

**CITY OF BLAINE**  
**REQUEST FOR COUNCIL ACTION**  
**MEETING DATE:** July 9, 2018

**SUBJECT:** Police Chief Employment Contract and First Amendment to Employment Contract

**DEPARTMENT:** City Manager

**PREPARED BY:** Michael Jones

**AGENDA LOCATION:**  Consent Agenda       Council Action       Unfinished Business

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**ATTACHMENTS:**

1. Employment Contract for Allen Schubert
2. First Amendment to Employment Contract for Allen Schubert

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**BACKGROUND/SUMMARY:**

The City has selected Allen Schubert to serve as Police Chief beginning August 2018. Mr. Schubert is retiring from service at the City of Los Angeles Police Department. During his transition, Mr. Schubert will serve in both the City of Blaine Police Department and the City of Los Angeles Police Department.

The contract stipulates the terms of ongoing employment. The first amendment allows for dual employment at both cities during the transition, and establishes a reduced pay and benefit structure for the transitional period when Chief Schubert will be on duty four days per week in Blaine.

The contract runs perpetually unless cancelled by either party. The amendment expires in early 2019.

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**Budget Implications:**  Current Budget       New Budget Request       Non-Budgetary

The contract is within the scope of the 2018 Budget.

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**Recommendation:**

The City Manager recommends that the Council authorize the City Manager to enter into the employment contract and the first amendment, subject to final review by the City Attorney.

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**Reviewed By:**

City Manager \_\_\_\_\_ Finance Director \_\_\_\_\_ City Clerk \_\_\_\_\_  
(Digital Signature) (Digital Signature) (Digital Signature)

**CITY OF BLAINE  
POLICE CHIEF  
EMPLOYMENT AGREEMENT**

**THIS EMPLOYMENT AGREEMENT** (the “Agreement”) is entered into this \_\_\_\_ day of \_\_\_\_\_, 2018, by and between the CITY OF BLAINE, a Washington municipal corporation (hereinafter the “City”) and Allen Schubert (hereinafter “Employee”), and is effective this \_\_\_\_ day of \_\_\_\_\_, 2018.

**WHEREAS**, the City desires to employ Allen Schubert in the position of Police Chief; and

**WHEREAS**, it is the desire of the City Council to provide certain conditions of employment and set working conditions and conditions of termination; and

**WHEREAS**, the Employee, having been appointed as provided for under RCW Chapter 35A.13 by the City Manager, desires to maintain employment as Police Chief of said City;

**NOW, THEREFORE**, IN CONSIDERATION OF THE MUTUAL PROMISES CONTAINED HEREIN, THE PARTIES AGREE AS FOLLOWS:

**I. EMPLOYMENT**

The City hereby agrees that Allen Schubert is employed as the Police Chief for the City of Blaine, and Allen Schubert hereby accepts under such employment, the terms and provision of this Agreement.

**II. DUTIES**

2.1 The Employee shall perform all of those responsibilities, duties, and obligations as set forth in the City of Blaine Police Chief Position job description attached hereto as “Attachment A”, and such other duties and responsibilities as are legally and properly assigned by the City Manager.

2.2 Exempt Position. The Employee is designated as an FLSA Executive Exempt employee and, subject to the City Manager’s approval, is permitted to design a flexible work schedule as may be warranted to accomplish the continuing objectives of the City. The position of Police Chief is also exempt from the provisions of the Washington State Minimum Wage Act.

2.3 Exclusive Employment. During the term of this agreement, Employee agrees to remain exclusively employed by the City and not to become employed by any other employer until the effective date of termination or resignation. The term “employed” shall not be interpreted to include occasional teaching, writing, or consulting work which does not interfere with Employee’s ability to effectively discharge his assigned duties.

2.4 Hours of Work. Employee’s schedule of work shall vary in accordance with the work required to be performed, including such time as is necessary outside normal office hours. However, Employee is generally expected to be in the office a minimum of 40 hours per week, typically during regular business hours (8:30 am to 4:30pm) and to attend City Council

meetings. Employee shall be compensated for the quality of his work product, as opposed to the number of hours required to perform his work.

### **III. SALARY**

3.1 Commencing on this \_\_\_\_\_ day of \_\_\_\_\_ 2018, Employee shall be paid a salary of Nine Thousand Four Hundred Seventeen Dollars (\$9,417) monthly. Employee shall also receive annual cost of living increases, based on the Seattle Urban CPI as approved in this agreement, or as funds are available and budgeted. Employee shall not receive a lesser cost of living increase than other exempt employees.

### **IV. PERFORMANCE EVALUATION**

4.1 The City Manager will ordinarily review and evaluate the performance of Employee as needed. Performance and evaluations shall be in accordance with Blaine Policy and Procedure 03-02. The City Manager and Employee shall define goals and performance objectives which they determine necessary for the proper operation of the City and for the attainment of the City's policy objectives, and shall further establish a relative priority among those various goals and objectives. Goals and objectives shall generally be attainable within the time limitations as specified and within the annual operating and capital budgets and the appropriations provided.

### **V. PERSONAL DEVELOPMENT**

5.1 The City shall pay Employee's dues in professional groups, provided they are approved in advance by the City Manager.

5.2 The City shall pay for the reasonable expenses of Employee's necessary travel and living expenses to represent the City at conferences, seminars, and training classes approved in advance by the City Manager.

5.3 The City recognizes the desirability of representation in and before local civic organizations, and Employee is authorized to become a member of such civic organizations as approved in advance by the City Manager. The City agrees to pay the membership fees for Employee in such civic organizations.

### **VI. VACATION, SICK, HOLIDAY, OTHER LEAVE**

6.1 Vacation Leave. As of the Commencement Date, Employee shall have 40 hours of vacation leave. Employee shall accrue vacation leave at 17.33 hours per month. Maximum vacation accrual shall be 280 hours. Any unused accrued vacation in excess of 280 hours at the end of a calendar year shall be forfeited by Employee.

6.2 Sick Leave. Employee shall accrue eight (8) hours of sick leave per month. Such sick leave shall be cumulative from month to month. Sick leave has no cashout value upon separation from employment except for the contribution to Employee's HRA VEBA as provided herein.

6.3 Holidays. Employee shall be entitled to two (2) personal, paid, floating holidays and ten (10) paid administrative leave days (banked as floating holidays) to be used annually. In addition, Employee shall be entitled to the following ten (10) holidays, (banked as floating holidays) based on an eight (8) hour day. Holidays may be used during or after the pay period in which the recognized holiday falls.

New Year's Day	Memorial Day
Martin Luther King Day	Independence Day
Presidents Day	Labor Day
Veterans Day	Thanksgiving Day
Day after Thanksgiving Day	Christmas Day

Unused, banked floating holidays at the end of a calendar year shall be forfeited by Employee.

6.4 Bereavement. Employee shall be entitled to five (5) days of bereavement leave annually without loss of pay for a death in the immediate family, defined as wife, husband, significant other, son, daughter, mother, father, brother, sister, grandparents, and grandchildren of either employee or employee's spouse/significant other, inclusive of step and in-law. Three (3) days of bereavement leave without loss of pay shall be allowed annually for any other family member not defined as immediate family.

6.5 Administrative Leave Pending Investigation. The City Manager may place the Employee on paid administrative leave under circumstances which make it reasonably appropriate for Employee to be absent from the workplace during investigation, resolution, or pendency of procedures appropriate to the circumstances involving employee. Such paid administrative leave is not considered discipline.

## **VII. BENEFITS**

7.1 The City shall provide the Employee and spouse/registered domestic partner/dependent(s) medical, vision, and dental benefits, and pay ninety-percent of the premiums for same. Current medical, vision, and dental benefits are provided as follows:

- a. Medical – AWC Benefits Trust, effective first of month following the Commencement Date, paid by City at 90%
- b. Vision and Dental – Teamsters H&W paid by City at 100%

In addition, the City shall provide Employee with, and pay the premiums for, life insurance, long-term disability insurance, and Employee Assistance Program (EAP).

7.2 The City shall contribute an amount equal to five percent (5%) of Employee's gross salary to either the ICMA Deferred Compensation Plan or the Washington State Department of Retirement system deferred compensation plan, at the Employee's election. The five-percent (5%) of Employee's salary initially equates to \$470.85/month.

7.3 The City will contribute to the Washington State Department of Retirement LEOFF II System in an amount provided for by State law.

7.4 Employee shall be covered by the City's insurance for actions performed by Employee within the scope of his employment.

7.5 The City shall participate in a HRA VEBA plan for Employee. Sick leave in excess of nine hundred sixty (960) hours, as outlined in Section 6.2, shall be contributed annually to the Employee HRA VEBA account at 100% equivalent salary value. Upon retirement through LEOFF II, termination without cause or a Qualifying Resignation (defined hereinafter), any accrued sick leave over nine hundred and sixty (960) hours shall be contributed to the HRA VEBA account at 100% equivalent salary value, and any accrued sick leave at nine hundred and sixty (960) hours or under shall be contributed to the HRA VEBA account at 25% equivalent salary value. Notwithstanding the foregoing, the total cumulative sick leave contribution by the City of Blaine to the Employee HRA VEBA account upon termination without cause, retirement or a Qualifying Resignation shall not exceed \$12,500.

7.6 Employee will contribute \$50 per month to Employee's HRA VEBA account through payroll deductions. Additional Employee contributions to HRA VEBA may be defined by the group contracts.

### **VIII. VEHICLE ALLOWANCE**

8.1 The City shall assign the Employee a clearly marked police vehicle. Employee shall be required to use the vehicle for commuting to and from work. Employee shall always be on call when using the vehicle. Employee understands that under existing IRS guidelines, use of such vehicle will be taxable to the Employee unless all of the following conditions are satisfied:

- Employee must always be on call.
- Employee is required to use the vehicle for commuting.
- Personal use (other than commuting) for travel outside of City limits is prohibited.
- The vehicle is readily apparent as a public safety vehicle by words or painted insignia.

The parties understand that the foregoing guidelines may change. It is the parties' intent that the use of the vehicle will meet the foregoing guidelines and not be taxable; however, the City shall not be responsible to Employee for any tax liability that Employee may incur by use of such vehicle.

8.2 The City shall reimburse the Employee, at the City approved mileage reimbursement rate, for all mileage the Employee accrues using a personal, private vehicle while on City related business, if a City vehicle is not available.

### **IX. TERMINATION, SEVERANCE PAY, TERMINATION FOR CAUSE**

9.1 Termination. Employee is an employee at will, which means that the City can terminate Employee at any time and for any legal reason; likewise, Employee may resign at any time and for any reason. Termination by the City shall comply with any applicable Federal and State laws. Employee shall be entitled to compensation up through the last day of actual service.

9.2 Severance Pay. If Employee is terminated under the provisions of Section 9.1 and such termination is not for cause as provided in Section 9.2.1, then the City agrees to pay the Employee severance pay. Severance shall be per the following: during the first 365 days of employment Employee shall receive severance equal to one-year's salary; subsequent to the first year of employment Employee shall receive severance equal to six-month's salary.

Severance shall not include any benefits. All benefits terminate effective with the last date of employment or the end of the month in which the termination occurs if applicable. Such severance shall only be paid to Employee if Employee executes a release of all claims against the City with terms and conditions acceptable to the City.

In the event Employee is terminated for cause at any time as defined below in 9.2.1, then Employee shall not receive severance pay or benefits. Instead, Employee shall only receive his salary through the termination date.

9.2.1 Termination for Cause. "Cause" for the purposes of this Agreement shall be determined by the City Manager upon his reasonable determination that one (1) or more of the following facts exist, regardless of whether Employee has been provided with prior notice:

- a. Incompetence, inefficiency, or inattention to or dereliction of duty as reasonably determine by the City Manager;
- b. Dishonesty, immoral conduct, insubordination, discourteous treatment to the public or a fellow employee, or any act or failure to act which is prejudicial to the City as reasonably determined by the City Manager;
- c. Mental or physical unfitness for the position, subject to the provisions of the Americans with Disabilities Act and similar state statutes;
- d. Violation of the City's personnel policies, including but not limited to the sexual harassment or drug and alcohol policies, as they now exist or are hereafter amended or adopted;
- e. Employee's failure to support and comply with the policies and guidelines established by the City and/or failure to perform the duties required as outlined in "Attachment A" of this Agreement;
- f. Being arrested and charged with, or convicted of, a felony or any misdemeanor which, in the City Manager's discretion, renders Employee unfit to continue serving as Police Chief; and/or
- g. Any other act, or failure to act, which in the reasonable judgment of the City Manager, is sufficient to show the employee to be an unsuitable or unfit person to hold the position of Police Chief.

9.3 Resignation. Employee may resign at any time from his employment with the City, provided, however, that Employee is requested to provide thirty (30) days' notice prior to resignation. An employee who resigns shall not be entitled to severance. A resignation which meets the terms and conditions of a "Qualifying Resignation" shall entitle Employee to the following:

- a. Compensation up through the date of resignation;
- b. Cash out of accrued vacation pay and pay equivalent to a maximum of two banked floating holidays;
- c. Contribution of sick leave to Employee's HRA-VEBA as provided for under Section 7.5.

9.3.1 A Qualifying Resignation is a resignation which satisfies all of the following terms and conditions:

- a. Employee provided the City with at least thirty (30) days' notice prior to the effective date of the resignation.
- b. Employee was not arrested or convicted of any felony or misdemeanor at the time of providing the resignation notice.
- c. At the time of providing the resignation notice, Employee was not under investigation, had not been placed on unpaid administrative leave and had not been notified of any potential disciplinary action.

## **X. TERM**

10.1 This Agreement shall commence on this \_\_\_\_\_ day of \_\_\_\_\_ 2018, ("Commencement Date") and shall continue indefinitely until Employee's separation from employment or as amended by agreement of both parties.

## **XI. GENERAL PROVISIONS**

11.1 Notice. Any notices required to be given by the City to Employee, or Employee to the City, shall be delivered to the address of the receiving party last known to the addressing party. Such notices shall be delivered either personally to the addressee or may be deposited in the United States Mail, postage prepaid, to the address of the person receiving the notice. Any notice so posted in the United States Mail shall be deemed received three (3) days after the date of mailing and the effective date of any such notice shall be the date of mailing.

11.2 Dispute Resolution. This Section is designed to provide an orderly method of resolving any alleged breach of the terms of this agreement. A determined effort shall be made to settle any such differences at the lowest possible level in this dispute resolution procedure.

11.2.1 This dispute resolution procedure is the sole remedy for any dispute involving the interpretation or application of the specific terms of this agreement or any alleged breach thereof. To the maximum extent allowed by law, the dispute resolution procedure set forth herein is also the sole remedy for any disputes arising out of or relating to Employee's employment. Any dispute concerning this agreement shall be submitted to this procedure.

11.2.2 Any dispute shall first be submitted to mediation as a condition precedent to arbitration. Upon a request by either party to mediate a dispute, the parties shall mutually agree upon a mediator. If the City and Employee cannot agree upon a mediator within ten (10) business days after such request, the City and Employee shall submit the matter to the Judicial Arbitration and Mediation Service (JAMS) and request that a mediator be appointed. This requirement to mediate the dispute may only be waived by mutual written agreement before a party may proceed to litigation as provided within this Restated ILA. Except for unusual reasons beyond the reasonable control of either party, mediation shall be completed within ninety (90) days after the mediator is selected. Any expenses incidental to mediation, including the mediator's fee, shall be borne equally by the City and Employee.

- 11.2.3 If the parties are unsuccessful in resolving any dispute through mediation, either party may demand binding arbitration as provided herein.
- 11.2.4 Upon receipt of a request for arbitration, the dispute shall be submitted to mandatory and binding arbitration before the Judicial Arbitration and Mediation Service (“JAMS”) located in Seattle, Washington. Each party shall bear the cost of preparation and presentation, including attorneys’ fees and expert witness fees, of its case before the arbitration. The cost of the arbitrator shall be shared equally. The decision of the arbitrator shall be binding and final on the parties. The arbitration shall be conducted in accordance with the JAMS Comprehensive Arbitration Rules and Procedures unless the parties agree otherwise.
- 11.2.5 The parties shall agree on a JAMS arbitrator within twenty (20) days from the date the matter is submitted to JAMS. In the event that the parties fail to agree on a JAMS arbitrator within such time, then JAMS shall be asked to submit the names of at least three arbitrators. Each party shall have ten (10) days after receiving the list to strike one name from that list. JAMS shall select the arbitrator from the names on the list that have not been struck by either party.
- 11.2.6 The parties may agree on another arbitrator in JAMS or another person at any time. In the event that JAMS is unable or unwilling to provide an arbitrator and the parties cannot otherwise agree, then the presiding judge of the Whatcom County Superior Court shall be asked to designate an arbitrator.
- 11.2.7 The hearing and the final decision of the arbitrator shall be made within thirty (30) days of the selection of the arbitrator or as soon thereafter as possible. The decision of the arbitrator shall be final and binding upon both parties, subject only to the right of appeal as provided in RCW 7.04; provided, however, that in arriving at such decision neither of the parties nor the arbitrator shall have the authority to alter this agreement in whole or in part.
- 11.2.8 The arbitrator cannot order the City to take action contrary to law.
- 11.2.9 The total cost of the stenographic record, if requested, shall be paid by the party requesting it. If the other party also requests a copy, each party shall pay one-half of the stenographic cost.

11.3 Non-Waiver. No failure by any of the foregoing parties to insist upon the strict performance of any covenant, duty, agreement, or condition of this Agreement or to exercise any right or remedy consequent upon a breach thereof, shall constitute a waiver of any such breach or any other covenant, agreement, term, or condition. Any party hereto, by notice, an only by notice as provided herein may, but shall be under no obligation to, waive any of its rights or any conditions to its obligations hereunder, or any duty, obligation, or covenant of any other party hereto. No waiver shall affect or alter this Agreement, and each and every covenant, agreement, term, and condition of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent breach thereof.

11.4 Severability. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such

invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

11.5 Neutral Authorship. Each of the provisions of this Agreement has been reviewed and negotiated, and represents the combined work product of all parties hereto. No presumption or other rules of construction which would interpret the provisions of this Agreement in favor of or against the party preparing the same shall be applicable in connection with the construction or interpretation of any of the provisions of this Agreement.

11.6 Time of Performance. Time is specifically declared to be of the essence of this Agreement and of all acts required to be done and performed by the parties hereto.

11.7 Entire Agreement. The entire agreement between the parties hereto is contained in this Agreement and the Appendices, as may be amended; and this Agreement supersedes all of their previous understandings and agreements, written and oral, with respect to this transaction. This Agreement may be amended only by written instrument, duly authorized and executed by the parties subsequent to the date hereof.

DATED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2018

\_\_\_\_\_  
Michael Jones, City Manager

\_\_\_\_\_  
Allen Schubert, Employee

Approved as to Form

\_\_\_\_\_  
Jon Sitkin, City Attorney

**FIRST AMENDMENT TO EMPLOYMENT AGREEMENT  
FOR THE CITY OF BLAINE POLICE CHIEF**

**THIS FIRST AMENDMENT TO EMPLOYMENT AGREEMENT** (the "Amendment") is entered into this \_\_\_\_ day of \_\_\_\_\_, 2018, by and between the CITY OF BLAINE, a Washington municipal corporation (hereinafter the "City") and Allen Schubert (hereinafter "Employee"), and is effective this \_\_\_\_ day of \_\_\_\_\_, 2018.

**WHEREAS**, the parties entered into an employment agreement (the "Agreement") dated \_\_\_\_\_, 2018; and

**WHEREAS**, the parties desire to amend the Agreement as provided herein.

**NOW, THEREFORE**, IN CONSIDERATION OF THE MUTUAL PROMISES CONTAINED HEREIN, THE PARTIES AGREE AS FOLLOWS:

**1. Dual Employment.** Until February 1, 2019 (the "Transitional Period"), the following terms and conditions will apply:

- 1.1 Employee will be expected to work four days a week for the City on the days of Monday, Tuesday, Wednesday and Thursday (the "Scheduled Days").
- 1.2 On other than Scheduled Days, Employee may continue to work for the Los Angeles Police Department in his current position.
- 1.3 Employee will earn 80-percent of his salary, 80% of his deferred comp benefit and 80% of vacation and sick leave accruals.
- 1.4 The vehicle assigned to the employee shall be left at the City when employee is out of state.

**2. All other terms and conditions.** All other terms and conditions of the Agreement not amended herein shall remain the same and in full force and effect, provided that in the event of a conflict between any provision of the Agreement and this Amendment, this Amendment shall control.

DATED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2018

CITY OF BLAINE

EMPLOYEE

\_\_\_\_\_  
Michael Jones, City Manager

\_\_\_\_\_  
Allen Schubert, Employee

Approved as to Form

\_\_\_\_\_  
Jon Sitkin, City Attorney