

INTERIM CITY MANAGER EMPLOYMENT AGREEMENT

THIS INTERIM CITY MANAGER EMPLOYMENT AGREEMENT is entered into between the OLYMPIA CITY COUNCIL on behalf of the City of Olympia, a Washington municipal corporation organized under RCW Chapter 35A.13 (hereinafter "City"), and STEVEN J. ("JAY") BURNEY (hereinafter "Burney"), and hereafter jointly referred to as the "Parties," hereby set forth the rights, responsibilities, compensation and benefits of the Olympia Interim City Manager, which are in addition to those set forth by RCW Chapter 35A.13 and other applicable Washington laws and judicial decisions, and the ordinances, resolutions, and administrative rules or guidelines of the City of Olympia.

RECITALS

WHEREAS, the City's current City Manager, Steven R. Hall, has given the City notice of his retirement at the conclusion of business on November 7, 2019, after sixteen years of service with the City as its City Manager; and

WHEREAS, pursuant to RCW 35A.13.150, the Olympia City Council is vested with the lawful authority to designate a qualified administrative officer for the City to perform the duties of manager as prescribed by law; and

WHEREAS, the Olympia City Council has the powers and authority granted to any code city organized under the council-manager plan as provided in RCW Chapter 35A.13 and granted to legislative bodies of cities governed by the Optional Municipal Code as more particularly described in RCW Chapter 35A.11, except insofar as such power and authority is vested in the position of city manager as provided by law; and

WHEREAS, it is the duty of the Olympia City Council to provide for an interim city manager with the appropriate executive and administrative qualifications, and knowledge of the accepted practice in respect to the duties of a city manager, following the retirement of the City's current City Manager; and

WHEREAS, the powers and duties of the interim city manager shall be as provided in RCW 35A.13.080, to wit: (1) to have general supervision over the administrative affairs of the City; (2) to appoint and remove at any time all department heads, officers, and employees of the City, except members of the council, and subject to the provisions of any applicable law, rule or regulation relating to civil service; provided that the council confirm a city planning commission, and other advisory citizens' committees, commissions, and boards; (3) to attend all meetings of the council at which attendance may be required; (4) to see that all laws and ordinances are faithfully executed, subject to the authority which the council may grant the mayor to maintain law and order in times of emergency; (5) to recommend for adoption by the council such measures as may be deemed necessary and expedient; (6) to prepare and submit to the council such reports as may be required by that body or as the interim city manager may deem advisable to submit; (7) to keep the council fully advised of the financial condition of the City and its future needs; (8) to prepare and submit to the council a proposed budget for the fiscal year, as required by RCW Chapter 35A.33, and to be responsible for its administration upon adoption; and (9) to perform such other duties as the council may determine by ordinance or resolution; and

WHEREAS, the Olympia City Council desires to appoint an Interim City Manager following the retirement of City Manager, Steven R. Hall, and wishes to enter into this agreement to employ Steven J. ("Jay") Burney, as interim city manager;

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

1. **Employment.** The City agrees to employ, and Burney agrees to be so employed, as the Interim City Manager for the City. Burney shall perform the duties and functions set forth as specified in RCW Chapter 35A.13 and as otherwise provided by law, and to perform such other legally permissible and proper duties and responsibilities as may be assigned by the Olympia City Council from time to time. Burney agrees to abide by the International City Management Association ("ICMA") Code of Ethics in discharging his duties on behalf of the City.

2. **Term.** Burney's term as Interim City Manager shall commence on November 8, 2019, and shall continue until the commencement of employment of a permanent replacement of a City Manager, duly selected and appointed by the Olympia City Council. It is understood and agreed that pursuant to RCW 35A.13.130 the term of this Agreement is indefinite; provided, however, that the Interim City Manager may be removed at any time by a vote of the majority of the members of the Olympia City Council subject to the statutory provisions of RCW Chapter 35A.13 and the termination and severance provisions set forth in this Agreement.

3. **Duties and responsibilities.** As Interim City Manager, Burney shall perform the duties and functions as set forth in RCW Chapter 35A.13, the Olympia Municipal Code Chapter 2.08, and the job description for the Olympia City Manager, attached hereto and incorporated herein as Exhibit A.

- A. Perform such duties and responsibilities as may be assigned by the Olympia City Council following its annual retreat, or at any Interim City Manager's performance evaluation, or at such other times as the Council may select;
- B. Comply with the International City Managers' Association Code of Ethics;
- C. Devote full-time effort to the Interim City Manager's duties with the City of Olympia and not directly or indirectly engage or participate in any activities while employed hereunder that would conflict with the best interests of the City of Olympia;
- D. Before commencing duties herein, take an oath or affirmation for the faithful performance of duties as Interim City Manager, and verify that coverage is included under the City's current fidelity bond coverage. The premium on such bond shall be paid by the City of Olympia; and
- E. Inform the Olympia City Council and obtain its consent before agreeing to accept any outside employment for which compensation will be paid, including without limitation any part-time teaching, lecturing or consulting position or work. This provision excludes any one-time presentations or guest lectures which occur infrequently and would provide de minimus honoraria or speaking stipends.

It is understood and agreed that, as Interim City Manager, the hours required will vary considerably and will sometimes be in excess of forty (40) hours per week. It is also

understood and agreed that such work in excess of forty (40) hours per week is a regular and normal part of the Interim City Manager's responsibilities, and that the Interim City Manager is not entitled to overtime or compensation beyond that specified in Section 4 of this Agreement.

4. **Compensation.** The Olympia City Council agrees that the City of Olympia shall pay the Interim City Manager compensation as herein set forth:

- A. **Base Salary:** \$175,249.59 per year.
- B. **Sick Leave:** Twelve (12) days per year, consistent with the City's administrative guidelines governing use of sick leave.
- C. **Vacation:** Twenty-four (24) days per year, with the option for the Interim City Manager to cash out up to five (5) days per year on the condition that the Interim City Manager has used at least ten (10) days of vacation in the year in which cash out is requested. The Interim City Manager may accrue no more than 480 hours of unused vacation at any time. The Interim City Manager shall accrue additional vacation leave consistent with the City's vacation policies.
- D. **Holidays.** Eleven (11) days per year, according to the holiday schedule duly adopted by the City of Olympia for other unrepresented municipal employees.
- E. **Medical, dental and vision insurance.** The City of Olympia shall pay the costs of medical, dental and vision insurance for the Interim City Manager and dependents, at the same rates available to other unrepresented municipal employees and their dependents.
- F. **Long-term disability insurance.** The City of Olympia shall pay the costs of long-term disability insurance for the Interim City Manager, consistent with the rates and terms of long-term disability insurance available for other unrepresented municipal employees.
- G. **Life insurance.** The City of Olympia shall pay the cost of premiums for term life insurance for the Interim City Manager, with a value of the Interim City Manager's then applicable annual base salary, contingent upon a successful medical examination if required by the life insurance company.
- H. **Retirement benefits.** The City of Olympia shall contribute on behalf of the Interim City Manager to the Public Employees Retirement System and Social Security at the same rate the City of Olympia contributes on behalf of other unrepresented municipal employees.
- I. **Mileage reimbursement.** The City of Olympia agrees to pay the Interim City Manager's mileage reimbursement for the use of a personal motor vehicle for municipal business purposes, consistent with the City of Olympia's policies for such reimbursements. The Interim City Manager may also use a City vehicle for trips on municipal business.

- J. General expenses. The City of Olympia agrees to pay the Interim City Manager's reimbursement of those actual, non-personal and job-related expenses that the Interim City Manager incurs in conducting business of the City of Olympia, to the extent reimbursement is permitted by state law.
- K. Conferences and dues. The City of Olympia agrees to pay the Interim City Manager's reasonable expenses for professional dues, subscriptions, training and travel required to participate in city manager associations and conferences related to professional development such as the International City Managers Association and the Washington City/County Managers Association.
- L. Civic club membership. The City of Olympia recognizes the importance of visibility for the Interim City Manager on behalf of the City and agrees to pay the Interim City Manager's annual dues for one or more local civic or other organizations approved by the Olympia City Council in an amount not to exceed \$400.00 annually. The Interim City Manager is authorized to join such local or regional organizations, but is not required to do so.

5. Indemnification. The City of Olympia expressly agrees that as a condition of the Interim City Manager's employment it shall defend, hold harmless and indemnify the Interim City Manager, and said employee's marital community, against any tort, professional, or personal liability, claim, lawsuit or demand of any kind or nature, and any and all other legal actions arising either directly or indirectly out of any alleged act, error or omission, occurring in the performance of the duties and responsibilities of the Interim City Manager on behalf of the City of Olympia.

6. Performance evaluation and compensation review. The Olympia City Council shall review and evaluate the performance and annual compensation of the Interim City Manager as follows:

- A. Performance evaluation. The Olympia City Council shall review and evaluate the Interim City Manager's performance in January and July of each year, on dates scheduled at the mutual convenience of the Parties to this employment Agreement. The January evaluation shall include consideration of the following: (a) the Interim City Manager's achievement of goals set by the Olympia City Council for the preceding year; (b) the Interim City Manager's career development; (c) an evaluation of the Interim City Manager's management skills; and (d) adoption of new Interim City Manager performance goals for the upcoming year.

The Olympia City Council and the Interim City Manager shall define such goals and performance objectives which are deemed necessary for the proper operation of the City of Olympia and in the attainment of the Olympia City Council's policy objectives and shall further establish a relative priority among those various goals and objectives. By mutual consent, the Olympia City Council and the Interim City Manager may elect to engage the services of an outside facilitator to assist in conducting the performance evaluation. Items (a) through (c) above shall be evaluated according to performance criteria separately adopted by the Olympia City Council and discussed with the Interim City Manager at the preceding January performance evaluation. The July evaluation shall include review of items (b) through (d) above, including the

Interim City Manager's progress towards them, and adjustment of the goals as necessary, as determined by the Olympia City Council.

- B. Compensation review. At the conclusion of the January evaluation described above, the Olympia City Council may, in its sole discretion, review and adjust the Interim City Manager's compensation by awarding a performance payment or providing a cost-of-living or comparable market compensation increase.

7. **Resignation and termination.** The Olympia City Council and Burney agree as follows:

- A. **Resignation.** Burney, as Interim City Manager, shall provide the Olympia City Council thirty (30) days' written notice prior to resigning, unless a different notice period is mutually agreed to by the Olympia City Council and the Interim City Manager. No severance pay shall be paid to the Interim City Manager as set forth below, in the event of such resignation. This Agreement shall terminate upon the effective date of such resignation.

- B. **Termination.**

- 1. **Just cause.** The Olympia City Council may terminate this Agreement for "just cause," which shall include, without limitation, any Interim City Manager act of dishonesty, embezzlement, theft, conviction of any felony or any crime involving driving under the influence, domestic violence, assault, battery, or moral turpitude, or a material breach of the Interim City Manager's duties described herein.

- 2. **Any other reason.** The Olympia City Council may terminate this Agreement for any reason other than "just cause," as determined in its sole discretion upon a vote of the majority of the Olympia City Council.

- 3. **Notice.** The Olympia City Council shall provide the Interim City Manager a minimum of thirty (30) days' notice of any termination, in the manner set forth in RCW 35A.13.130; provided, however, that the Olympia City Council may upon passage of the resolution referred to in RCW 35A.13.130 suspend the Interim City Manager from duty, but the pay for the Interim City Manager shall continue until the aforesaid removal becomes effective.

- 4. **Severance or reversion to prior status.** If this Agreement is terminated for any reason other than "just cause" as defined in Section 7.B.1 above, the City of Olympia shall continue to pay the Interim City Manager the then effective compensation pursuant to Section 4 above for one-hundred eighty (180) days after termination of this Agreement. In addition to the foregoing, the City of Olympia shall also continue to pay the Interim City Manager's and his dependents' medical, dental, vision, and long-term disability benefits at the then effective rates available to other unrepresented employees for a period not to exceed one-hundred eighty (180) days following the date of notice of termination; provided, however, that if the Interim City Manager is offered by the City of Olympia the opportunity to return to his previous position as Assistant City

Manager at the base salary compensation and benefits then in effect, no severance is payable. In the event the Interim City Manager obtains other employment outside the City of Olympia, severance pay shall terminate; however, medical, dental, vision, or long-term disability insurance shall continue up to one-hundred eighty (180) days until the Interim City Manager notifies the City of Olympia when such new insurance coverage with another employer is effective, and after the effective date of such coverage the City of Olympia shall no longer be obligated to maintain the Interim City Manager or his dependents under the comparable City of Olympia insurance coverage.

In the event of a change in the form of government for the City of Olympia to a mayor-council form as provided in RCW Chapter 35A.12, the Parties agree that the Interim City Manager shall be offered a comparable position as a chief administrative officer or similar executive administrative position at comparable pay, or the Interim City Manager shall receive severance pay and benefits as previously set forth in this subsection.

5. Release and hold harmless. In consideration for such severance payments, or the opportunity to return to prior employment as Assistant City Manager for the City of Olympia, the Interim City Manager agrees to cooperate in the transition to a new administration and to release and hold the City of Olympia harmless from any claims, causes of action, costs, attorneys' fees, expenses or damages related to termination as Interim City Manager or the requested resignation by a majority of the Olympia City Council.

8. **Notices.** Notices required to be delivered hereunder shall be sent as follows:

To the City of Olympia: Mayor
City of Olympia
601 4th Ave E
P.O. Box 1967
Olympia, WA 98507-1967

To the Interim City Manager: PERSONAL AND CONFIDENTIAL
Steven J. ("Jay") Burney
Interim City Manager
601 4th Ave E
P.O. Box 1967
Olympia, WA 98507-1967

Notices may be delivered either in person or at the locations set forth above by mail via United States Postal Service, registered or certified mail, postage prepaid to the addresses above. In the event that notice is mailed rather than personally delivered, the notice shall be deemed received four (4) calendar days after deposit in the mails of the United States, addressed to the addresses set forth above. Either party may change the address specified above by giving notice in writing to the other party of an address change.

9. **Entire agreement.** The terms and covenants herein constitutes the entire agreement between the Parties and supersedes any other agreements or understanding, oral or written, which may exist. This Agreement may only be amended when reduced to writing and signed by both Parties.

10. **Governing law.** This Agreement is made and shall be interpreted, construed and performed under the laws of the State of Washington.

11. **Waiver of breach.** The waiver by the City of Olympia of a breach of any term of this Agreement by the Interim City Manager shall not operate or be construed as a waiver by the City of Olympia of any subsequent breach by the Interim City Manager.

12. **Captions.** The captions and headings of the paragraphs of this Agreement are for convenience and reference only and are not to be used to interpret or define the provisions herein. This Agreement shall not be construed as if it had been prepared by one of the Parties, but rather as if both Parties had prepared it.

13. **Severability.** If any term, covenant, condition or provision of this Agreement or the application therefore to any person or circumstance shall at any time or to any extent be determined to be invalid or unenforceable, the remaining provisions hereto shall not be affected and shall be deemed valid and fully enforceable to the extent permitted by law.

14. **Assignment and successor.** The rights and obligations of the City of Olympia under this Agreement shall inure to the benefit of and be binding upon the successors and assigns of the City of Olympia. The rights and obligations of the Interim City Manager herein are non-assignable.

15. **Attorneys' fees.** Should either party bring suit to enforce this Agreement, the prevailing party in such lawsuit shall be entitled to an award of its reasonable attorneys' fees and costs incurred in connection with such lawsuit.

16. **Recitals.** The recitals set forth above are incorporated by this reference into this Agreement and are made a part hereof.

17. **Jurisdiction and venue.** In the event of an action to enforce the terms and covenants of this Agreement, the Parties agree that jurisdiction and venue is with the Thurston County Superior Court of the State of Washington.

18. **Effective date.** The term "effective date of this Agreement" or "date hereof" or "Effective Date," as used in this Agreement, shall mean the later of the following dates: (1) the date of the Interim City Manager's signature on this Agreement; or (2) the date of the City of Olympia's signature on this Agreement as authorized by the Olympia City Council.

IN WITNESS WHEREOF, the Olympia City Council, for and on behalf of the City of Olympia, a municipal corporation organized under the laws of the State of Washington, by a majority vote of the aforesaid legislative body has authorized this Agreement to be signed and executed on its behalf by its Mayor, duly approved by its City Attorney, and attested to by its City Clerk.

CITY OF OLYMPIA

Cheryl Selby, Mayor
Date: _____

ATTEST:

Debbie L. Sullivan, City Clerk

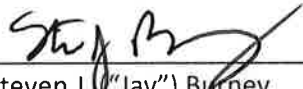
APPROVED AS TO FORM:



Mark Barber, City Attorney

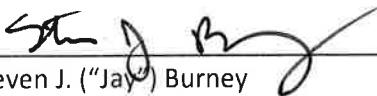
The Interim City Manager acknowledges that he has the right to consult with independent legal counsel, and has elected to waive such right and acknowledges that in signing this Agreement he is not acting under fraud, duress or undue influence of any person or persons. In the event the Interim City Manager does not waive the right to consult with independent legal counsel, the fact of such consultation shall be indicated by independent legal counsel signing on the line provided below, indicating that the Agreement is approved as to form.

INTERIM CITY MANAGER



Steven J. ("Jay") Burney
Date: 9/18/19

Independent Legal Counsel Waived:



Steven J. ("Jay") Burney

Independent Legal Counsel, Approved as to form:

Signature

(Print name)