



MEDINA, WASHINGTON

AGENDA BILL

Monday, June 27, 2022

Subject: Acceptance of Professional Services Agreement with Stephen R. Burns

Category: Consent

Staff Contact: Scott Missall, City Attorney; Aimee Kellerman, City Clerk

Summary

On June 13, 2022, the City Council appointed Stephen Burns to the position of Medina City Manager effective July 1, 2022. The Council asked that the previously negotiated Professional Services Agreement (Contract) for Mr. Burns' services as City Manager be signed by Mr. Burns and the Mayor so that the Council could formally accept the Contract prior to commencement of Mr. Burns' services.

The Contract has been signed by the parties and is presented herewith for Council acceptance. It will be authenticated by the City Clerk and City Attorney at Council's June 27th meeting.

Attachment:

- Professional Services Agreement with Stephen R. Burns (signed)

Budget/Fiscal Impact: N/A

Recommendation: Move that Council accept Mr. Burns' Professional Services Agreement to complete performance of Council's June 13, 2022 motion.

City Manager Approval: 

Proposed Council Motion: "I move that Council accept the signed Professional Services Agreement with Stephen R. Burns for his forthcoming service as Medina City Manager."

**PROFESSIONAL SERVICES AGREEMENT
BETWEEN**

**City of Medina, Washington
and**

Stephen R. Burns

Contract No. CO-28 _

I. Parties

This Professional Services Agreement (**Agreement**) is made and effective as of the date set forth below by and between the City of Medina, a Washington municipal corporation (**City or Medina**) located at 501 Evergreen Point Road, Medina, Washington 98039, and Stephen R. Burns, City Manager for the City of Medina (**Manager**). City and Manager are each a Party and collectively the Parties to this Agreement.

II. Recitals

1. City is a noncharter, optional municipal code city organized under RCW Title 35A as a Council/Manager form of government. For the purposes of this Agreement, City acts by and through the Medina City Council (**Council or City Council**).

2. Manager has been serving as the Interim City Manager for City since his appointment to that position by the Council on December 13, 2021, effective January 4, 2022, and represents that he possesses the qualifications and experience necessary for the complete and proper performance of the responsibilities of a city manager serving under RCW Title 35A and his responsibilities under this Agreement. City, through its Council, therefore desires to employ Manager to serve as the City Manager for City pursuant to this Agreement, and Manager desires to fill said position and serve as City Manager for City pursuant to this Agreement.

3. These recitals are material terms of this Agreement between the Parties.

III. Agreement

IN CONSIDERATION OF the foregoing recitals, terms, conditions and mutual benefits of this Agreement, the receipt and sufficiency of which is acknowledged, the Parties agree as follows:

1. **Employment; At-Will Employment Status.** City agrees to employ Manager as, and Manager agrees to accept the position of, City Manager for the City of Medina upon and in accordance with the terms and conditions of this Agreement. Manager's employment under this Agreement and with City is "at will" and is subject to termination for any reason or no reason at all under the terms hereof. While employed by City, Manager shall not accept any outside employment and shall devote all time, attention, efforts, knowledge and skills as are necessary to faithfully and fully perform his duties under this Agreement for the benefit of City.

2. **Commencement Date; Term.** Manager shall commence employment as Manager of the City on the Effective date stated in Section 8.7 below, which shall be Manager's first day of employment under this Agreement (**Commencement Date**). Employment will continue for an indefinite term unless terminated as provided by law or by the provisions of this Agreement.

3. **Manager's Duties.** Manager shall perform all the duties and obligations of the city manager as required by law, and such other duties and responsibilities as are assigned from

time to time by City Council. Manager shall be the chief executive officer of the City and responsible for managing the City and implementing City and policies and requirements established by the Council. Manager shall be a confidential employee to the Council and shall keep the Council fully advised of the business and operations of the City by means of regular and special reports and as assigned by or agreed between the Manager and Council. Manager shall attend all special and regular meetings of the Council unless excused, and such other meetings and City functions as are appropriate, necessary or required by the Council. Manager is expected to attend all official functions of City as part of Manager's routine work.

4. Compensation. Manager's compensation will consist of the following while serving as Manager. Unless stated otherwise below, all compensation shall be paid in accordance with City's usual policies and procedures for its employees and new compensation rates shall commence on January 1 of each calendar year.

4.1. **Base Salary.** Commencing on the Commencement Date, Manager shall receive an annual salary of \$180,000 (**Base Salary**). Thereafter, Base Salary from the prior year shall be increased by the latest CPI for Urban Workers/Seattle region with a 2% floor and 4% maximum increase. In addition, Base Salary may be annually adjusted at Council's discretion based on Council's annual performance review and evaluation of Manager.

4.2. **Annual Performance Review.** Manager's performance shall be reviewed and evaluated by the City Council annually in accordance with its current procedures and end-of-year schedule (Res. No. 411; 7.13.2020). Council may identify specific performance goals and milestones for Manager's attention and action in the coming year or other pertinent time frame, and shall, as part of the Council's next annual performance review, evaluate Manager's performance in achieving such goals and milestones.

5. Benefits. Manager's benefits shall be: (A) all general benefits uniformly applicable to City Department Directors (**Directors**) pursuant to the City of Medina Personnel Guidelines (December 13, 2021) (**Guidelines**) as adopted and amended from time to time, and (B) other specific benefits stated below, all subject to applicable City policies and code and state laws/regulations.

5.1. **General Benefits.** General benefits shall include social security/MEBT or equivalent contributions, health, medical and other insurance and contributions covered under Guidelines Chapter 6.0 (Benefits); vacation, holiday, sick leave and the like covered under Guidelines Chapter 7.0; travel, credit card usage and other stated benefits covered under Guidelines Appendix E.

5.2. **Retirement.** City shall pay into the Mission Square 457 Deferred Compensation Plan instead of the Washington State Department of Retirement System Public Employees Retirement System (PERS) plan for the benefit of Manager at the same rate and manner as provided for Directors and in accordance with applicable state regulations and City procedures.

5.3. **Membership Dues for Professional Development.** In addition to work-related dues and memberships covered under the Guidelines, City shall pay reasonable annual dues for Manager's membership in the International City/County Management Association (ICMA) and the Washington City/County Managers Association (WCCMA). City shall pay a reasonable cost for such other memberships, subscriptions, or dues desirable for Manager's continued professional growth, advancement and the good of the City as approved by City Council or provided for in City's adopted budget.

5.4 Vehicle Allowance. Manager shall maintain a personal vehicle for his use in connection with his employment and City related business, for which City shall provide an allowance of \$500 dollars per month. Manager shall obtain, pay for and maintain at all times a valid Washington driver license, the vehicle's annual Washington license and tabs, and the minimum State-required insurance coverages and limits for a personal vehicle, including comprehensive liability, bodily injury and property damage. The City may obtain additional insurance coverages and limits as it determines appropriate, either by coverage under the City's WCIA policy or otherwise.

5.4 Technology. City will provide Manager with appropriate communications device(s) and a portable computing device (e.g., laptop, pad, or similar device) for use in performing his duties. Such devices will be selected by Manager and City for compatibility with the City's technology system. City shall own such devices unless otherwise agreed. City will arrange for 24/7/365 access to police and fire call outs in the City.

6. [Reserved]

7. Termination of Manager's Employment. Manager's employment with City shall be terminated in accordance with the following procedures and requirements.

7.1 Termination by City. As an at-will employee of City, the Parties agree that the Council may terminate Manager's employment at any time for any reason or no reason at all, and with or without cause, including for City's convenience. Such termination shall comply with the following procedures, and with the procedures set forth in RCW 35A.13.130 as applicable.

7.1.1 Severance and COBRA Payment; Requirements. City Council may terminate Manager's employment without cause at any time. In the event Council passes a resolution to terminate Manager's employment for any reason or no reason at all other than cause as defined in Section 7.2.3 below, and Manager chooses in response to voluntarily resign within thirty (30) days of such resolution in lieu of a public hearing that he may otherwise have a right to pursuant to RCW 35A.13.140, Manager shall be paid: (i) compensation in an amount equal to three months of Manager's then current Base Salary commencing on the effective date of termination (**Severance Payment**); and (ii) the monthly cost of continuing Manager's medical insurance coverages under COBRA (**COBRA Costs**); PROVIDED that no Severance Payment shall be made if such termination occurs within four months of the Effective Date. Except for the Severance Payment and as otherwise required by law, no compensation or benefits will be paid to Manager after the effective date of termination or resignation-in-lieu except COBRA Costs. Any Base Salary paid to Manager for paid time off during a suspension or administrative leave that commenced upon or after adoption of the Council's resolution to terminate Manager will be deducted from the Severance Payment. Manager's receipt of Severance Payment and COBRA Costs is expressly conditioned upon Manager executing a full release and waiver of all known and unknown claims he and his marital community may have, directly or indirectly, against City, its elected and appointed officers, employees, and agents arising out of or connected with Manager's employment and Manager's termination of employment with City. The release and waiver shall be in a form approved by the City Attorney.

7.1.2 Payment of Severance Payment and COBRA Costs. Severance Payment and COBRA Costs may be paid in a lump sum or in equal monthly payments at City's option and in accordance with City's usual procedures, but in no event shall it be paid before expiration of ten (10) days after Manager's release and waiver has been fully executed and delivered to the City Attorney and any applicable revocation period under the Age Discrimination in Employment Act (or similar legislation) has expired. Severance Payment and

COBRA Costs shall be subject to applicable federal and state withholding taxes and all other required deductions and withholdings, including any repayment owed by Manager to City for benefits provided in accordance with Section 5 above.

7.1.3 Termination for Cause. In the event the City Council becomes aware of or determines there is evidence that may constitute grounds to terminate Manager's employment for cause, the Council shall give notice thereof to Manager and provide a prompt opportunity for Manager to respond in a meeting with one or more Councilmembers, prior to adopting any termination resolution under RCW Chapter 35A.13. In the event Manager is terminated for cause as defined in the next sentence, Manager shall not be entitled to any Severance Payment or COBRA Costs under this Section 7. For the purposes of this Agreement, the term "cause" shall include but is not limited to lying, failing a drug or alcohol test, falsifying records, embezzlement, theft, insubordination, fraud, felonious conduct, crime involving moral turpitude, disclosing private and/or confidential information, deliberately violating City policy or rules, and intentionally discriminating against an employee on a basis that is prohibited under the Washington Law Against Discrimination.

7.1.4 Statutory Hearing. In the event Manager requests a hearing under RCW 35A.13.130 and/or RCW 35A.13.140, Manager shall not be entitled to Severance Payment or COBRA Costs under this Agreement.

7.2 Termination by Voluntary Resignation of Manager. In the event Manager elects to voluntarily resign employment with City for any reason other than in response to a City Council resolution to terminate Manager, Manager shall provide City with written notice thereof delivered to the Council not less than forty-five (45) days prior to the effective date of said resignation. Upon receiving Manager's notice of intent to resign Manager's employment, City may ask Manager to voluntarily make the effective date of his resignation less than forty-five (45) days. If Manager advances the effective date of resignation per such request, or if the Council places Manager on administrative leave after Manager provides notice of his intended resignation, City will continue Manager's Base Salary and benefits for up to the full forty-five (45) day notice period. If Manager provides more than forty-five (45) days notice of his intended resignation, City may either accept the resignation as offered or require the resignation be effective in a shorter period of time, but not less than thirty (30) days from the date of the notice. A request or requirement for a shorter resignation period shall not require City to pay any Severance Payment or COBRA Costs.

7.3 Manager's Personal Effects and Devices. At any time following notice of or commencement of any termination or resignation, Manager shall at City request promptly and cooperatively return to City all keys, access cards, technology devices, files, records (written and electronic) and all other City property in Manager's possession or control, without any alteration thereof and with functional passwords and/or codes enabling full operation thereof. City shall likewise promptly and cooperatively return or make available to Manager his personal property and effects located in or at City facilities.

7.4 Unemployment Benefits. Nothing herein shall prevent Manager from seeking unemployment benefits from the State Department of Labor and Industries following termination or resignation, nor shall it prevent City from responding to Department of Labor and Industries information requests concerning such termination or resignation.

8. General Terms.

8.1 Integration; Mutual Drafting. This Agreement constitutes the entire written

agreement between the Parties. The Parties acknowledge there are no other agreements, oral or otherwise, that have not been fully set forth in the text of this Agreement. This Agreement has been mutually negotiated by the Parties and neither Party shall be deemed or construed to be the drafter.

8.2 Modification. This Agreement may be amended or modified only with the written concurrence of both Parties. Each such amendment or modification shall be denoted a sequentially numbered amendment of this Agreement and, upon the Parties' execution thereof, shall become part of this Agreement.

8.3 Venue; Jurisdiction. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. Jurisdiction and venue for any proceeding brought to enforce or interpret this Agreement shall be in King County Superior Court for the State of Washington at Seattle, Washington. The Parties consent to such venue and jurisdiction.

8.4 Severability. If any provision or portion of this Agreement is held by a court of competent jurisdiction to be unconstitutional, illegal, invalid or unenforceable, the remainder of this Agreement, or portion thereof, shall not be affected and shall remain in full force and effect.

8.5 No Third Party Beneficiaries. The Parties enter into this Agreement for their convenience alone, and there are no third party beneficiaries to this Agreement.

8.6 Legal Consultation. The Parties have the opportunity at their own expense to seek legal assistance and review of all matters connected with this Agreement.

8.7 Effective Date. The Effective Date of this Agreement is July 1, 2022.

9. Acknowledgements.

9.1 Each Party acknowledges that this Agreement is entered into in good faith.

9.2 Each Party acknowledges it has had full and sufficient opportunity to consult with an attorney of its own choosing before entering into this Agreement, and enter into this Agreement knowingly and voluntarily.

9.3 Each Party represents that the terms of this Agreement have been carefully read, are understood, and are voluntarily accepted.

9.4 The City Council has taken all actions necessary and proper to enable it to enter into this Agreement, and has authorized Jessica Rossman, Mayor of the City of Medina, to execute this Agreement on behalf of City and City Council.

Dated for reference purposes July 1, 2022.

CITY OF MEDINA  Jessica Rossman, Mayor Date	CITY MANAGER  Stephen R. Burns Date
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<p>ATTEST</p> <hr/> <p>Aimee Kellerman, City Clerk</p> <p>APPROVED AS TO FORM OFFICE OF THE CITY ATTORNEY</p> <hr/> <p>Scott M. Missall, City Attorney</p>	
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