

City of Blaine
Request for Council Action
Meeting Date: October 23, 2023

Subject: Employment Agreement for Community Development Services Director (Alex Wenger).

Department: City Manager

Prepared By: _____
(Digital Signature)

Agenda Location: Consent Agenda Council Action Unfinished Business

Action Needed:

City Council must authorize the City Manager to enter into an employment agreement with Alex Wenger for him to become the new Community Development Services Director.

Attachments:

1. Community Development Services Director Employment Agreement

Background/Summary:

After a comprehensive recruitment and interview process, the City Manager has selected Alex Wenger for the position of Community Development Services Director. If approved at the October 23, 2023, City Council meeting, it is anticipated that Alex will become the Community Development Services Director on October 24, 2023.

The Community Development Services Director is an at-will position that is dictated by an employment agreement. Below are the primary financial related stipulations of the agreement:

1. \$140,988 annual salary
2. 5% monthly deferred compensation
3. 26 vacation days
4. 12 sick days
5. 12 paid holidays (11 statutory, one floating)
6. Three Administrative days
7. \$150 monthly HRA VEBA contribution (\$50 employee contribution and \$100 City contribution)

Budget Implications: Current Budget New Budget Request Non-Budgetary

The Community Development Services Director position is included in the 2023 Budget.

Recommendation:

The City Manager recommends City Council authorize him to enter into an Employment Agreement for Community Development Services Director with Alex Wenger.

Reviewed By:

City Manager _____ Finance Director _____ City Clerk _____
(Digital Signature) (Digital Signature) (Digital Signature)

**CITY OF BLAINE
COMMUNITY DEVELOPMENT SERVICES DIRECTOR
EMPLOYMENT AGREEMENT**

THIS EMPLOYMENT AGREEMENT (the “Agreement”) is entered into this ___ day of October, 2023, by and between the CITY OF BLAINE, a Washington municipal corporation (hereinafter the “City”) and Alexander Wenger (hereinafter “Employee”), and is effective as of the last signature below.

WHEREAS, the City desires to employ Alexander Wenger in the position of Community Development Services Director; 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 Community Development Services Director of said City;

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

I. EMPLOYMENT

1.1 The City hereby agrees that Alexander Wenger is employed as the Community Development Services Director for the City of Blaine, and Alexander Wenger 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 Community Development Services Director position 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 Community Development Services Director 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 the Commencement Date defined below, Employee shall be paid a salary of Eleven Thousand Seven Hundred Forty-Nine Dollars (\$11,749) monthly, or \$140,988 annually. On January 1 of each calendar year, Employee shall 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. Employee shall accrue vacation leave at 17.33 hours per month. Maximum vacation accrual shall be 240 hours. Any unused accrued vacation in excess of 240 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 Sick Leave Incentive. Employee shall receive one (1) vacation day for sixteen (16) or fewer sick leave hours used in a full calendar year, and two (2) vacation days for eight (8) or fewer sick leave hours used in a full calendar year.
- 6.4 Holidays. Employee shall be entitled to one (1) personal, paid, floating holidays and three (3) paid administrative leave days (banked as floating holidays) to be used annually. In addition, Employee shall be entitled to the following eleven (11) holidays, based on an eight (8) hour day. Holidays may only be used on the day the holiday is recognized.

New Year's Day
Martin Luther King Day
President's Day
Memorial Day
Juneteenth
Independence Day

Labor Day
Veteran's Day
Thanksgiving Day
Native American Heritage Day
Christmas Day

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

- 6.5 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.
- 6.6 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.
- 6.7 The Employee has the option to cash out 40 hours of accrued vacation leave on an annual basis. This one-time cash out must be the entire 40 hours, and can occur in any month; provided their remaining vacation leave balance is in excess of 40 hours.

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:
- Medical – AWC Benefits Trust, effective first of month following the Commencement Date, paid by the City at 90% and by the employee at 10%.
 - Vision and Dental – Teamsters H&W paid by the 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.
- 7.3 The City will contribute to the Washington State Department of Retirement PERS System in an amount provided for by State law.
- 7.4 Employee shall be covered by the City's Errors and Omissions Insurance and with the Professional Liability Insurance provided to Department Heads and the City Council.
- 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 PERS, 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.

- 7.5.1 Commencing with the first payroll distribution, Employee will contribute Fifty Dollars (\$50) per month to Employee's HRA VEBA account through payroll deductions. The City shall contribute One Hundred Dollars (\$100) per month to Employee's HRA VEBA account.
- 7.5.2 Additional Employee contributions to HRA VEBA may be defined by the group contracts.
- 7.6 Should the City negotiate a different health, dental, and/or vision benefit package with other exempt employees, including but not limited to a different employee contribution level, the City shall have the right to change the Employee's benefit package or contribution to that which has been negotiated with other exempt employees.

VIII. VEHICLE ALLOWANCE

- 8.1 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 outside of Whatcom County, 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 equal to three (3) months' salary from the date of termination. 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 determined 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 Community Development Services Director; 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 Community Development Services Director.

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;
- 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 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 November 1, 2023 ("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 Employee shall notify the City no later than twenty (20) days after any occurrence which he deems to be a breach of this agreement. Employee shall be entitled to a hearing with the City Council within ten (10) working days of such notice. If the dispute cannot be settled at this hearing, Employee shall, within ten (10) working days following the rejection of the dispute by the City Council, submit, in writing, to the City Council a request for arbitration.
- 11.2.3 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.
- 11.2.4 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.
- 11.2.5 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.
- 11.2.6 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.
- 11.2.7 The arbitrator cannot order the City to take action contrary to law.
- 11.2.8 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.

11.2.9 There will be no reprisals against Employee or others as a result of his or their participation in this dispute resolution process.

- 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, and 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.

XII. RESIDENCY

- 12.1 Employee shall reside within the Blaine School District boundaries.

DATED THIS _____ DAY OF _____, 2023.

Michael Harmon, City Manager

Alexander Wenger, Employee

Approved as to Form

Peter Ruffatto, City Attorney