

RESOLUTION 2013-E

**A RESOLUTION OF THE EATONVILLE TOWN COUNCIL TO AUTHORIZE
THE EXECUTION OF SETTLEMENT AND SEPARATION AGREEMENT
WITH THOMAS K. FAUBION**

WHEREAS, Thomas K. Faubion served as the judge of the Eatonville Municipal Court under a “Fee and Employment Agreement” executed on November 19, 2009, in which the then-Mayor of Eatonville appointed Faubion to be the judge of the Eatonville Municipal Court;

WHEREAS, a dispute arose over the terms of said agreement, and in particular over the language used to describe the contract’s term; and

WHEREAS, resolving the dispute by way of the attached agreement is more cost effective than litigation;

NOW, THEREFORE, BE IT RESOLVED by the Council of the Town of Eatonville as follows:

Section 1. The Mayor is authorized to execute on behalf of the Town the attached Settlement and Separation Agreement.

Passed by the Council of the Town of Eatonville at a regular meeting this 28th day of January, 2013.

Raymond Harper, Mayor

ATTEST:

Kathy Linnemeyer, Town Clerk

APPROVED AS TO FORM:

Daniel G. Lloyd, Town Attorney

SETTLEMENT & SEPARATION AGREEMENT

THIS AGREEMENT (the "Agreement") is entered into this ____ day of _____, 2013, by and between THE TOWN OF EATONVILLE, a Washington municipal corporation ("Town") and THOMAS K. FAUBION, ("Faubion") (collectively, the "Parties").

WHEREAS, the Parties entered into a "Fee and Employment Agreement" on November 19, 2009, (hereinafter "Judge Contract") in which the then-Mayor of Eatonville, Tom Smallwood, appointed Faubion to be the judge of the Eatonville Municipal Court; and

WHEREAS, a dispute has arisen between the parties relating to the Judge Contract; and

WHEREAS, the Parties desire to have full and final resolution of the relationship between them, without either party admitting liability or wrongdoing; and

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the Parties hereby agree as follows:

1. **Payment.** Town shall make twelve (12) separate payments of five hundred dollars and zero cents (\$500.00) each to Faubion, with each payment to be delivered by the end of the respective calendar month (e.g., January 31, February 28, March 31, April 30, May 31, June 30, July 31, August 31, September 30, October 31, November 30, December 31). The first payment is due to Faubion no later than January 31, 2013 and the last payment is due to Faubion no later than December 31, 2013. Town, at its discretion, may elect to prepay the balance of the remaining payments. The aggregate sum of money owed by the Town to Faubion is Six Thousand Dollars and zero cents (\$6,000.00).

2. **Termination of Contract and Classification:** The Judge Contract, and Faubion's appointment as Eatonville Municipal Court judge, are hereby terminated.

3. **Tax Liability.** Town will issue Form 1099 to the Internal Revenue Service ("IRS") corresponding to the payment identified at Paragraph 1 of this Agreement. Faubion agrees that: (i) Faubion is solely responsible for reporting the payment and for any tax liability and consequence that may result therefrom; (ii) Town bears no responsibility whatsoever for any such tax liability or consequence; (iii) Town is not required to pay any further sum to Faubion even if any tax liability or consequence to Faubion resulting from the payment is ultimately assessed in a fashion that Faubion does not presently anticipate; (iv) neither Town nor its attorneys has made any representation to Faubion concerning any tax aspect of the payment.

4. **Mutual Release.** The Parties hereby release, hold harmless, covenant not to sue, and forever discharge each other and the Additional Released Parties, as defined below, from all Released Claims, as defined below.

a. "Released Claims" means any and all claims, demands, causes of action, rights, liabilities, damages, whether punitive or otherwise, and/or attorneys' fees and costs whatsoever at law or in equity or otherwise, direct or indirect, known or unknown, asserted or

unasserted, that the Parties now own or hold and/or has at any time heretofore owned or held against each other and/or the Additional Released Parties, in any capacity, that (i) are or may be based upon any fact, act, omission, cause or matter of any kind occurring or existing at any time on or before the date of this Agreement, and (ii) relate to and/or arise from in any way, directly or indirectly, the Judge Contract, the Town's appointment of Faubion as municipal court judge, Faubion's service as municipal court judge, including but not limited to any compensation for Faubion's service, and/or the elimination of the Eatonville Municipal Court:

b. These releases extend to and inure to the benefit of the Parties and the following individuals entities, which are herein defined to mean "Additional Released Parties": all of Town's past and present officers, directors, agents, employees, representatives, attorneys, accountants, insurers, employee benefit plans, predecessors, successors, transferees, assigns, and related entities thereof.

c. The Parties, warrant and agrees that they: (i) understand that they are releasing potentially unknown claims; (ii) these releases are fairly and knowingly made; and (iii) the Parties are aware that they have limited knowledge with respect to certain of the Released Claims. The Parties specifically allocate the risk of any mistake by any party in entering into this Agreement to the party or parties who later claim that party was mistaken.

5. No Other Claims/Assignment Of Claims. The Parties represent and warrant that he has not filed or initiated any administrative charge, lawsuit, arbitration or other proceeding of any kind whatsoever against the other party or any of the Additional Released Parties that has not been dismissed or otherwise completely terminated, and further represents that the Parties have not assigned, transferred, encumbered, and/or given to anyone any Released Claim that the Parties have, ever had and/or claimed to have against the other party or any of the Additional Released Parties.

6. No Admission Of Liability. This Agreement does not constitute, and may not be construed as, an admission of liability or wrongdoing on the part of Faubion, the Town, the Additional Released Parties or an admission of violation of any law. This Agreement further does not constitute any admission of wrongdoing or deficiency by Faubion. The Parties have entered into this Agreement solely to avoid litigation. The Parties mutually agree not to assert that this Agreement is an admission of guilt, wrongdoing, and/or liability because the Parties do not believe or admit that either Faubion or Town have done anything wrong or illegal.

7. Independent Legal Counsel. The Parties acknowledge, represent and agree that they have read this Agreement, they fully understand its terms, they have consulted with and been fully advised by legal counsel, and they are entering into it voluntarily. Both of the Parties have participated in drafting this Agreement and waive the rule of construction that an agreement is construed against its drafter.

8. Governing Law, Attorneys' Fees and Costs. This Agreement is governed by Washington law, without giving effect to principles or provisions of those laws relating to conflicts or choice of laws. The party that substantially prevails in any dispute or claim arising from or in connection with this Agreement will be entitled to recover its reasonable expenses

associated with the dispute or claim including, but not limited to, attorneys' fees, expenses and recoverable costs.

9. Use of the Term "Employee". The Parties agree that although the term "Employee" or "Employment" has been used in documents to define the status of Faubion vis-à-vis the Town of Eatonville, Faubion is not and has not been an "employee" of the Town otherwise entitled to benefits of public employees.

10. Binding Effect. This Agreement is binding upon, and inures to the benefit of, the Parties and the Parties' respective heirs, survivors, legatees, executors, personal representatives, receivers, trustees, insurers, marital communities, successors, subrogees, transferees, agents, and assigns.

11. Non-Disparagement. The Parties shall refrain from directly or indirectly making any defamatory, false, misleading, and/or disparaging remarks about each other.

12. Captions/Headings. This Agreement may be executed in counterparts and all such counterparts shall collectively constitute this one agreement. Any copy or facsimile reproduction shall be considered an original for all purposes. Captions and paragraph headings used in this Agreement are for convenience only and are not a part of this Agreement and shall not be used in construing it.

13. Severability. In the event that any one or more of the provisions (except the Release under Paragraph 4 of this Agreement) shall be held invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, the validity, legality and enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired thereby.

14. Compliance with Open Public Meetings Act: This Agreement may bind the Town only after executed by the Mayor after due authorization by the Eatonville Town Council pursuant to chapter 42.30 RCW.

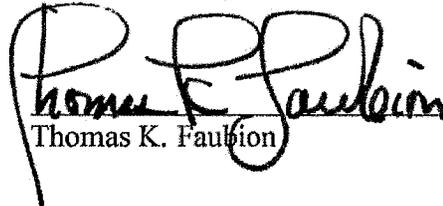
15. Final and Complete Expression. This Agreement is the final, entire and complete expression of the agreement of the Parties and may be modified only by a written addendum signed by each party. The terms of this Agreement are contractual and not mere recitals. This Agreement supersedes and replaces all prior agreements, discussions and representations, all of which are merged into, and superseded by, this Agreement. No party is entering into this Agreement in reliance on any oral or written promises, inducements, representations, understandings, interpretations, or agreements, other than those contained in this Agreement.

**BY SIGNING BELOW, THE PARTIES REPRESENT THAT THEY HAVE LEGAL
AUTHORITY TO EXECUTE THIS AGREEMENT ON BEHALF OF THE
DESIGNATED PARTY, THAT HE/SHE HAS READ ALL OF THE AGREEMENT'S
TERMS, THAT HE/SHE UNDERSTANDS ALL OF THE FOREGOING TERMS, AND
THAT HE/SHE AGREES TO THE SAME.**

**TOWN OF EATONVILLE,
WASHINGTON**

THOMAS K. FAUBION

By: _____
Raymond Harper, Mayor


Thomas K. Faubion 1/14/13

Attest:

Kathy Linnemeyer, Town Clerk

Approved as to form:

Daniel G. Lloyd, WSBA 34221
Town Attorney