

EMPLOYMENT AGREEMENT

This Employment Agreement ("Agreement") is made and entered into as of the 10th day of January, 2003, by and between the City of Providence (the "City") and Dean M. Esserman ("Esserman" or the "Chief").

WHEREAS, pursuant to and consistent with its authority under Article X, Section 1001 of the Home Rule Charter of the City of Providence, the City desires to employ Esserman as the Chief of Police of the City of Providence Police Department through January 9, 2007, and to provide Esserman with an employment contract to that effect; and

WHEREAS, the City desires to employ a Chief of Police with the expertise and experience to address the current challenges presented to the Providence Police Department; and

WHEREAS, Esserman is willing to accept such employment upon the terms and conditions hereinafter set forth;

NOW THEREFORE in consideration of the mutual promises and agreements hereafter contained, it is mutually agreed as follows:

1. Term

The City employs Esserman and Esserman accepts employment as the Chief of Police for a term of four years, commencing on January 10, 2003 and ending on January 9, 2007. The term of this Agreement shall automatically extend an additional year (*i.e.*, from January 10, 2007 through January 9, 2008) unless notice to Esserman is given by the City pursuant to Section 10. The City shall have the option of extending the term of this Agreement for an additional four years (*i.e.*, from January 10, 2007 through January 9, 2011), pursuant to mutually agreeable terms and conditions.

2. Residency

At all times during the term of this Agreement and/or any renewal term of this Agreement the Chief shall be a resident of the City of Providence; provided, however, that if the Chief is not a resident by the effective date of this Agreement the Chief shall permanently relocate to Providence no later than July 10, 2003, and shall thereafter be a resident of the City of Providence at all times during the term of this Agreement (and any renewal).

3. Employment

A. Duties

The Chief shall be the chief executive officer, law enforcement leader and administrative manager of the Providence Police Department and, as such, shall be charged with the responsibilities of performing the duties and responsibilities pertaining to the office of the Chief of Police, as prescribed by law, this Agreement and City policy. The Chief's duties shall include, but shall not be limited to, those duties as set forth in Article X, Section 1001 of the Home Rule Charter of the City of Providence. Except as permitted in this Agreement, the Chief shall devote substantially his full time and attention to the performance of his duties as Chief of the City of Providence Police Department.

B. Outside Professional Activities

The Chief shall devote substantially his entire time, attention, and energy to the direction and supervision of the Police Department. Notwithstanding the foregoing, the Chief may, without additional compensation by the City, participate in outside professional activities, including, but not limited to, consulting (including the Chief's current role as monitor of the Wallkill Police Department), speaking, teaching, and writing, with or without compensation, provided they do not materially interfere with his full time duties as the Chief of Police and do not present an actual or potential conflict of interest with his duties as Chief of Police.

In the course of participating in such activities, the Chief may utilize whatever Police Department resources are reasonable and necessary for such undertakings, provided that the use of such resources does not materially interfere with the job duties of other employees of the Police Department. In the event that the Chief desires to participate in an outside activity that would require the Chief to be absent for more than five (5) consecutive full working days, the Chief shall obtain the prior approval of the Mayor.

4. COMPENSATION

A. Base Salary

The Chief shall be paid an annual base salary of one hundred thirty eight thousand dollars (\$138,000) for the first year of this Agreement. For the second, third, and fourth years of this Agreement, the Chief's annual base salary shall be increased by five thousand (\$5,000), commencing on the anniversary date of each such year. The Chief shall be paid on a weekly

basis in an amount equal to 1/52 of the annual salary rate in effect for the term of this Agreement.

B. Retroactive Pay

Prior to ratification of this Agreement by the Providence City Council, the City will pay the Chief's annual base salary at the currently approved, reduced rate of \$98,081 (the "Temporary Salary"). Upon the City Council's ratification of this Agreement, the Chief shall receive retroactive pay in an amount equal to the difference between (x) the portion of the annual base salary to which the Chief was entitled for such period under Paragraph A of this Section 4 above, and (y) the Temporary Salary actually received by the Chief during such period (the "Retroactive Pay"). The City shall pay the Retroactive Pay to the Chief in full within the two weekly pay periods immediately following the City Council's ratification of this Agreement, which ratification the Mayor, on behalf of the City, shall use his best efforts to expedite and secure, but which shall be obtained in any event no later than March 6, 2003.

5. Additional Compensation and Benefits

A. Health and Related Benefits

The Chief shall be entitled to the medical and dental insurance and other like benefits to which other administrative employees (the senior command staff) of the Providence Police Department are entitled.

B. Retirement Benefits

The Chief will be entitled to receive any retirement benefits otherwise available to administrative employees (including those available to the senior command staff) of the Providence Police Department.

C. Sick Leave

During the term of this Agreement, the Chief shall be entitled to fifteen (15) sick leave days per year. At the commencement of this Agreement, the Chief shall be deemed to have accrued 15 sick days for the first year of this Agreement. Thereafter, sick days for each subsequent year shall accrue pro rata over the immediately preceding year (i.e., on each anniversary of this Agreement, the Chief shall have accrued the number of sick days to which he is entitled for the following year commensurate with the period he remained employed during the year preceding such anniversary). The Chief may carry forward up to ten (10) days of unused sick leave from each year of this Agreement. Unused sick leave that is carried forward from different years may be accumulated. At termination of employment, the Chief shall be entitled to a cash payment for his accrued sick leave for not more than a

total of ten (10) days of unused sick leave for each year, or fraction thereof, of employment.

D. Personal Leave

During the term of this Agreement, the Chief shall be entitled to personal leave under the same terms and conditions as other administrative employees (the senior command staff) of the Providence Police Department.

E. Vacation

During the term of this Agreement, the Chief shall be entitled to twenty-eight (28) vacation days per year under the same terms and conditions as other administrative employees (the senior command staff) of the Providence Police Department. At the commencement of this Agreement, the Chief shall be deemed to have accrued 28 vacation days for the first year of this Agreement. Thereafter, vacation days for each subsequent year shall accrue pro rata over the immediately preceding year (i.e., on each anniversary of this Agreement, the Chief shall have accrued the number of vacation days to which he is entitled for the following year commensurate with the period he remained employed during the year preceding such anniversary). The Chief may carry forward up to fifteen (15) days of unused vacation leave from each year of this Agreement. Unused vacation leave that is carried forward from different years may be accumulated. At termination of employment, the Chief shall be entitled to a cash payment for his accrued vacation leave for not more than a total of fifteen (15) days of unused vacation leave for each year, or fraction thereof, of employment.

F. Business Expenses

The City will reimburse the Chief for all reasonable and usual expenses connected with the discharge of the Chief's job duties during the term of this Agreement or any renewal period. All requests for reimbursement of expenses must be accompanied by a receipt and/or written description/explanation of the nature and reason for the expense.

To further the Chief's professional development, the City shall pay the cost of membership in such organizations that the Chief deems reasonably necessary to maintain and improve his professional skills and benefit the Providence Police Department; provided that such expenses are permitted by state law and approved by the City in the annual budget.

Upon obtaining prior approval of the Mayor, the Chief may, to the extent permitted by state law, also attend professional meetings, programs, seminars and courses that he deems reasonably necessary for his professional development and which will benefit the Police Department. The City shall reimburse the Chief for all reasonable and usual expenses

connected with his attendance. All requests for reimbursement must be accompanied by a receipt and/or written description/explanation of the nature and reason for the expense.

G. Deferred Compensation

On or before the 30th day of December of each year that this Agreement is in effect, or in advance on the first business day of January and July of each year if permitted by law, the City shall pay on behalf of the Chief to an investment vehicle that is tax-qualified under Section 457(b) of the Federal Internal Revenue Code (a "Section 457 Plan") the following amounts:

- By December 30, 2003 - \$12,000;
- By December 30, 2004 - \$13,000;
- By December 30, 2005 - \$14,000;
- By December 30, 2006 - \$15,000.

The Chief shall select the provider of the Section 457 Plan.

H. Automobile/Cellular Telephone/Computer

The City, at its expense, shall provide the Chief with an automobile, a cellular telephone, a home computer, and other reasonably necessary equipment (including reasonable routine replacement) for business and personal use and shall reimburse the Chief for all reasonable and usual expenses associated with his use of the automobile, cellular telephone, and home computer. All requests for reimbursement of expenses must be accompanied by a receipt and/or written description/explanation of the nature and reason for the expense.

I. Relocation Expense

The City shall reimburse the Chief for relocation expenses which can include residential closing costs, in an amount not to exceed nine thousand (\$9,000) dollars. In addition, the City shall reimburse the Chief for interim travel and living expenses in an amount not to exceed four thousand (\$4,000) dollars for the first six months of this Agreement; provided, however, that such reimbursement shall cease upon the Chief's permanent relocation to the City of Providence. All requests for reimbursement of expenses must be accompanied by a receipt and/or written description/explanation of the nature and reason for the expense.

J. Sell Back of Vacation and Sick Days

The Chief may elect, on an annual basis, to sell back to the City a maximum of fifteen (15) accrued but unused vacation days and/or sick days. Such election shall be exercised by the Chief by giving notice to the City no later than January thirtieth of the following year, otherwise this right shall expire for that year. The City shall include payment for such "sold" days in the Chief's next regularly scheduled payment of his annual base salary after receipt of the Chief's notice of election to sell back such days. All days sold back by the Chief pursuant to this Section 5-J, shall be deemed to be "used" for the purposes of paragraphs C and E of Section 5.

K. Other Benefits

In addition to the benefits provided in this Section 5, the Chief shall be entitled to all other benefits to which other administrative employees (including the senior command staff) of the Providence Police Department are entitled (including without limitation, uniforms).

6. Professional Liability

The City shall defend, hold harmless, and indemnify the Chief from financial loss and expense, including legal fees and costs, if any, arising out of any claim, demand, or suit for actions resulting in accidental bodily injury to or death of any person, or in accidental damage to or destruction of property, or any other acts, including but not limited to infringement of any person's civil rights, resulting in any injury, which acts are not criminal, wanton, reckless, malicious, or grossly negligent, as determined by a court of competent jurisdiction, provided the Chief, at the time of the acts resulting in the injury, death, damages, or destruction, was acting in the discharge of his duties or within the scope of his employment.

The Chief hereby agrees to cooperate with the City and its authorized representatives in the handling and defense of such demands, claims, suits, actions and/or legal proceedings, both during and after the term of employment herein, as may be required by the City. In the event that the Chief's cooperation is required or requested after leaving office, the City shall reimburse, upon presentation of written receipts, the Chief for the costs and expenses reasonably connected to such cooperation. In the event that the Chief is required to travel to Rhode Island to render such cooperation, the City shall, upon being provided with written assurance that he used vacation and/or personal leave for the time spent in Rhode Island, also pay the Chief a reasonable per diem; provided, however, that the Chief shall not be entitled to a per diem if a claim has been made against him in his individual capacity.

In such case the City has agreed to defend, hold harmless and indemnify the Chief, counsel for the City shall serve as counsel for the Chief; provided, however, that in the event of a conflict of interest, as determined by said counsel with input from the Chief, the Chief may engage counsel, who maintains his or her principal place of business within the State of Rhode Island, of his choice, in which event, the City shall indemnify the Chief for the reasonable and necessary costs of a legal defense.

7. Evaluation

The Chief shall be evaluated on an annual basis in accordance with generally recognized and accepted guidelines and policies applicable to chiefs of police.

8. Termination

This Agreement and the Chief's employment thereunder may be terminated on the grounds and conditions as provided below:

A. Unilateral Termination by the City

The City, acting through the Mayor, may, at its option, unilaterally terminate this Agreement by either (1) giving the Chief written notice that the Agreement will terminate one year from the date of said notice or (2) giving the Chief written notice that the Agreement will terminate sixty (60) days from the date of said notice. In the event of such unilateral termination in accordance with the 60 days notice requirement the City shall pay to the Chief, as severance pay, an amount equal to 75% of his then current base salary. This severance payment shall be paid in its entirety within thirty (30) days of termination. The City shall also provide the Chief with the benefits set forth in paragraph A of Section 5 for nine (9) months after such termination and shall pay, if applicable, the Chief terminal benefits in accordance with paragraph I of this Section 8.

B. Termination for Cause by the City

The City, acting through the Mayor, may terminate this Agreement for cause. For purposes of this provision, "cause" shall mean: (1) conviction of a felony or other crime involving moral turpitude; (2) repeated, willful violations of established Police Department or City policies; and (3) willful neglect of duties. For purposes of this section, an act, or failure to act, shall be considered "willful" if it is done, or not done, by the Chief in bad faith or without reasonable belief that his act or omission was done in the best interest of the Police Department; provided, however, that the initial determination of whether the act or omission was "willful" shall be made by the Mayor. In the event that the City discharges the Chief for cause, it shall be done in accordance with the procedures set forth in Section 9. All

obligations of the City under this Agreement shall cease as of the date of the termination; provided, however, that the City shall pay, if applicable, the Chief terminal benefits in accordance with paragraph I of this Section 8.

C. Termination for Cause by the Chief

The Chief may at his option terminate this Agreement by written notice to the City; if: (i) the City unreasonably fails to perform or observe any of the material terms or provisions of this Agreement and such failure is not cured within thirty (30) days after the City receives written notice thereof from the Chief; or (ii) there is a material reduction in the scope of the Chief's duties or authority for a period exceeding three (3) months without his written consent, unless such reduction is authorized by state law or necessitated by the Chief's health, and such reduction is not withdrawn within thirty (30) days after the City receives written notice thereof from the Chief. In the event the Chief terminates the contract pursuant to this Section 8-C, the City shall pay the cost of the Chief's health insurance coverage for a period of six months; provided, however, that this obligation shall end if and when the Chief becomes eligible for health insurance from a subsequent employer. The City shall also pay the Chief a sum equal to three months of his then current base salary, such sum to be paid over a six month period, and, if applicable, terminal benefits in accordance with paragraph I of this Section 8, shall cease.

D. Termination upon Disability

In the event that the Chief is, or will be, unable to perform his duties for a period of at least one year due to illness, physical incapacity and/or mental incapacity, this Agreement shall, effective upon such written finding by the Mayor, be terminated, and all obligations of the City shall cease, except that the City shall pay: (1) all unpaid salary through the date of said finding; (2) the cost of the Chief's health insurance coverage for a period of six months and a sum equal to three months of his then current base salary, such sum to be paid over a six month period; and (3) terminal benefits, if applicable, in accordance with paragraph I of Section 8 of this Agreement.

Notwithstanding the foregoing, no such termination shall occur unless and until such incapacity, and its cause, is established by competent medical documentation provided by two (2) physicians specializing in the area of medicine that resulted in the incapacitation.

In the event that the Chief is, or will be, unable to perform his duties for a period of more than six, but less than twelve, months due to illness, physical incapacity and/or mental incapacity, the City, acting through the Mayor, may, and after the exhaustion of sick leave, make an appropriate deduction from the Chief's salary, including deferred compensation, for the period of incapacitation.

E. Non-Compliance with State Law or Residency Provision

This Agreement shall terminate, and all obligations of the City shall cease, in the event of the Chief's non-compliance with any provisions of the state law that relate to the Chief's qualifications for holding the position of Chief of Police or the failure of the Chief to be a resident of the City of Providence; provided however, that the City shall pay, if applicable, the Chief terminal benefits in accordance with paragraph I of this Section 8.

F. Retirement or Resignation of the Chief

In the event of retirement or resignation of the Chief, the Chief shall notify the City at least ninety (90) days prior to the date of retirement or within such other time period as may be mutually agreeable to the parties. All obligations and agreements of the parties as contained in this Agreement shall cease as of the date of the retirement. Notwithstanding the foregoing, the City shall pay the Chief unpaid salary earned through the effective date of his retirement and, if applicable, terminal benefits in accordance with paragraph I of this Section 8.

G. Death of the Chief

This Agreement shall terminate upon the death of the Chief at which point all obligations of the City shall cease. Notwithstanding the foregoing, the City shall pay to the estate of the Chief unpaid salary earned through the date of his death and, if applicable, terminal benefits in accordance with paragraph I of this Section 8.

H. Mutual Agreement of the Parties

This Agreement may be terminated by written agreement of the parties, at which point all obligations and duties of the parties shall cease. Notwithstanding the foregoing, the City shall pay the Chief unpaid salary earned through the effective date of this Agreement and, if applicable, terminal benefits in accordance with paragraph I of this Section 8.

I. Terminal Benefits

In the event of any termination of this Agreement, the Chief shall in addition to the pay and benefits referenced in this Section 8, be entitled to receive all accrued pay and benefits under paragraphs C and E of Section 5 of this Agreement.

J. No Duty to Mitigate

In the event that the Chief's employment with the City is terminated pursuant to this Section 8, the Chief shall be under no obligation to make

any efforts to mitigate the City's obligations hereunder by seeking alternative employment, and all amounts and benefits to which the Chief is entitled hereunder shall be absolute and shall not be subject to any offset, counterclaim, recoupment or defense.

9. Procedure Upon Termination of Chief for Cause

In the event the City proposes to discharge the Chief for cause, it shall notify the Chief, in writing, of the proposed action and shall provide the Chief with a complete and detailed statement of the reasons therefor. The Chief shall be placed on administrative leave with pay as of the date of this notification. The Chief shall notify the City in writing not later than fifteen (15) days from the date of his receipt of written notice of the City's proposed action of his desire to contest his termination. If no such demand is timely made, the Chief shall be terminated as of the sixteenth (16th) day after the date of his receipt of written notice of the City's action and all obligations of the City under this Agreement shall cease as of that date; provided, however, that the City shall pay, if applicable, the Chief terminal benefits in accordance with paragraph I of Section 8.

Upon receipt of timely written notification of the Chief's desire to contest his termination for cause, the City shall notify the Chief of the date and place of a hearing to be conducted as set forth below. The Chief shall, unless otherwise agreed to in writing by the parties, be entitled to have this hearing not less than forty (40) days and no more than fifty (50) days from the date of his request for such a hearing.

Unless otherwise agreed to in writing between the parties, the hearing shall be conducted as follows:

- (a) The City shall, within fourteen (14) days of the scheduled hearing, provide to the Chief, or his designee: (1) a copy of each document intended to be used in support of each alleged reason for discharge; (2) a list of witnesses who may be called to testify at the hearing, including their names, official titles or other identifying information, and a brief description about which each such witness is expected to testify;
- (b) The Chief shall, within seven (7) days of the scheduled hearing, provide to the City, or its designee: (1) a copy of each document intended to be used in his defense; and (2) a list of witnesses who may be called to testify at the hearing, including their names, official titles or other identifying information, and a brief description about which each such witness is expected to testify;

- (c) The hearing will be held before a tribunal consisting of three people (the "Tribunal"), one selected by the Chief, one selected by the Mayor, and the third by the designees of the City and the Chief. The City and the Chief shall select their respective designees to the Tribunal within five (5) days of notice of the Chief's desire to contest his termination and the two respective designees shall select the third member of the Tribunal within five (5) days thereafter. If the designees of the City and the Chief do not select the third member of the Tribunal within the time period set forth above, the Presiding Justice of the Rhode Island Superior Court shall be authorized to make such designation. The Chief expressly waives any and all rights to have this hearing conducted in open session pursuant to the Rhode Island Open Meetings Act. The Chief shall be entitled to legal counsel and shall have the right to cross examine any adverse witnesses and present any witness or documentary evidence on his behalf;
- (d) The City and the Chief shall each have: (1) fifteen (15) minutes in which to make an opening statement; (2) two (2) hours in which to present evidence to the City, inclusive of cross-examination; and (3) fifteen (15) minutes in which make a closing statement. The City may, but is not required to, extend the evidentiary portion of the hearing upon request of either party. In no event, however, shall the Chief be required to accept less time to present his case than that given to the City;
- (e) The City shall have the burden of proof, by the preponderance of the evidence, to establish cause for the proposed termination, and, if applicable, a "willful" act or omission on the part of the Chief;
- (f) The Rhode Island Rules of Civil Procedure and Rules of Evidence shall not apply to the hearing, but shall serve as guidelines;
- (g) Upon the conclusion of the hearing, the Tribunal shall retire to closed session to discuss whether the Chief should be terminated, retained, or given some less punishment. The Chief expressly waives any and all rights to have this discussion conducted in open session pursuant to the Rhode Island Open Meetings Act;
- (h) After the discussions are concluded, the Tribunal shall take a vote to determine whether the Chief shall be terminated, retained, or given some lesser punishment;
- (i) The employment status of the Chief shall be determined by a simple majority of the Tribunal;

- (j) Should the Tribunal vote to terminate the Chief for cause, such termination will be effective immediately and all obligations of the City under this Agreement shall cease; provided, however, that the City shall pay, if applicable, the Chief terminal benefits in accordance with paragraph I of Section 8;
- (k) If the Tribunal votes to terminate the employment of the Chief, the Tribunal shall provide him with a reasonably detailed statement of the reasons therefor; and
- (l) The Chief shall retain the right to appeal a decision to terminate his employment in accordance with state law.

10. Renewal

This Agreement shall be automatically renewed for a period of one year unless not later than 90 days prior to the end of the last year of this Agreement the City notifies the Chief in writing of its election not to renew this Agreement. The City's failure to give the required notice of nonrenewal herein described within the time specified shall constitute an election to employ the Chief for the following year under the same terms and conditions as are contained in the last year of this contract, unless otherwise agreed to in writing by the parties; provided, however, that the Chief's annual base salary shall be increased by five thousand (\$5,000) dollars.

11. Modification

The construction and operation of this Agreement will be in accordance with the laws of the State of Rhode Island, and will not be modified except by written consent of the parties hereto.

12. Notices

All notices, demands, requests, or other communications which may be or are required to be given, served, or sent by any party to any other party pursuant to this Agreement shall be in writing and shall be hand delivered, sent by overnight courier or mailed by first-class, registered or certified mail, return receipt requested, postage prepaid and addressed as follows:

(i) If to the City:

Mayor, City of Providence
Providence City Hall
Providence, RI 02903

PERSONAL AND CONFIDENTIAL

with a copy (which shall not constitute notice)
to:

Solicitor, City of Providence
Providence City Hall
Providence, RI 02903

PERSONAL AND CONFIDENTIAL

(ii) If to the Chief:
Dean M. Esserman

with a copy (which shall not constitute notice)
to:

Robert Raymond
Cleary, Gottlieb, Steen & Hamilton
One Liberty Plaza
New York, NY 10006-1470

Each party may designate by notice in writing a new address to which any notice, demand, request or communication may thereafter be so given, served or sent. Each notice, demand, request, or communication which shall be hand delivered, sent, mailed, in the manner described above, shall be deemed sufficiently given, served, sent, received or delivered for all purposes at such time as it is delivered to the addressee (with the return receipt, the delivery receipt, or at such time as delivery is, refused by the addressee upon presentation.

13. Severability

The invalidity or unenforceability of any one or more provisions of this Agreement shall not affect the validity or enforceability of the other provisions of this Agreement, which shall remain in full force and effect.

14. Assignment

The rights and obligations of the parties to this Agreement shall not be assignable or delegable. Notwithstanding the foregoing, in the event of the death of the Chief, the City shall pay to the estate of the Chief any unpaid salary earned through the date of his death and if applicable, terminal benefits in accordance with paragraph I of Section 8.

15. Binding Effect

Subject to any provisions hereof restricting assignment, this Agreement shall be binding upon the parties hereto upon ratification by the City in accordance with the provisions of law and City policy and shall inure to the benefit of the parties and their respective heirs, devisees, executors, administrators, legal representatives, successors and assigns.

16. Amendment; Waiver

This Agreement shall not be amended, altered or modified except by an instrument in writing duly executed by the parties hereto. Neither the waiver by either of the parties hereto of a breach of or a default under any of the provisions of this Agreement, nor the failure of either of the parties, on one or more occasions, to enforce any of the provisions of this Agreement or to exercise any right or privilege hereunder, shall thereafter be construed as a waiver of any subsequent breach or default of a similar nature, or as a waiver of any such provisions, rights or privileges hereunder.

17. Headings

Section and subsection headings contained in this Agreement are inserted for convenience of reference only, shall not be deemed to be a part of this Agreement for any purpose, and shall not in any way define or affect the meaning, construction or scope of any of the provisions hereof.

18. Governing Law

This Agreement, the rights and obligations of the parties hereto, and any claims or disputes relating thereto, shall be governed by and construed in accordance with the laws of Rhode Island (but not including any choice of law rule thereof that would cause the laws of another jurisdiction to apply).

19. Forum Selection Clause

The Chief and the City agree that any dispute or claims relating to the rights and obligations of the parties to this Agreement shall be brought in the Providence County Superior Court and the Chief expressly consents to the jurisdiction and venue of said court.

20. Entire Agreement

This Agreement constitutes the entire agreement between the parties respecting the employment of the Chief, there being no representations, warranties or commitments except as set forth herein.

21. Counterparts

This Agreement may be executed in two counterparts, each of which shall be an original and all of which shall be deemed to constitute one and the same instrument.

The parties hereto have executed this Agreement in counterpart copies, each of which shall be deemed an original for all purposes, as of the date and year noted above.



Dean M. Esserman

1/17/03
Date Signed

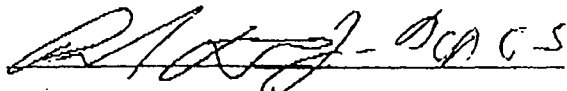
City of Providence

By: 

David N. Cicilline
Mayor

1/17/03
Date Signed

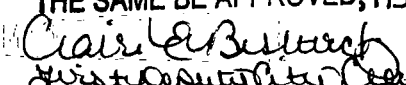
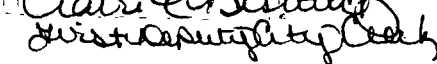
Approved as to form and correctness

By: 

1/17/03
Date Signed

PRV1 #95013 v1

IN CITY COUNCIL
MAY 13 2004

READ
WHEREUPON IT IS ORDERED THAT
THE SAME BE APPROVED, AS AMENDED





Mayor of Providence

David N. Cicilline

May 10, 2004

Michael R. Clement
Office of City Clerk
Providence City Hall
25 Dorrance Street
Providence, Rhode Island 02903

Dear Mr. Clement:

In the past year Providence has made astounding progress in fighting and preventing crime. Residents, visitors, and business owners feel safer, as community policing brings more officers walking beats in their neighborhoods. With each day, the proud men and women of the Providence Police Department serve this city with a renewed sense of confidence, buoyed by sound leadership and a new sense of partnership between the police and community.

Our police officers, and the community of Providence as a whole, have embraced Colonel Dean Esserman's efforts and afforded him the support needed to transform a demoralized police department, and bring about a double-digit decrease in crime. However, recent discussions regarding Colonel Esserman's Employment Agreement have the potential to distract the Colonel and his department, and impede their significant progress.

To remedy these potential distractions, I am forwarding Colonel Dean Esserman's Employment Agreement to the City Council for approval. While the Council and my Administration continue to disagree about whether this Employment Agreement requires City Council ratification, it is in the best interests of the Providence Police Department, and the residents of this city, that any and all obstacles to continued improvement be eliminated, and that Colonel Esserman be allowed to proceed with his efforts without further disruption or uncertainty. Moreover, spending additional taxpayer dollars to resolve this issue in court is not in the best interest of Providence's residents.

City of Providence, Rhode Island 02903
Phone (401) 421-7740 Fax (401) 274-8240

Also enclosed with this correspondence, please find a letter clarifying the duration of Colonel Esserman's Employment Agreement, which will now end on January 1, 2007. In addition, the Proposed Budget for the Fiscal Year Ending June 30, 2005, which I presented to the City Council on April 29, 2004, adjusts the Police Chief's salary line item to reflect total compensation, including contributions to a "Section 457 Plan."

I trust prompt ratification by the City Council will allow Colonel Esserman and the fine men and women of the Providence Police Department to continue their exemplary service to our city without distraction.

Sincerely,

A handwritten signature in black ink, appearing to read "D. Cicilline", with a long horizontal flourish extending to the right.

David N. Cicilline
Mayor, City of Providence

cc: Honorable Members of the Providence City Council

FILED

MAY 11 12 55 PM '03

DEP. CLERK
PROVIDENCE, R.I.



Mayor of Providence

David N. Cicilline

May 10, 2004

Via Hand Delivery, Return Receipt Requested

Colonel Dean M. Esserman
Chief, Providence Police Department
325 Washington Street
Providence, Rhode Island 02903

Re: Employment Agreement

Dear Colonel Esserman:

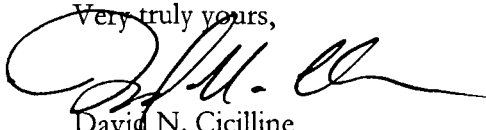
Since your appointment as the Chief of Police in January of 2003, you have served our City with great distinction. On your watch, crime is down in Providence. Under your leadership, the integrity of the Police Department is being restored. Through your efforts, the community is regaining confidence in our police force.

But, as you and I agree, the discussion that has been generated lately about your employment agreement has become an unnecessary distraction from your important work. To remedy this distraction, and as we have agreed, this document shall serve as the City's notice of nonrenewal under Section 10 of your employment agreement, and the contract shall end on January 1, 2007.

In regard to the Deferred Compensation, "Section 457 Plan," contained in Section 5G of your employment agreement, it is understood that this is a voluntary deferred compensation amount and will be contained in the relevant compensation ordinances for Fiscal Year 2005.

These actions should allow the issues and distractions to be ended so you can focus on the important task of rebuilding our Police Department. Please take into account my intention to extend your contract for another four years if I am privileged enough to have the opportunity to serve the residents of our City for a second term. I look forward to your continued exemplary service to our City.

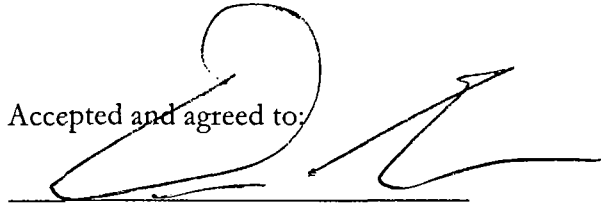
Very truly yours,



David N. Cicilline

Mayor and Commissioner of Public Safety

Accepted and agreed to:



Dean M. Esserman

Dated: 5/10/2004

cc: Robert Raymond, Esq. (via certified mail, return receipt requested)

Return Receipt

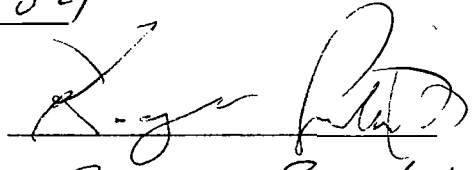
Hand Delivery:

***Colonel Dean Esserman
Chief, Providence Police Department
325 Washington Street
Providence, Rhode Island 02903***

A.) Correspondence Received by: (signature) 

(print name) Dean Esserman

Date: 5/10/04

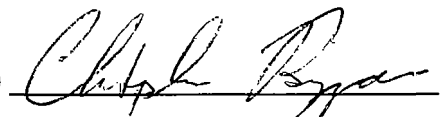
Witness: (signature) 

(print name) Regis Suchite

B.) Return Receipt Received by: (signature) 

(print name) Michael P. Melto

Date: 5/10/04

Witness: (signature) 

(print name) Christopher Bizzaco



Department of Law

May 13, 2004

The Hon. Patrick Butler
Providence City Council
25 Dorrance Street
Providence, RI 02903

Re: Open Meetings Act Query on Docket Item #6 for
May 13, 2004 Special Meeting

Dear Councilman Butler:

Thank you for giving me the opportunity to address in a formal way your concerns that a decision to act immediately on Docket Item #6 (Communication from the Mayor submitting the Employment Agreement of Colonel Esserman, Chief of Police) might violate of the Rhode Island Open Meetings Act's requirement of public notice.

In fact, the notice requirement is quite flexible. R.I.G.L. Section 42-46-6(b) requires forty-eight hours' notice, including "a statement specifying the nature of the business to be discussed." However, that section goes on to permit public bodies to add additional items to the agenda by a majority vote of the members.

The section has been interpreted by the Rhode Island Attorney General in a number of cases. Most notably, Pulchalski v. Charlestown Town Council (OM 99-07) specifically held that there is no requirement that a public body identify its intention to vote on a particular subject.

It is therefore my legal opinion that nothing in the Open Meetings Act precludes the Providence City Council from electing to act tonight on the Mayor's communication.

Very truly yours,

A handwritten signature in black ink, appearing to read "Adrienne G. Southgate".


Adrienne G. Southgate
Deputy City Solicitor

cc: President John Lombardi
Honorable Council Members
Clerk Michael Clement

ROBERTS, CARROLL, FELDSTEIN & PEIRCE

INCORPORATED

MEMORANDUM

TO: Providence City Council
FROM: R. Kelly Sheridan 
DATE: May 11, 2004
RE: Revised Employment Contract – Police Chief

ATTORNEYS AT LAW
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DENNIS J. ROBERTS
(1903-1994)

DAVID W. CARROLL
EDWARD D. FELDSTEIN
RICHARD M. PEIRCE*
R. KELLY SHERIDAN
ROBERT P. LANDAU*
DENNIS E. CARLEY
R. JEFFREY KNISLEY
EDWARD G. AVILA*
ADAM C. ROBITAILLE*
MARCO P. URIATI
JAMES A. MUSGRAVE*
MAURENE SOUZA*
JASON C. PRECIPHS*
JAMES H. KAPLAN*

Of Counsel
MARTIN M. TEMKIN*

* ALSO ADMITTED IN
MASSACHUSETTS

* ADMITTED IN
MASSACHUSETTS ONLY

I have reviewed the May 10, 2004 amendment to the Employment Agreement the Mayor executed with Chief Esserman. I am satisfied the revised Agreement addresses the legal concerns outlined in my Memorandum dated April 15, 2004.

First, the term of the contract has been changed to coincide with the Mayor's current term of office. Specifically, under the Charter the term of office of the Mayor and the Council end on the first Monday in January following the next election (January 1, 2007). Charter, Section 202. The Mayor and the Chief have now agreed the Employment Agreement will end on January 1, 2007.

Second, the deferred compensation provisions of the Chief's contract have been amended to meet my concerns. Specifically, the Chief and the Mayor have agreed that the sums the Chief seeks to defer will be included within the salary approved by the Council in the compensation ordinance and will be in the nature of a voluntary deferral by the Chief on an annual basis. You may recall that a significant concern we had with the initial implementation of the Agreement was the payment by the Mayor of City funds to the Chief (or to any employee) in excess of the amount fixed by the Council in the compensation ordinance. As long as the total compensation paid to the Chief - deferred or otherwise - does not exceed the compensation established by the Council, I see no legal concerns if the Chief, or any employee, chooses to defer a portion of that income in a tax-qualified instrument.

You will recall that my earlier Memorandum discussed in some detail the legal support for the principle that the authority to establish salaries and benefits of City employees is the exclusive province of the City Council. As a consequence, absent ratification by the Council, the Chief's contract is not a binding obligation on the City and the Council is free to fund, or not fund, all or any portion of the benefits provided for in the Agreement. The converse is, of course, also true. If the Council ratifies the Agreement, as amended, the Agreement will become a binding

contractual obligation of the City. As with collective bargaining agreements ratified by the Council, the Council will be obligated to fund all of the benefits provided for in the Agreement on an annual basis through the end of the current term of the Council.

1690-9/237335