RESOLUTION 1396

A RESOLUTION HIRING DEREK M. HOLMES AS A POLICE OFFICER FOR THE CITY OF WEST BRANCH, IOWA, SETTING THE SALARY FOR THE POSITION FOR FISCAL YEAR 2015-2016 AND ENTERING INTO AN OFFICER TRAINING REIMBURSEMENT AGREEMENT.

WHEREAS, the City of West Branch is interested in hiring Derek M. Holmes as a police officer; and

WHEREAS, the City Attorney has prepared an officer training reimbursement agreement which requires approval of the City Council.

BE IT RESOLVED by the Council of the City of West Branch, Iowa:

Section 1. That the City of West Branch, Iowa will hire Derek M. Holmes as a police officer.

Section 2. The following person and position named shall be paid the hourly wage indicated and the City Clerk is authorized to issue warrants/checks, less legally required or authorized deductions for the amounts set out below, and make such contributions to IPERS and Social Security or other purposes as required by law or authorization of the Council:

Position	Name	Wage	Basic Hours
Police Officer	Derek M. Holmes	$20.20/hour	40/week

SECTION 3. The above named employee is subject to the City of West Branch Personnel Policies and Procedures applicable to their department.

SECTION 4. The aforementioned officer training reimbursement agreement be and the same is hereby approved by the City Council of the City of West Branch, Cedar County, Iowa. Further, the Mayor and City Clerk are directed to execute said agreement on behalf of the City.

SECTION 5. This resolution will be effective upon final passage of the City Council.

Passed and Approved this 2nd day of November, 2015.

Roger Laughlin, Mayor

ATTEST:

Matt Muckler, City Administrator/Clerk

OFFICER TRAINING REIMBURSEMENT AGREEMENT

THIS AGREEMENT, made and entered this 5th day of November, 2012, by and between the City of West Branch, Iowa, A Municipal Corporation, 110 Poplar Street, West Branch, Iowa, 52358 (The "CITY") and **Derek M. Holmes, DOB: _____, SSN: _____,** (the "THE EMPLOYEE").

THE INTENT OF THIS AGREEMENT IS TO PROVIDE FOR THE REIMBURSEMENT OF THE TRAINING OF THE EMPLOYEE AS A POLICE OFFICER, AND TO SPECIFY THE CONSIDERATION THAT THE EMPLOYEE PROVIDES THE CITY IN RETURN FOR THE TRAINING. THIS AGREEMENT SHALL NOT BE CONSTRUED IN ANY WAY AS AN EMPLOYMENT AGREEMENT THAT WOULD PROFFER A PROPERTY RIGHT OR INTEREST ON THE EMPLOYEE.

NOW, THEREFORE, THE CITY AND THE EMPLOYEE, FOR CONSIDERATION HEREIN SET FORTH, DO MUTUALLY AGREE AS FOLLOWS:

I. TRAINING OF THE EMPLOYEE

The CITY and the EMPLOYEE hereby expressly agree that the CITY shall pay the EMPLOYEE'S prior training expenses in the amount of $8,000.

II. REIMBURSEMENT OF TOTAL TRAINING EXPENSES

A. In consideration for the expenditures incurred by the CITY to reimburse the training expenses of the EMPLOYEE as a police officer, the EMPLOYEE expressly agrees to serve as a full time police officer for the CITY for at least four (4) years from the date upon which the EMPLOYEE executes this Agreement (the "Reimbursement Period").

B. If any of the following occurs during the Reimbursement Period:

1. The EMPLOYEE voluntarily resigns from the West Branch Police Department; OR
2. The EMPLOYEE is dismissed during the probationary period of nine (9) months from the date of certification as an Iowa Peace Officer (said probationary period to expressly include the training period hereunder); OR
3. The EMPLOYEE is properly terminated;

THEN the EMPLOYEE shall reimburse the CITY for reimbursed training expenses under the terms of this AGREEMENT as set forth below:

Years of Service Following Approved Training	Amount of Reimbursement
0-1 year	100% of actual costs
1-2 years	75% of actual costs
2-3 years	50% of actual costs
3-4 years	25% of actual costs
More than 4 years	No reimbursement required

C. In the event the EMPLOYEE is required to make reimbursement payments hereunder, one hundred per cent (100%) of the total reimbursement is due within thirty (30) days from the date of resignation, dismissal or termination, unless the EMPLOYEE contacts the City Administrator to make payment arrangements under the following terms:

1. The first payment shall be made within thirty (30) calendar days from the date of resignation, dismissal, or termination, as applicable, and on the same date for each successive month thereafter until the CITY has been reimbursed in full for the reimbursed training expenses.

2. The minimum monthly payment shall be one hundred dollars ($100.00).

3. Interest shall commence from the date of resignation, dismissal or termination at the rate of six per cent (6%) per year, and shall be calculated on the unpaid principal balance to the date of each installment paid, with the payments being credited first to the accrued interest and then to the reduction of principal.

4. Until such time as the CITY has been reimbursed in full by the EMPLOYEE in accordance with the terms of this Agreement, the EMPLOYEE has an ongoing duty to notify the CITY of any change in the EMPLOYEE'S place of residence. Such notice shall be in writing and shall be made no later than fifteen (15) calendar days from the date of any such change in place of residence.

D. The EMPLOYEE does hereby expressly acknowledge and understand that, in addition to any remedies at law or in equity that the CITY may have to recover Total Training Expenses hereunder, the CITY may, at its sole election, also seek to have the EMPLOYEE decertified as an Iowa law enforcement officer.

E. **THE EMPLOYEE DOES FURTHER HEREBY EXPRESSLY ACKNOWLEDGE AND UNDERSTAND THAT THE REIMBURSEMENT OBLIGATION SET FORTH HEREUNDER IS MANDATORY. IN OTHER WORDS, WHILE THE CITY HAS THE DISCRETION TO DETERMINE WHETHER TO SEEK DECERTIFICATION OF THE EMPLOYEE AS A LAW ENFORCEMENT OFFICER, NO SUCH AFFIRMATIVE ELECTION OF ENFORCEMENT IS REQUIRED FOR REIMBURSEMENT HEREUNDER. FAILURE ON THE PART OF THE EMPLOYEE TO SATISFY THE EMPLOYEE'S EMPLOYMENT OBLIGATION DURING THE REIMBURSEMENT PERIOD HEREUNDER SHALL AUTOMATICALLY TRIGGER MANDATORY REIMBURSEMENT OF TOTAL TRAINING EXPENSES UNDER THIS AGREEMENT.**

F. If the EMPLOYEE is dismissed for any reason other than those set forth in Section II(B) above, such as reduction in force, the EMPLOYEE shall not be required to reimburse the CITY for any unpaid Training Expenses incurred hereunder.

G. If the EMPLOYEE is killed or permanently and totally disabled, as defined under Chapter 85 and 411 of the Code of Iowa, while in the employ of the CITY, Total Training Expense reimbursement obligations hereunder shall be deemed satisfied in full.

H. Sections A, B and C notwithstanding, if the EMPLOYEE voluntarily resigns within one (1) year from the date upon which the EMPLOYEE executes this Agreement, the EMPLOYEE is required to provide to the CITY with one hundred per cent (100%) of the total reimbursement within thirty (30) days, and will not be allowed to make reimbursement payments set forth in Section II(C) above.

III. BONA FIDE EMPLOYMENT

A. The EMPLOYEE does hereby expressly acknowledge that the CITY is entering into this Agreement to facilitate the bona fide employment of the EMPLOYEE as a police officer by the CITY and not for the purpose of achieving certification as an officer by way of sponsorship through the Academy.

IV. CONTROLLING LAW

A. This Agreement is to be governed by the laws of the State of Iowa. The parties hereto agree that any action, suit, or proceeding based upon any matter, claim or controversy arising under this Agreement shall be brought solely in the state courts located in Cedar County, Iowa. The parties hereto irrevocably waive objection to the venue of the above-mentioned courts, including any claim that such action, suit or proceeding has been brought in an inconvenient forum. Both parties hereby expressly acknowledge and agree that nothing contained in this Agreement shall be construed to require the parties to submit to mandatory arbitration or mediation in the vent of a breach or dispute hereunder.

V. HEADINGS

A. The heading of sections of this Agreement are for convenient reference only and shall not be deemed to limit, construe, affect, modify or alter the meaning of such sections.

VI. SEVERABILITY

A. If any section, subsection, term or provision of this agreement or the application thereof to the EMPLOYEE, the CITY or a particular circumstance shall, at any extent, be invalid or unenforceable, the remainder of said section, subsection, term or provision of this Agreement or the application of same to the EMPLOYEE, the CITY or particular circumstances other than that for which it was held valid or invalid or enforceable, shall not be affected thereby and each remaining section, subsection, term or provision of this Agreement shall be valid and enforceable to the fullest extent of the law.

VII. AUTHORITY

A. The persons signing this Agreement warrant and represent that they have the authority to sign as, or on behalf of, the party for whom they are signing.

VIII. FINAL AGREEMENT

A. Both the EMPLOYEE and the CITY hereby expressly acknowledge and agree that this Agreement is intended to set forth the entire agreement between the parties regarding reimbursement of Training Expenses by the EMPLOYEE, that there are no other considerations or monies contingent upon or resulting from the execution of this Agreement, and that no other monies or consideration have been solicited. No waiver, change, modification or amendment of this Agreement shall be binding upon either party hereto unless in writing and signed by both the EMPLOYEE and the CITY. The waiver by either party hereto of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach of that provision or of any other provision or condition in this Agreement.

Dated this 5th day of November, 2012.

THE EMPLOYEE:

Derek M. Holmes

Attest:

Mike Horihan, Chief of Police

CITY OF WEST BRANCH:

Roger Laughlin, Mayor

Attest:

Matt Muckler, City Administrator/Clerk

(Revised 02-09-07)