and pay all expenses incurred by DeMaio in attending any meeting of the above-named associations.
5. Payment, reimbursement, and total cost to the Township under items 1-4 in this Article (as listed above) shall not exceed \$5,000, not including any forfeiture money that is approved to be utilized by the Essex County Prosecutor's Office to cover the cost of any of the above listed items or activities.

ARTICLE IX

VACATIONS

1. DeMaio shall be entitled to thirty (25) days of vacation time annually.
2. DeMaio shall be entitled to schedule his vacation time, provided that he shall not take vacation leave unless subordinates are available to assume control of, and responsibility for, the operation of the Police Department. In addition, he shall not schedule his vacation time during any time period where planned events shall require the presence of the Police Director. DeMaio shall be required to report to the Township Administrator, the dates, which he has selected for his vacation. Such information shall be provided to the Township Administrator, in writing, at least

one (1) week in advance of the beginning of the vacation period. If the vacation period selected conflicts with a planned activity that requires the presence of the Police Director, the Township Administrator shall have the right to require DeMaio to select a different vacation period.

3. Any unused vacation time may be carried over for two consecutive years. However, the accumulated unused earned vacation shall not exceed 50 days at any time.

ARTICLE X

SICK LEAVE

DeMaio shall be entitled to sick leave as defined and outlined in the Agreement between the Township of Bloomfield and the Superior Officers Association of the Bloomfield Police Department as amended from time to time.

ARTICLE XI

PERSONAL DAYS

1. DeMaio shall be entitled to utilize five (5) days a year for leave for personal business, household, or family matters as described below, and such leave shall not accumulate from year to year.

2. "Business" means an activity that requires DeMaio's presence during the workday and is of such a nature that it cannot be attended to at a time outside of the workday.

3. "Personal," "household," and "family" refer to matters when DeMaio's absence from duty is necessary for his welfare or that of his family.

4. An application for a personal day should be submitted to Township Administrator or his designee and should state the reasons for requesting a personal day. The request for a personal day must be submitted at least five (5) days in advance, except where exigent circumstances prevent the giving of such notice. The approval or denial of any requested personal day must be

communicated by the Township Administrator within two (2) days after receiving the application for a personal day or it shall automatically be deemed approved.

ARTICLE XII

HOLIDAY TIME

DeMaio shall be granted time off, with pay, for all Township holidays wherein Town Hall is closed.

ARTICLE XIII

WORK-CONNECTED INJURY LEAVE

DeMaio shall be entitled to work-connected injury leave as defined and outlined in the Agreement between the Township of Bloomfield and the Superior Officers Association of the Bloomfield Police Department as amended from time to time.

ARTICLE XIV

FUNERAL LEAVE

DeMaio shall be entitled to funeral leave as defined and outlined in the Agreement between the Township of Bloomfield and the Superior Officers Association of the Bloomfield Police Department as amended from time to time.

ARTICLE XV

DISCIPLINE

1. During the duration of this Agreement, DeMaio shall not be reduced in pay (unless required by budgetary restrictions), reduced in position, suspended, discharged or subjected to disciplinary action except for only good and just cause.
2. If the Township Administrator, or any other Township official, suspends the Director for any reason, prior to a hearing, the suspension shall be with pay.

3. The Director has a right to be served with disciplinary charges and an opportunity to be heard.

4. The Police Director has a right to a hearing on any disciplinary charges. The hearing shall be held before a designated hearing officer, mutually agreed upon between the parties. The hearing shall be held not less than 5 days or greater than 30 days of the charges, unless another mutually agreed upon date is scheduled. The hearing officer's expenses shall be paid for by the Township. The decision of the hearing officer shall be issued within 20 days of the hearing, unless the Parties mutually agree to extend the time. The decision of the hearing officer is final and binding on the parties. The Parties shall be responsible to pay for their own attorneys fees, if any, and under no circumstances shall either Party be responsible to pay the attorneys's fees of the other regardless of the outcome of the hearing.

ARTICLE XVI

GRIEVANCE PROCEDURE

Any contractual grievance, difference or dispute arising over the application or interpretation of the terms and conditions of this Agreement shall follow the grievance procedure as defined and outlined in the Agreement between the Township of Bloomfield and the Superior Officers Association of the Bloomfield Police Department as amended from time to time.

ARTICLE XVII

INSURANCE, HEALTH, AND WELFARE

The Township shall provide DeMaio with legal defense and indemnity for any criminal charges or other legal action filed or taken against him in the performance of his duties or in the course of his employment in the same manner provided to all other Township employees.

ARTICLE XVIII

TERM OF AGREEMENT - EXPIRATION OF AGREEMENT

This Agreement shall become effective August 21, 2015 and shall expire at midnight on December 31, 2018. Upon expiration of this Agreement, the employment of Samuel A. DeMaio shall automatically cease and permanently terminate unless the Township extends the term of this Agreement by passing a resolution.

In that event that this Agreement expires and is not renewed, or is not renewed after it is extended, and comes to a natural termination, the following shall occur:

1. DeMaio shall return all issued property, including, but not limited to, all equipment, automobile, phone, keys, access buttons and identification cards issued by the Township.
2. The Township shall pay the DeMaio, at his than current salary, for any unused time vacation, personal or sick time in accordance with the terms and conditions as set forth in the Agreement between the Township of Bloomfield and the Superior Officers Association of the Bloomfield Police Department as amended from time to time and as in effect at the date of separation. Payment shall be made on the date of DeMaio's separation or on the next normally scheduled payroll date thereafter or as otherwise mutually agreed upon.
3. If DeMaio passes away, prior to seperation, all accumulated referred to in this Article shall be paid to his designated beneficiary.

ARTICLE XIX

TERMINATION OF AGREEMENT BY TOWNSHIP

This Agreement may be terminated before its expiration by the Township upon a 2/3 vote of the governing body to terminate the same. In the event such resolution is adopted by the Township, DeMaio shall be paid for all earned unused accumulated sick, vacation, and personal

time (all time prorated to date of termination) and he shall also be entitled to payment of one year's salary at his than current rate of pay.

ARTICLE XX

TERMINATION OF AGREEMENT BY DEMAIO

This Agreement may be terminated by DeMaio at any time upon 3 months notice. In the event that this Agreement is terminated by DeMaio he shall forfeit and not be entitled to payment of any kind (other than salary earned to date of separation) including, but not limited to payment for any unused accumulated time sick, vacation, or personal time.

ARTICLE XXI

MISCELLANIOUS PROVISIONS

1. **FORCE MAJEURE.** Neither party will be liable to the other or be deemed to be in breach of this Agreement for any failure or delay in rendering performance arising out of causes beyond its reasonable control and without its fault or negligence. Such causes may include but are not limited to, acts of God or the public enemy, terrorism, significant fires, floods, earthquakes, epidemics, quarantine restrictions, strikes, freight embargoes, or Governmental Authorities approval delays which are not caused by any act or omission, and unusually severe weather. The party whose performance is affected agrees to notify the other promptly of the existence and nature of any delay.

2. **ENTIRE AGREEMENT.** This Agreement represents the entire Agreement between the parties, and there are no other agreements, whether written or oral, which affect its terms. This Agreement may be amended only by a subsequent written agreement signed by both parties. This Agreement represents and incorporates the complete and final understanding by the Parties on all issues, which were or could have been the subject of negotiations. During the term

of this Agreement, neither party will be required to negotiate with respect to any such matter, whether or not covered by this Agreement, and whether or not within the knowledge or contemplation of either or both of the parties at the time they negotiated or signed this Agreement.

3. SEVERABILITY. If any provision of this Agreement is held by any court or other competent authority to be void or unenforceable in whole or part, this Agreement shall continue to be valid as to the other provisions thereof and the remainder of the affected provision.

4. WAIVER. Any waiver by either party of a breach of any provision of this Agreement shall not be considered as a waiver of any subsequent breach of the same or any other provision thereof.

5. CONSTRUCTION Except as expressly otherwise provided in this Agreement, this Agreement shall be construed as having been fully and completely negotiated and neither the Agreement nor any provision thereof shall be construed more strictly against either party.

6. HEADINGS. The headings of the sections contained in this Agreement are included herein for reference purposes only, solely for the convenience of the parties hereto, and shall not in any way be deemed to affect the meaning, interpretation or applicability of this Agreement or any term, condition or provision hereof.

7. EXECUTION AND COUNTERPARTS. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, and such counterparts together shall constitute only one instrument. Any one of such counterparts shall be sufficient for the purpose of proving the existence and terms of this Agreement, and no party shall be required to produce an original or all of such counterparts in making such proof.

8. COVENANT OF FURTHER ASSURANCES. All parties to this Agreement shall, upon request, perform any and all acts and execute and deliver any and all certificates, instruments and other documents that may be necessary or appropriate to carry out any of the terms, conditions and provisions hereof or to carry out the intent of this Agreement.

9. REMEDIES CUMULATIVE. Each and all of the several rights and remedies provided for in this Agreement shall be construed as being cumulative and no one of them shall be deemed to be exclusive of the others or of any right or remedy allowed by law or equity, and pursuit of any one remedy shall not be deemed to be an election of such remedy, or a waiver of any other remedy.

10. BINDING EFFECT. This Agreement shall inure to the benefit of and be binding upon all of the parties hereto and their respective executors, administrators, successors and permitted assigns.

11. COMPLIANCE WITH LAWS. Nothing contained in this Agreement shall be construed to require the commission of any act contrary to law, and whenever there is a conflict between any term, condition or provision of this Agreement and any present or future statute, law, ordinance or regulation contrary to which the parties have no legal right to contract, the latter shall prevail, but in such event the term, condition or provision of this Agreement affected shall be curtailed and limited only to the extent necessary to bring it within the requirement of the law, provided that such construction is consistent with the intent of the Parties as expressed in this Agreement.

12. NO THIRD PARTY BENEFIT. Nothing contained in this Agreement shall be deemed to confer any right or benefit on any Person who is not a party to this Agreement.

13. APPLICABLE LAW. This Agreement shall be governed only by and construed, in all respects, solely in accordance with the laws of the State of New Jersey.

14. JURISDICTION AND VENUE. Any conflict, claim or dispute between the Township and DeMaio affecting, arising out of or relating to the subject matter of this Agreement shall be filed only in and litigated solely in the Superior Court of Essex County New Jersey and both parties specifically agree to be bound by the exclusive jurisdiction and venue thereof.

15. PREVAILING PARTY. In the event of any conflict, claim or dispute between the Township and DeMaio affecting, arising out of or relating to the subject matter of this Agreement, the prevailing party shall be entitled to receive from the non-prevailing party all attorneys' fees, expert fees, and related costs. Attorneys' fees, expert fees, and related costs shall be assessed by a Court and not by a jury and shall be included in any judgment obtained by the prevailing party.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first set forth above.

POLICE DIRECTOR

Samuel A. DeMaio

Notary

DATED: _____

TOWNSHIP OF BLOOMFIELD



Michael J. Venezia, Mayor



Attest