

POLICE CHIEF EMPLOYMENT AGREEMENT

THIS POLICE CHIEF EMPLOYMENT AGREEMENT (this “Agreement”) is made and entered into this ____ day of May, 2018, by and between the City of Bainbridge Island, Washington, a municipal corporation of the State of Washington (the “City” or “Employer”), and Matthew Hamner (“Employee”).

RECITALS

- A. The City is a municipality organized under the laws of the State of Washington under the Council-Manager form of government. The City Manager, as the chief administrative official of the City, appoints the Employee.
- B. The City desires to retain the services of Employee as Chief of Police of the Police Department consistent with the laws of the State of Washington and ordinances and policies of the City.
- C. The City desires to provide certain benefits, establish certain conditions of employment and set the general working conditions for Employee.
- D. Employee desires to continue employment as Chief of Police of the Police Department for the City in accordance with the terms and conditions of this Agreement, City ordinances and the City Employee Policy Manual, as the same may be amended from time to time (the “Manual”), subject to the provisions of Section 10.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants herein contained the parties agree as follows:

SECTION 1. DUTIES

- A. The City agrees to employ the services of Employee as Chief of Police of the City’s Police Department (the “Department”). Employee shall have the following powers and duties:
 - 1. Perform the functions and duties that are specified in Bainbridge Island Municipal Code, City ordinances and resolutions.
 - 2. Under the general direction of the City Manager, manage, administer and direct the Department’s functions and operations.
 - 3. Administer Department contracts consistent with the terms and conditions of such contracts and within budget appropriations.

4. Provide policy advice to the City Manager and the City Council.
 5. Organize and plan on a timely basis the annual Department budget in accordance with state law and in conjunction with other City departments and the City Manager.
 6. Maintain open communications with the community and promote responsive and courteous public services.
 7. Perform other legally permissible and proper duties and functions as the City Manager may from time to time assign.
 8. Perform other legally permissible and proper duties and functions necessary to perform the office of the Chief of Police of the Police Department.
- B. Employee will report to and be supervised by the City Manager.
- C. Employee agrees to accept employment and act as Chief of Police for the City and to perform his duties to the best of his ability in accordance with the highest professional and ethical standards of the profession and shall comply with all general rules and regulations established by the State of Washington and the City.
- D. Employee shall not engage in any activity that is, or may become, a conflict of interest, as defined by Washington law, or would be incompatible with the position of Chief of Police, or enter into a prohibited contract, as defined by Washington law.

SECTION 2. STATUS AND TERM

- A. ~~Employee shall be employed for a five year term, commencing June 10, 2013. Notwithstanding the five year term of the Agreement, Employee shall serve at the pleasure of the City Manager. Employee shall be considered an "at-will" employee of the City. This Agreement shall be effective June 10, 2018 and shall remain in full force and effect until terminated as provided in Section 6 of this Agreement. Notwithstanding Section 6 of this Agreement, Employee shall serve at the pleasure of the City Manager. Employee is an "at-will" employee of the City.~~
- B. Nothing in this Agreement shall prevent, limit or otherwise interfere with the City's right to terminate this Agreement, with or without cause, at any time, subject only to the provisions set forth in Section 6 of this Agreement, the laws of the State of Washington, City ordinances, and the Manual.
- C. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of Employee to resign and terminate this Agreement at any time, subject only to the provisions set forth in Section 6 of this Agreement.

- D. So long as this Agreement remains in effect, Employee agrees to remain in the exclusive employ of City and shall neither accept other employment nor become employed by any other City without the prior written approval of the City Manager. The term “employed” and derivations of that term as used in the preceding sentence shall include employment by another legal entity or self employment, but shall not be construed to include occasional teaching, writing, consulting or military reserve service performed on Employee’s own time, and with the advance approval of the City Manager.
- E. Employee understands and agrees that he will not be covered by the civil service system applicable to the Department under RCW 42.12 and BMC 2.28. Employee shall not be entitled to any of the procedural or substantive protections afforded civil service employees, but the employment relationship between the City and Employee shall be at will and governed by the terms of this Agreement and the Manual as provided herein.

SECTION 3. SALARY

- A. ~~The City agrees to pay Employee a starting base salary of One Hundred Forty Four Thousand One Hundred Ninety Two Dollars (\$144,192) per annum for his services, payable in equal installments in accordance with the City’s normal payroll schedule.~~ The City agrees to pay Employee a starting base salary of One Hundred Fifty-Eight Thousand Four Hundred Seventy-Two Dollars (\$158,472) per annum for his services, payable in equal installments in accordance with the City’s normal payroll schedule. Required withholding and deductions will be undertaken by the City, and the City shall make any and all matching contributions required by law.
- B. This salary is Step E in the unrepresented pay scale, Range 22, and is at the top of the scale.
- C. The parties agree that Employee shall be eligible to receive the same cost-of-living adjustment (if any) that applies to the City’s other senior managers, as determined annually by Council.
- D. This Agreement shall be automatically amended to reflect any salary adjustments that are provided or required by this Agreement and/or the City’s compensation policy.
- E. ~~Employee shall be reimbursed for the cost of packing and moving Employee’s and Employee’s family’s personal property up to a maximum of Fifteen Thousand Dollars (\$15,000). Employee shall solicit three bids from qualified moving companies and shall accept the low bid.~~

- F. ~~The City shall pay up to Three Thousand Five Hundred Dollars (\$3,500) for travel, meal and lodging expenses for trips by Employee and his spouse or significant other to the City in order to find housing.~~

SECTION 4. BENEFITS

- A. ~~Employee shall be entitled to a bank of ten days (80 hours) of vacation on the commencement date of Employee's employment. Thereafter, the Employee shall~~ accrue vacation leave at the rate of 15.33 hours per month up to a maximum annual carry-over of 40 days (320 hours). Upon termination of employment for any reason other than death, any accrued but unused vacation hours, up to the limit stated in the previous sentence, shall be paid in a single cash sum.
- B. ~~Employee shall be entitled to a bank of fifteen days (120 hours) of paid sick leave on the commencement date of Employee's employment. Thereafter, the Employee shall~~ accrue sick leave at the rate of eight hours per month (12 days per year), up to a maximum accumulation of 130 days (1040 hours). Upon termination of employment for any reason, any accrued unused sick days shall be forfeited and shall not be paid in cash.
- C. ~~After commencing employment,~~ Employee shall accrue one day (8 hours) per month of management leave, up to a maximum of six management leave days per calendar year, which may not be carried over.
- D. Employee shall be entitled the same bereavement leave as that provided to other non-represented employees of the City.
- E. Employee shall have the use of a Police Department vehicle. In the event that Employee uses his own vehicle for City-business related trips, the City shall reimburse Employee for such use in accordance with the then-current IRS approved mileage rate.
- F. The City shall provide Employee with a smart hand-held mobile device with phone and data communication services, for use in accordance with City policies that limit or prohibit, or require the Employee to reimburse the City for, personal use of the device.
- G. Employee shall participate in the City's health benefit (medical, dental, vision, employee assistance) plans in accordance with the terms then applicable to other non-represented employees of the City. Such terms change from time to time, and shall not be more generous than the terms applicable to other non-represented employees. For example, in 2018, the Employer will provide 95% of the medical plan premium for the Employees's coverage, and 85% of the premium for medical coverage for a spouse/domestic partner or other dependents.

- H. The City shall pay one hundred percent (100%) of the premium for term life insurance in the amount of Three Hundred Thousand Dollars (\$300,000). The Employee shall name the beneficiary(ies) of said term life insurance.
- I. The City shall provide long-term disability insurance for Employee with terms equivalent to that which applies, from time to time, to City non-represented employees.
- J. Notwithstanding the terms of this Agreement that describe the Employee's salary, the Employee shall participate in any furlough program that applies, from time to time, to City non-represented employees.
- K. Employer shall reimburse or pay the Employee's reasonable and actual business expenses outside the City. The finance director or designee, shall disburse such moneys upon receipt of duly executed expense or petty cash vouchers, receipts, statements or personal affidavits.

SECTION 5. RETIREMENT, DEFERRED COMPENSATION AND RETENTION

- A. Employee shall be enrolled in the Law Enforcement and Fire Fighters Plan of Washington ("LEOFF"). The City shall make all legally required City contributions for Employee's participation in said system, and Employee shall be responsible for paying all legally required Employee contributions for Employee's participation in said retirement system.
- B. In addition to City's payment to LEOFF described above, City shall pay an amount equal to ~~4 percent~~ eight (8) percent of Employee's current annual base salary into an Internal Revenue Code Section 457 plan or similar deferred compensation program to be paid by the City in accordance with the City's normal payroll schedule.
- C. Employee shall receive Retention pay as follows:
 - 1. Provided Employee remains employed with the City on September 1, 2018, Employee shall receive a Retention payment in the amount of Ten Thousand Dollars (\$10,000), subject to standard withholdings, on the City's next regular payroll date.
 - 2. Provided Employee remains employed with the City on June 1, 2019, Employee shall receive a Retention payment in the amount of Five Thousand Dollars (\$5,000), subject to standard withholdings, on the City's next regular payroll date.
 - 3. Provided Employee remains employed with the City on June 1, 2023, Employee shall receive a Retention payment in the amount of Five Thousand Dollars (\$5,000), subject to standard withholdings, on the City's next regular payroll date.

SECTION 6. RESIGNATION, TERMINATION AND SEVERANCE PAY

- A. The Employee may resign at any time, with or without cause, and shall give City at least thirty (30) days' advance written notice of the effective date of his resignation. The City may at any time terminate Employee without cause upon thirty (30) days' advance written notice.
- B. This Agreement shall be terminated upon the death or permanent disability of the Employee, which for purposes of this Agreement shall mean that Employee is incapacitated and unable to perform his essential duties, with or without reasonable accommodation, for at least the period of time prescribed by the terms of the Long-Term Disability benefit plan that then covers him.
- C. If Employee is terminated by the City without Cause, then, subject to the Employee signing a legal release as described in Section 6.F below, the Employee shall be entitled to receive severance benefits described in Section 6.E below ~~for one year following termination of employment, if that termination occurs in the first year of Employee's employment, if that termination occurs in the second year of Employee's employment, or for three months following termination of employment if that termination occurs in the third, fourth or fifth year of employment.~~ six months following termination of employment.
- D. The following reasons shall constitute grounds to terminate this Agreement with "Cause" and without payment of the severance provided in Subsection 6.C above:
 - 1. A material breach of this Agreement or the repeated neglect by Employee to perform the duties Employee is required to perform under this Agreement, either of which continues after written notice and a 30-day cure period, or which occurs within one year following a prior written notice and cure opportunity under this Subsection 6.D.1;
 - 2. Conviction of any criminal act relating to employment with the City or otherwise involving dishonesty, moral turpitude or physical violence;
 - 3. Conduct, relating to City employment, which, while not criminal in nature, violates the Manual or other reasonable standards of professional and personal conduct in some substantial manner injurious to the business or reputation of the City;
 - 4. Conviction of any felony offense;
 - 5. Mental or physical unfitness that prevents the Employee from carrying out the essential functions and/or duties of the position of Chief of Police; and
 - 6. Loss of law enforcement commission.

- E. For purposes of the severance benefits described in Subsection 6.C, each month's severance "benefits" shall mean cash payment equal to the annual rate of base salary in effect on the date of termination of employment for the remaining term of the Agreement, paid in accordance with the Employer's normal payroll schedule. In addition, the Employer shall provide, at no cost to the Employee, up to six (6) months COBRA health coverage for each health plan (i.e., medical, dental, and/or vision plan coverage) that applied to the Employee as of the termination date, at the level of coverage that was then in effect for the Employee and any then-covered dependents. Any severance payments shall be paid following the termination date, in accordance with the Employer's normal payroll schedule, subject to the Employee signing a legal release as described in Subsection 6.F. Except as described in this subsection, the Employer as of the date of termination will cease life and long term disability insurance coverage, all Employer LEOFF and/or deferred compensation payments, and any other benefits previously received by Employee.
- F. As a condition to eligibility to receive any severance benefits under this Section 6, the Employee shall sign, as of the date immediately following his separation and in a form provided by the City, a legal release of any and all claims of any kind against the City (except for earned and unpaid wages and benefits as of the termination date, and except for severance benefits hereunder and COBRA benefits), and agreeing neither to bring any litigation nor to make any written or oral communications that are harmful to the reputation of the City or any elected or unelected official or employee of the City.
- G. It is understood that after notice of termination or resignation in any form, Employee and the City will cooperate to provide for an orderly transition. Specific responsibilities during such transition will be specified in a written separation agreement. If Employee is involuntarily terminated by Employer for reasons that have the potential to adversely impact Employee's professional reputation if made public, Employee may request, and if requested, Employee shall be given an opportunity for a name clearing hearing with the City Manager.

SECTION 7. FLEXIBLE HOURS OF WORK

It is recognized that Employee must devote a great deal of time outside the normal office hours on business for City, and to that end Employee shall be allowed to establish an appropriate work schedule that allows time away from the office during normal office hours. It is expected that Employee will work at least forty (40) hours per week. The parties recognize that Employee will be exempt from the provisions relating to overtime payment and compensatory time under the Fair Labor Standards Act.

SECTION 8. PERFORMANCE EVALUATION

The City shall review and evaluate the performance of Employee on an annual basis. Performance evaluations shall be conducted by the City Manager. Employee shall be provided with a written copy of the evaluation.

SECTION 9. PROFESSIONAL DEVELOPMENT

The City shall budget and pay for the professional dues and subscriptions of Employee and associated costs (including travel, lodging and meal expenses) reasonably necessary for his continuation and full participation in regional, state and local associations and organizations that are necessary and desirable for his continued professional participation, growth and advancement to better serve the interests of the City.

SECTION 10. OTHER TERMS AND CONDITIONS OF EMPLOYMENT

- A. The City Manager may fix in writing any such other terms and conditions of employment, as he may determine from time to time, relating to the performance of Employee, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this Agreement, City ordinances, or any other applicable law
- B. All provisions of City ordinances, regulations, rules and the Manual as they now exist or hereafter may be amended, shall also apply to Employee as they would to other employees of the City, except as may be specifically agreed upon herein.
- C. If any term of this Agreement differs from the Manual, the terms of this Agreement shall take precedence.

SECTION 11. INDEMNIFICATION AND BOND

Without regard to any lesser requirements of federal, state or local law, the City shall defend, save harmless and indemnify Employee against any 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 Employee's duties as Chief of Police or resulting from the exercise of judgment or discretion in connection with the performance of program duties or responsibilities, unless the act or omission involved willful or wanton misconduct. In such case, Employee may request, and the City shall not unreasonably refuse to provide, independent legal representation at City's expense, and City may not unreasonably withhold approval. Legal representation, provided by the City for Employee, shall extend until a final determination of the legal action, including any appeals brought by either party. The City shall indemnify Employee against any and all losses, damages, judgments, interest, settlements, fines, court costs and other reasonable costs and expenses of legal proceedings including reasonable attorneys' fees, and any other liabilities incurred by, imposed on, or suffered by Employee in connection with or resulting from any claim, action, suit, or proceeding, actual or threatened, arising out of or in connection with the performance of his duties. Any settlement of any claim must be made with prior approval

of the City in order for indemnification, as provided in this section, to be available. Employee recognizes that the City shall have the right to compromise and settle any claim or suit arising out of or in connection with the performance of Employee's duties as Chief of Police.

SECTION 12. CIVIC INVOLVEMENT

Employer recognizes the desirability of representation in and before local and regional civic and other organizations, and Employee is authorized to become a member of such civic clubs or organizations he deems necessary or desirable in order to maintain awareness of community attitudes and ideas. Employer shall pay all expenses for membership and participation in up to three such Bainbridge Island organizations. Employee shall report to Employer on each membership that he has taken out at Employer's expense.

SECTION 13. MISCELLANEOUS PROVISIONS

- A. Paragraph Headings. The headings in this Agreement are inserted for convenience and identification only and are in no way intended to describe, interpret, define or limit the scope, extent or intent of this Agreement or any of the provisions of the Agreement.
- B. Provisions Severable. Every provision of this Agreement is intended to be severable. If any term or provision hereof is illegal or invalid for any reason whatsoever, such illegality or invalidity shall no affect the validity of the remainder of the Agreement.
- C. Rights and Remedies. The rights and remedies provided in this Agreement are cumulative, and the use of any one right or remedy by any party shall not preclude nor waive its rights to use any or all other remedies. Any rights provided to the parties under this Agreement are given in addition to any other rights the parties may have by law, statute, ordinance or otherwise.
- D. Entire Agreement. This Agreement contains the entire agreement between the parties respecting the matters herein set forth and supersedes all prior agreements between the parties hereto respecting such matters, including the Employment Agreement between the parties in effect from April 25, 2013 through June 9, 2018.
- E. Governing Law and Dispute Resolution. This Agreement shall be construed in accordance with the laws of the State of Washington. Venue for any dispute arising hereunder shall be in Kitsap County Superior Court. However, before any lawsuit may be filed by either party, the Employee and Employer must agree to engage in non-binding mediation, in which the expense of the mediator will be paid by the Employer. Other than the cost of the mediator, each party shall bear its own expenses and attorney fees in any dispute, including mediation or litigation.

- F. Preparation of Agreement. No presumption shall exist in favor of or against any party to this Agreement as a result of the drafting and preparation of this document.
- G. No Waiver. No waiver of any breach by either party of the terms of this Agreement shall be deemed a waiver of any subsequent breach of the Agreement.
- H. Counterparts. This Agreement may be executed simultaneously in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
- I. Amendment. No amendment of this Agreement shall be effective unless the amendment is in writing, signed by each of the parties.
- J. Notices. All notices and demands of any kind which either party hereto may be required or desires to serve upon the other party under the terms of this Agreement shall be in writing and shall be served upon such other party by personal service, or by leaving a copy of such notice or demand at the address hereinafter set forth, whereupon service shall be deemed complete, or by mailing a copy thereof by certified or registered mail, airmail if the address is outside the state in which the same is mailed, postage prepaid, with return receipt requested, addressed as follows:

CITY:

City of Bainbridge Island
c/o Human Resources
280 Madison Avenue North
Bainbridge Island, WA 98110

EMPLOYEE:

Matthew Hamner
[REDACTED]
Bainbridge Island, WA 98110

In case of service by mail, it shall be deemed complete on the day of actual delivery as shown on the addressee's registry of certification receipt or at the expiration of the third day after the date of mailing, whichever first occurs. The addresses to which notices and demands shall be delivered or sent may be changed from time to time by notice served as hereinabove provided by either party upon the other party.

- K. Appropriations. No commitment of public funds will be made prior to the approval of this Agreement. The terms of this Agreement are contingent upon sufficient appropriations being made by the City Council for the performance of this Agreement. If sufficient appropriations are not made, this Agreement shall terminate subject to the conditions subsequent concerning notice and severance

payment being given by the City to Employee as provided in Section 6 of this Agreement. Termination pursuant to the terms of this Agreement shall not result in any claim for payment or damages by Employee or the City. The City's decision as to whether sufficient appropriations are available shall be accepted by Employee and shall be final.

IN WITNESS WHEREOF, the City has caused this Agreement to be signed and executed on its behalf by the City Manager, and Employee has signed and executed this Agreement, both in duplicate, as of the day and year first above written.

CITY OF BAINBRIDGE ISLAND

EMPLOYEE

By: _____
Douglas Schulze, City Manager

By: _____
Matthew Hamner

Date: _____

Date: _____