



CITY MANAGER EMPLOYMENT AGREEMENT

CITY OF MERCER ISLAND, WASHINGTON
9611 SE 36th Street • Mercer Island, WA 98040-3732

2020 Agreement

THIS CITY MANAGER EMPLOYMENT AGREEMENT (“Agreement”) is dated effective the ____ day of February 2020, and is between the CITY OF MERCER ISLAND, a Washington municipal corporation (the “City”) and Jessica L. Bon (“Jessi Bon” or the “City Manager”).

RECITALS

Whereas, Jessi Bon is currently employed by the City, and has been serving as its interim city manager since, on or about, June 7, 2019; and

Whereas, the Mercer Island City Council (“City Council”) wishes to appoint Jessi Bon as the City’s city manager; and

Whereas, Jessi Bon wishes to accept the City Council’s appointment, and serve as the City’s city manager; now, therefore, the parties agree as follows:

1. DUTIES AND AUTHORITY

- 1.1 The City hereby agrees to continue Jessi Bon’s employment with the City, and to appoint her as its city manager in order to perform, without interference, not only the functions and duties specified in chapter 35A.13 RCW, but also such other legally permissible and proper duties and functions as the City Council may collectively assign from time to time (“Services”).
- 1.2 The City Manager’s employment status shall be as an employee of City and not as an independent contractor. The City Manager shall be an at-will employee who serves at the pleasure of the City Council for an indefinite term pursuant to RCW 35A.13.130, as now enacted and hereafter amended. The City Manager is subject to the provisions of the Mercer Island Employee Handbook, incorporated by reference herein and as hereafter amended, except for any provisions of the Handbook that are inconsistent with this Agreement or State laws regulating the office of City Manager under chapter 35A.13 RCW.
- 1.3 The City Manager shall perform all duties with reasonable care, diligence, skill and expertise.

EXHIBIT A

- 1.4 The City Manager is expected to devote her full time and attention to her duties as city manager starting on the effective date of this Agreement. Any outside activities that might materially interfere with her duties shall require prior approval by the City Council.

2. COMPENSATION AND BENEFITS

- 2.1 Salary. In consideration of the City Manager performing the Services, the City Manager shall be paid during the remainder of 2020 a base annual salary of \$203,000. Starting in 2021 and subsequent calendar years of this Agreement, such base salary shall be increased by the annual cost of living increases awarded to non-represented employees. In addition, in 2022, and every fourth year thereafter, a market analysis will be performed, and the City Council will determine whether to increase the City Manager's annual base salary.
- 2.2 Vehicle Allowance and Equipment. The City Manager will be paid a vehicle allowance of \$400 per month in lieu of mileage reimbursement for the use of her personal vehicle for business purposes. The City Manager will be provided a cellular phone or a monthly stipend and a laptop computer and other necessary equipment to perform her duties as city manager.
- 2.3 Vacation and Sick Leave Allowance. The City Manager shall be awarded vacation at the rate of 200 hours per year. In addition, the City Manager shall be paid for all recognized City holidays plus one floating holiday. The City Manager shall be allowed to carry-over or cash out unused hours of accrued vacation according to the City leave policy for full-time Department Directors. Sick leave shall be accrued according to City policy. During vacation or other extended absences, the City Manager will designate an acting city manager.
- 2.4 Life Insurance. City shall pay the amount of premium due for term life insurance in the amount of 125% of annual base salary, including all increases in the base salary during the life of this Agreement. The City Manager shall name the beneficiary of the life insurance policy.
- 2.5 Other Employee Benefits. Except as otherwise provided in this Agreement, the City Manager is entitled to receive all other benefits accorded to full-time Department Directors employed by the City, including but not limited to: health care (medical, dental, vision coverage), long-term disability coverage, PERS contribution, Retirement Health Savings Accounts contributions and the option to participate in the City's deferred compensation program ("457") including annual deferred compensation/cash awards.
- 2.6 Professional Development and Memberships. Subject to the amount expressly budgeted for such activities in the approved City budget, the City agrees to pay for professional dues and subscriptions of the City Manager for participation in national,

EXHIBIT A

regional, state and local associations and organizations necessary and desirable for the City Manager's continued professional participation, growth and advancement. Subject to the amount expressly budgeted for such activities in the approved City budget, the City agrees to pay for reasonable fees, travel and subsistence expenses of the City Manager for professional and official travel, and for attendance at occasional courses, meetings and conferences to further the professional development of the City Manager.

- 2.7 Residency. Consistent with RCW 35A.13.050, the City Manager need not be a resident at the time of her appointment, but shall reside in the City of Mercer Island within six (6) months of her appointment, unless such residency is further waived by the City Council.

3. PERFORMANCE REVIEW & EVALUATION

Annual Performance Review. Starting in June of 2021 and annually thereafter, the City Council will review the City Manager's performance since the latter of the effective date of this Agreement or the last performance review. Approximately two months prior to the annual review in June, the Mayor and the City Manager will discuss the performance review process and determine jointly how such process will be conducted and whether the process will be led by the Mayor or by a qualified facilitator acceptable to the City Council and the City Manager. The Mayor or facilitator will present the findings to the City Council in an Executive Session; following which, the City Council may choose to meet to discuss the City Manager's performance and achievements in an Executive Session or open meeting at the discretion of the City Council. At the conclusion of each performance review and evaluation, the Mayor or facilitator will provide the City Manager with a written summary of the results of the review and evaluation.

4. TERM

This Agreement shall commence on the effective date of this Agreement and shall remain in effect for an indefinite term pursuant to RCW 35A.13.130-140, as now enacted and hereafter amended.

5. TERMINATION, RESIGNATION AND SEVERANCE

- 5.1 Termination. This Agreement may be terminated by the City by a majority vote of the City Council, in accordance with RCW 35A.13.130 – 140 as now enacted and hereafter amended.
- 5.2 Resignation. The City Manager may terminate this Agreement upon a minimum of thirty (30) days' written notice to the City Council prior to the effective date of her resignation.
- 5.3 Severance. In the event this Agreement is terminated by the City for any reason other than just cause, the City agrees to pay the City Manager (1) a lump sum cash payment

EXHIBIT A

equal to nine months of salary as of the date of separation, provided that the lump sum cash payment shall be reduced to six months of salary if the City Manager has held that position for two years or more on the date of separation; and (2) monthly COBRA payments to continue the City Manager's City family medical coverage as of the date of separation for up to three months after the date of separation, provided that no such payments shall be made after the City Manager secures similar coverage through another employer. The City Manager's receipt of any severance is conditioned upon the City Manager executing a release of claims agreement that is deemed satisfactory by the City Council. For purposes of this Agreement, the term "just cause" shall include acts, errors or omissions that discredit the City, as determined by the majority of the City Council; intentional violation of any lawful duty; any unauthorized disclosure of any confidential information of the City; any act of dishonesty, fraud, embezzlement, or theft; conviction of any felony or misdemeanor involving moral turpitude or a material breach by the City Manager of this Agreement. In the event the City terminates this Agreement for just cause, no severance will be paid.

- 5.4 Unused Vacation Time. In the event the City Manager's employment is terminated either voluntarily or involuntarily, the City Manager shall be compensated for unused vacation time up to a total of 240 hours in the aggregate. For purposes of this section, if termination is within a pay period, leave shall be credited for each day worked pro rata in the partial pay period in calculating the ending vacation leave balance.

6. INDEMNIFICATION

The City shall defend, hold harmless and indemnify the City Manager, notwithstanding the fact that the City Manager may have concluded service or employment with the City, against any obligation to pay money or perform or not perform action, including without limitation, any and all losses, damages, judgments, interests, settlements, penalties, fines, court costs and other reasonable costs and expenses of legal proceedings including reasonable attorney's fees, and any other liabilities arising from, related to, or connected with any tort, professional liability claim or demand or any other threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative, arbitral or investigative, whether groundless or otherwise, arising out of an alleged act or omission occurring in the good faith performance of the City Manager's duties on behalf of the City and within the scope of the City Manager's employment with the City, unless the act or omission is alleged to involve any dishonest, fraudulent, criminal or malicious act or willful or wanton misconduct or unless the act or omission is alleged to be outside the scope of her employment, in which case defense shall be provided under a reservation of rights pending final legal determination of the legal action including any appeals brought by either party.

Legal representation shall be provided by the Office of the City Attorney unless, in the sole opinion of the City Attorney, a conflict of interest or ethical bar exists with respect to said representation or if the City Attorney determines in consultation with the City Council that outside counsel should be retained on behalf of the City Manager. In the event that outside counsel is retained, the City shall indemnify the City Manager from the reasonable fees and

EXHIBIT A

costs of such legal defense services. Legal representation shall extend until a final determination of the legal action including any appeals brought by either party.

The City Manager shall permit all claims against the City Manager to be dealt with by the City Attorney's Office for uncovered claims, or for covered claims, by the City's risk pool, the Washington Cities Insurance Authority ("WCIA"), or any insurer with which the City insures itself. The City Attorney's Office, the WCIA or the insurer shall be entitled to take absolute control of the defense of all proceedings against the City Manager (including arbitrations) and, in the sole discretion of the City Attorney, the WCIA or the City's insurer, to defend or compromise in the City Manager's name without further consultation with the City Manager as to any proceedings relating to any such claim and to enforce for the City's own benefit any order made for costs or otherwise, or any claim for indemnity against any other person or persons. The City Manager recognizes that the City Manager shall have no veto authority over any settlement unless the City Manager is a personally-named party to the suit and the City Manager is using exclusively personal funds to achieve settlement.

The City Manager shall cooperate with the defense of any claims, lawsuits or other legal proceedings beyond the City Manager's service to the City as long as litigation is pending; shall attend reasonably necessary interviews, depositions, hearings and trials; and shall assist in securing witnesses and evidence. For any litigation to which the City Manager is a witness or advisor to the City, the City agrees to pay all reasonable litigation expenses of the City Manager throughout the pendency of such litigation including reasonable travel expenses and shall compensate for the City Manager's time at an hourly rate determined by the City Manager's ending annual salary.

7. NOTICE

Any written notices required to be given under this Agreement shall be delivered to the following parties at the following addresses:

To the City: Mayor
City of Mercer Island
9611 SE 36th Street
Mercer Island, WA 98040

To the City Manager: Jessi Bon
P.O. Box 23
Mercer Island, WA 98040

Any notices may be either delivered personally or mailed to the addressee of the notice.

8. GENERAL PROVISIONS

8.1 Entire Agreement; Modifications. This Agreement constitutes the entire agreement between the parties and both parties acknowledge there are no other agreements,

EXHIBIT A

oral or otherwise. The parties agree that this Agreement cannot be amended or modified without the written consent of both parties.

8.2 Waiver. Waiver by the City or the City Manager of any provision of this Agreement does not constitute a waiver of any other provision.

8.3 Severability. If any provision or portion of this Agreement is held to be unenforceable, the City will have the right to declare the Agreement void and enter into negotiations with City Manager for execution of a new agreement.

8.4 Jurisdiction, Venue, and Attorney’s Fees. This Agreement will be governed and construed in accordance with the laws of the State of Washington. In the event any suit or other proceeding is instituted to enforce any terms of this Agreement, the parties specifically understand and agree that venue will be exclusively in King County, Washington. Each party shall pay all of its own attorney’s fees, costs and expenses in connection with any legal action commenced regarding this Agreement.

8.5 Mediation Prior to Litigation. The parties agree to participate in mediation, conducted by a mutually agreeable third party, prior to filing a lawsuit on any claims arising under this Agreement.

8.6 Equal Opportunity to Draft. The parties have participated in, and had an equal opportunity to participate in, the drafting of this Agreement. No ambiguity will be construed against any party upon a claim that such party drafted the ambiguous language.

8.7 Interim City Manager Agreement Terminated. With the appointment of Jessi Bon as city manager, the Interim City Manager Agreement between the parties dated June 5, 2019 (“ICM Agreement”) is hereby terminated without Jessi Bon electing to exercise any of her post-termination rights set forth in Section IV(C) of the ICM Agreement.

CITY:

CITY MANAGER:

By: _____
Benson Wong, Mayor

By: _____
Jessica L. Bon

Approved as to Form:

By: _____
Bio Park, Interim City Attorney