

## **DIRECTOR EMPLOYMENT AGREEMENT**

THIS DIRECTOR EMPLOYMENT AGREEMENT (this "Agreement") is made and entered into this \_\_\_\_ day of October, 2009, by and between the City of Bainbridge Island, Washington, a municipal corporation of the State of Washington (the "City" or "City"), and Jon Fehlman ("Employee").

### **RECITALS**

- A. The City is a municipality organized under the laws of the State of Washington. The City Manager, as the chief administrative official of the City, appoints the Employee.
- B. Since December 1, 2008, Employee has been employed by the City in the position of Deputy Chief of Police of the Police Department.
- C. Since February 1, 2009, Employee has been employed by the City in the position of Interim Chief of Police of the Police Department.
- D. The City desires to secure and retain the services of Employee as Chief of Police of the Police Department and to provide an inducement for Employee to remain in such employment.
- E. The City desires to provide certain benefits, establish certain conditions of employment and set the general working conditions for Employee.
- F. Employee desires to accept employment as Chief of Police of the Police Department for the City in accordance with the terms and conditions of this Agreement.

### **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 an indefinite term, commencing upon execution of this Agreement, and shall serve at the pleasure of City Manager. Employee shall be considered 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, applicable federal, state and local laws, and the City's Employee Manual. To the extent there is any conflict between the language of this Agreement and the Manual, the language of this Agreement shall control.

- 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. 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, or consulting performed on Employee's own time, and with the advance approval of the City Manager.

**SECTION 3. SALARY**

- A. The City agrees to pay Employee a starting base salary of One Hundred Twenty-Seven Thousand Five Hundred Thirty Dollars (\$127,530) per annum for his services, payable in equal installments at the same time as other employees of the City.
- B. Employee shall be eligible to receive an annual step increase in accordance with the following base salary schedule:

Range	Position	Minimum	Maximum	Step A	Step B	Step C	Step D	Step E
22	Chief Of Police	107,623	134,952	107,623	113,887	120,516	127,530	134,952

Said step increase is not guaranteed and is at the discretion of the City Manager, based upon Employee's job performance as reflected in the Employee's annual performance evaluation as described in Section 8. The final step increase and maximum amount under the salary schedule is One Hundred Thirty-Four Thousand Nine Hundred Fifty-Two Dollars (\$134,952).

- C. The parties agree that Employee may receive an appropriate cost-of-living adjustment on an annual basis, compatible with Employee's performance and not lower than the amount granted to other non-represented City employees. It is understood that said adjustment is not guaranteed and is at the discretion of the City Manager.
- D. The Employee shall also be eligible to receive an annual merit payment. Said merit payment is not guaranteed and is at the discretion of the City Manager based upon the Employee's job performance as reflected in the Employee's annual performance evaluation as described in Section 8. If paid, said merit payment shall be in amount that equals up to five percent (5%) of the annual base salary of Employee and shall be paid by the end of the respective year for which it is earned.

- E. This Agreement shall be automatically amended to reflect any salary adjustments that are provided or required by the City's compensation policy.

#### **SECTION 4. BENEFITS**

- A. Employee shall continue to accrue vacation leave at a rate set forth in the City's Employee Manual that reflects his years of employment with the City up to a maximum accumulation of three hundred twenty (320) hours.
- B. Employee shall continue to accrue sick leave at the rate of eight (8) hours per calendar month of employment.
- C. Employee shall receive ninety-six (96) hours of management leave per annum.
- D. Employee shall be entitled to no less bereavement leave than 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 cell-phone and/or personal digital assistant (PDA). Employee shall use said cell phone and/or PDA in accordance with City policies regarding such use.
- G. The City shall pay one hundred percent (100%) of the medical insurance premiums for Employee but the Employee and the City shall share the costs of the medical insurance premiums for Employee's spouse and dependents in accordance with the following:

Effective upon execution of this Agreement, Employee shall pay ten percent (10%) of the medical insurance premiums for the Employee's spouse and dependents.

Effective January 1, 2010, Employee shall pay fifteen percent (15%) of the medical insurance premiums for the Employee's spouse and dependents.

Effective January 1, 2011, and for subsequent years during the term of this Agreement, the rate of the Employee's contribution for medical insurance premiums for the Employee's spouse and dependents shall be the same as that for other non-represented employees of City.

- H. The City shall make available to Employee, his spouse and dependents the same dental insurance and vision plan that is provided to non-represented employees of

the City. The City shall pay one hundred percent (100%) of the premiums for said dental insurance and vision plan for Employee, his spouse and dependents.

- I. The City shall make available to the Employee, his spouse and dependents the same Employee Assistance Plan that is made available to non-represented employees of City. The City shall pay one hundred percent (100%) of the premiums for said Employee Assistance Plan for Employee, his spouse and dependents.
- K. The City shall pay one hundred percent (100%) of the premium for term life insurance in the amount of One Hundred Thousand Dollars (\$100,000.00). The Employee shall name the beneficiary(ies) of said term life insurance.
- L. The City shall pay one hundred percent (100%) of the premium for long-term disability insurance for Employee with no more than a 90-day elimination period.

#### **SECTION 5. RETIREMENT AND DEFERRED COMPENSATION**

- A. Employee is enrolled in the Law Enforcement and Fire Fighters Plan of Washington ("LEOFF") and the City shall make all legally required City contributions for Employee's participation in said system. 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 4.0 percent (4%) of Employee's current annual base salary into a qualified Section 457 or similar program designated by Employee, as deferred compensation, in equal proportionate amounts for each pay period. City shall execute all necessary agreements required to establish such a plan.

#### **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.
- C. If Employee is terminated by the City without cause, and during such time the Employee is willing and able to perform Employee's duties under this Agreement, the City shall pay Employee severance as described in paragraph E of this section.

D. The following reasons shall constitute grounds to terminate this Agreement with cause and without payment of the severance provided in paragraph E of this section:

1. A breach of this Agreement or the repeated neglect by Employee to perform the duties Employee is required to perform under this Agreement that continues after written notice and a 30-day cure period;
2. Conviction of any criminal act relating to employment with the City and/or affecting the ability of Employee to carry out the duties and responsibilities of the position of Chief of Police;
3. Conduct, relating to City employment, which, while not criminal in nature, violates the Personnel Manual or other reasonable standards of professional and personal conduct in some substantial manner; and
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.
6. Loss of law enforcement commission.

E. Severance payment.

If Employee is terminated as Chief of Police by the City without cause or requested to resign for the convenience of the City during such time as Employee is willing and able to perform Employee's duties as Chief of Police under this Agreement, the City shall pay Employee, as severance, a cash payment equal to six (6) months of Employee's then current annual compensation (defined as annual base salary; deferred compensation as described in Section 5(B); five percent (5%) merit pay; and amount paid by City for Employee's health, dental and vision coverage), and City shall extend and pay for health coverage benefits for six (6) months. Such payment shall fully and finally release the City from any and all further obligations to Employee under this Agreement. Further, the payment of said severance is expressly conditioned upon the Employee and the City executing an employment release and settlement agreement in a form that is mutually agreeable to the City and the Employee. Any severance shall be paid in a lump sum within thirty (30) days of termination unless otherwise agreed to by City and Employee.

F. 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 terminated without cause, Employee may

request, and if requested, Employee shall be given an opportunity for a public name clearing with the City Manager and City Council.

## **SECTION 7. 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 a 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**

The City Manager may fix in writing any such other terms and conditions of employment, as they 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 or applicable federal, state and/or local law. All provisions of Bainbridge Island Municipal Code, City ordinances, City regulations, City 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.

## **SECTION 11. INDEMNIFICATION AND BOND**

Beyond that required under federal, state or local law, the City shall defend, save harmless and indemnify Employee 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 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 conduct. 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 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.
- E. Governing Law. This Agreement shall be construed in accordance with the laws of the State of Washington.
- 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 City Clerk  
280 Madison Avenue North  
Bainbridge Island, WA 98110

EMPLOYEE:

Jon Fehlman  
13429 Graywolf Place NE  
Poulsbo, WA 98370

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(F) 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: \_\_\_\_\_  
Mark Dombroski, City Manager

By: \_\_\_\_\_  
Jon Fehlman

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Paul McMurray  
City Attorney