

**CITY OF BURIEN  
AGENDA BILL**

<b>Agenda Subject:</b> Motion to Amend City Manager Employment Agreement		<b>Meeting Date:</b> May 23, 2011
<b>Department:</b> Human Resources	<b>Attachments:</b> 1. Amended City Manager Employment Agreement, dated 5/11/09. 2. City Manager Employment Agreement, dated 11/20/06. 3. Second Amended City Manager Employment Agreement.	<b>Fund Source:</b> N/A <b>Activity Cost:</b> N/A <b>Amount Budgeted:</b> N/A <b>Unencumbered Budget Authority:</b> N/A
<b>Contact:</b> Angie Chaufy, Human Resources Manager		
<b>Telephone:</b> (206) 248-5504		
<b>Adopted Initiative:</b> Yes    No    X	<b>Initiative Description:</b> N/A	
<b>PURPOSE/REQUIRED ACTION:</b>		
<p>The purpose of this agenda item is for the Council to consider a Second Amendment to the City Manager Employment Agreement between Michael H. Martin and the City of Burien.</p> <p><b>BACKGROUND (Include prior Council action &amp; discussion):</b></p> <ol style="list-style-type: none"> <li>1) On May 11, 2009, City Manager Martin and the City Council entered into an amended employment agreement, which added a new Section 5.5, amended Section 7.1.1, and added a new Section 8.5 to the original agreement. As City Manager Martin has complied with the provisions of the amended agreement, the Council has determined that the terms of the Amended Agreement are no longer necessary.</li> <li>2) The Council has conducted its annual review of the City Manager's performance and has determined that it is appropriate to increase the City Manager's salary by a 1% COLA plus a 2% merit increase. This amounts to a 3% ongoing increase to the City Manager's base salary, which is to be effective on the City Manager's November 29, 2010 anniversary date.</li> </ol> <p><b>OPTIONS (Including fiscal impacts):</b></p> <ol style="list-style-type: none"> <li>1) Amend the City Manager Employment Agreement between Michael H. Martin and the City of Burien as discussed above.</li> <li>2) Take no action.</li> </ol>		
3) <b>Administrative Recommendation:</b> None.		
<b>Committee Recommendation:</b> N/A		
<b>Advisory Board Recommendation:</b> N/A		
<b>Suggested Motion:</b> Move to approve the Second Amended City Manager Employment Agreement between Michael H. Martin and the City of Burien.		
Submitted by: Angie Chaufy <b>Administration</b>		Mike Martin <b>City Manager</b>
<b>Today's Date:</b> May 11, 2011	<b>File Code:</b> \\File01\records\CC\Agenda Bill 2011\052311cm-1 Rescind Amended CM Agreement.docx	



**AMENDED CITY MANAGER EMPLOYMENT AGREEMENT  
BETWEEN  
MICHAEL H. MARTIN AND THE CITY OF BURIEN**

THIS AMENDED AGREEMENT is made and entered into as of this   <sup>th</sup> day of May, 2009, by and between the City of Burien, Washington, a non-charter optional municipal code city (hereinafter, the "City") and Michael H. Martin (hereinafter, the "Manager").

**WHEREAS**, the City and Manager entered into an agreement effective November 26, 2006 (hereinafter, the "Original Agreement") that set forth the terms under which the City would employ Manager for an indefinite period of time; and

**WHEREAS**, on the evening of April 19, 2009, the Manager was arrested for driving under the influence of alcohol, a misdemeanor under the laws of the State of Washington; and

**WHEREAS**, the Manager denies that he committed any wrongful or criminal act, he acknowledges that the facts and circumstances of his arrest may constitute "cause" to terminate his employment under the Original Agreement, and he desires to remain an employee of the City in his current position; and

**WHEREAS**, in recognition of the excellent performance of the Manager for the past 2½ years, the Burien City Council has agreed to retain the Manager in his current position if he agrees to the following amendments to the Original Agreement for the mutual protection of the Manager, the City, its employees, and residents.

For good and valuable consideration, as set forth above, the City and Manager agree to amend the Original Agreement as follows:

**5. Duties**

A new Section 5.5 is added as follows:

5.5 Alcohol-Related Conditions. Manager will comply fully with the following conditions of continued employment.

A. Manager will comply fully with the conditions of any court, criminal sentence, or diversion program arising from his arrest on April 19, 2009.

B. Manager will not report to work at the City, or remain at work or on duty, while under the influence of alcohol. For purposes of this Amended Agreement, Manager will be deemed to have reported to work or remained at work under the influence of alcohol if he has a blood alcohol level at .02 or above at the time of testing.

C. Manager will submit to alcohol testing on dates and times chosen at random and without prior notice to the Manager, to ensure that he is not reporting to work or remaining at work under the influence of alcohol.

D. Manager will submit to alcohol testing at the request of the Mayor and at least one other council person, based on an articulated suspicion by any person that the Manager has reported to work or has remained at work under the influence of alcohol. If the Mayor is unavailable, the Deputy Mayor will take his/her place in this process. Employees who report their suspicions in good faith will be entitled to protection from retaliation for doing so, and any proven allegations of retaliation will be grounds for discipline. Employees who report unfounded suspicions in bad faith will be subject to discipline for such reporting.

E. Manager will apply for and install, for a period of two years, an ignition interlock device on any vehicle that he drives to or from the City or while on duty as Manager. All costs associated with the ignition interlock device, including the application, installation, or monthly fee, will be paid by the Manager.

F. Manager will undergo an alcohol assessment program by a qualified assessor, and comply with any treatment recommendations of the assessor, including but not limited to any inpatient recommendation, follow up treatment, or attendance at meetings of Alcoholics Anonymous or a similar support group. The costs of such assessment or treatment will be borne by Manager to the extent not covered by an EAP or Manager's health care plan.

G. Manager will meet with the City Council in executive session on a quarterly basis to affirm his compliance with the conditions, as set forth above.

## **7. Termination of Employment**

Section 7.1.1 of the Original Agreement is deleted in its entirety as is replaced by the following:

7.1.1 Severance Pay. In the event that the City elects to terminate Manager's employment for any reason other than for "cause" as defined below, Manager shall receive the equivalent of three months salary and shall receive three months of continued health insurance benefits (medical, dental, and vision only) both commencing on the date of termination of employment. The salary equivalent shall be payable on regular City paydays.

The City's obligation to pay any such continued salary and health insurance severance benefits shall terminate if Manager accepts other employment within any period that such salary and continued benefits are being paid, unless otherwise negotiated by the parties.

"Cause" shall mean a fair and honest cause or reason, regulated by good faith on the part of the Burien City Council and based on facts which are supported by evidence, and which the Council reasonably believes to be true, and which are not for any arbitrary, capricious or illegal reason. Cause includes, but is not limited to, acts, errors, or omissions by the Manager that discredit the City, or materially impair the provision of orderly services to the citizens of the City.

"Cause" shall also include the Manager's failure to comply with any of the conditions set forth in Paragraph 5.5 above.

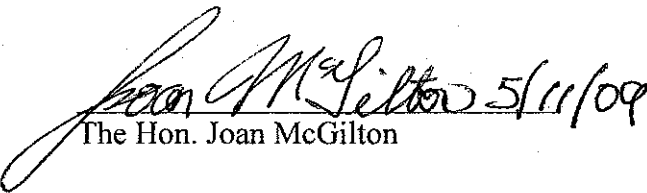
**8. General Provisions**

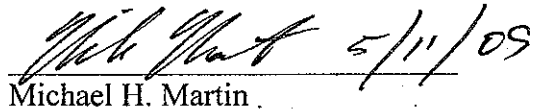
A new Section 8.5 is added as follows:

8.5 Re-evaluation period. Two years after the effective date of the Amended Agreement, the City Council will confer with Manager and re-evaluate whether any of the terms of this Amended Agreement are still necessary, in consideration of Manager's performance and compliance therewith.

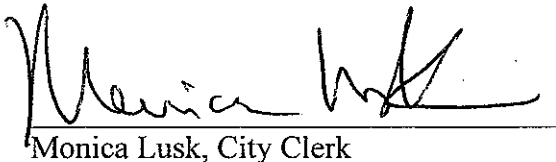
CITY OF BURIEN

CITY MANAGER

  
The Hon. Joan McGilton

  
Michael H. Martin

Attest/Authenticated:

  
Monica Lusk, City Clerk

Approved as to Form:



CITY MANAGER EMPLOYMENT AGREEMENT  
BETWEEN  
MICHAEL H. MARTIN AND THE CITY OF BURIEN

1. Parties.

1.1 This Agreement is effective as of the 29th day of November, 2006 (the "Effective Date"), by and between the City of Burien, Washington, a non-charter optional municipal code city, hereinafter referred to as "City" and Michael H. Martin, hereinafter referred to as "Manager" for the purposes more fully set forth below.

2. Recitals.

2.1 The City conducted an extensive selection process to identify, locate and select a qualified individual to fill the position of City Manager.

2.2 The City Council selected Michael H. Martin as City Manager, and Michael H. Martin agreed to accept employment as City Manager effective upon the Effective Date.

2.3 Both parties desire to establish the terms and conditions of employment as set forth below.

3. Commencement of Employment.

3.1 Agreements. Michael H. Martin accepts employment as City Manager effective on the Effective Date, and the City agrees to so employ Michael H. Martin.

3.2 Term. Manager's employment shall continue for an indefinite period pursuant to RCW 35A.13.130, unless terminated in the manner provided in this Agreement.

4. Salary and Performance Review.

4.1 Salary. Effective on the Effective Date, City agrees to pay Manager an annual base salary of \$125,000 payable in installments at the same time that the other management employees of the City are paid in accordance with the normal and usual payroll procedure for management employees of the City. An initial salary adjustment, in an amount within the discretion of the City Council, shall be considered after six months of employment, based on a satisfactory evaluation of Manager's performance by a majority of the City Council. Subsequent salary adjustments shall be considered prior to January 1 of each contract year, for the ensuing calendar year, as a part of the budget process without further amendment of this Agreement, or at such other times as the City

Council shall establish. Any such subsequent salary adjustments shall likewise be based on a satisfactory evaluation of Manager's performance by a majority of the City Council.

4.2 Vacation Leave. Effective on the Effective Date, the Manager shall be credited with 40 hours of vacation leave which credited vacation leave shall be forfeited if not exhausted on or before July 1, 2007. Such credited vacation leave is provided in consideration of the obligation of the Manager to relocate his residence to within the corporate limits of the City and is in addition to any other vacation leave the Manager may accrue. Effective on the Effective Date, the Manager shall accrue vacation leave at the rate of 160 hours per year, which leave shall accrue in equal proportions for each of the twenty-four (24) pay periods in a year.

4.3 Performance Review and Potential Merit Increase. It is intended that the Manager's performance will be reviewed by the City Council on an annual basis consistent with the budget process, or at such other times as the City Council shall establish.

5. Duties.

5.1 Generally. Manager shall perform all the functions and duties of the City Manager, including such duties as are set forth in RCW 35A.13.080 and such other legally permissible and proper duties and functions as the City Council shall from time to time assign. Manager further agrees that his position is a managerial position and acknowledges that he will occupy a position of confidentiality with the City Council, and will have direct responsibility involving employee and labor relations and preparation of the City budget. It is recognized that the Manager must devote a great deal of time outside the normal office hours on business for the City, and to that end Manager shall be allowed to establish an appropriate work schedule.

5.2 Meetings. Manager understands that in addition to his duties referenced in Section 5.1 above, unless otherwise excused, he shall also be required to attend certain nighttime meetings, including all City Council meetings and study sessions. Said meetings are an integral part of the duties of the position and have been and are included in the consideration in establishing the salary to be paid Manager.

5.3 Outside Activities. The employment provided for by this Agreement shall be the Employee's sole employment. Recognizing that certain outside consulting or teaching opportunities provide indirect benefits to the City and the community, the Manager may elect to accept limited teaching, consulting or other business opportunities with the understanding that such arrangements shall not be accepted or performed in a manner that constitutes interference with nor a conflict of interest with, nor an appearance of a conflict of interest with his responsibilities under this Agreement.

5.4 Conduct. During the term of employment, Manager shall avoid conflicts of interest or the appearance of conflicts of interest. Manager shall not (a) use his position for personal gain, (b) have or obtain or appear to have or obtain a pecuniary interest, either for himself or those with whom he may have business ties or immediate family ties, from or with respect to this Agreement or an activity assisted by or through this Agreement, or (c) benefit directly or indirectly, or appear to benefit directly or indirectly, either for himself or those with whom he may have business ties, from or with respect to an activity assisted by or through this Agreement.

6. Benefits.

6.1 Medical Leave. Effective on the Effective Date, the Manager shall be credited with 80 hours of medical or "sick" leave. Manager shall additionally accrue medical leave at the same rate applicable to other City employees. In the event of a serious illness, a majority of the City Council may consider Manager's request for additional paid medical leave.

6.2 Membership Dues. The City shall pay membership dues for ICMA and WCMA.

6.3 Other Benefits.

A. Medical and Disability Insurance. The City shall provide medical, dental, vision, and disability insurance for Manager and his dependents in the same manner as is provided for all other City employees.

B. Life Insurance. The City will provide a policy of term life insurance, with no cash value, in the same manner as is provided for other City employees. In addition, the City will provide a policy of term life insurance, with no cash value, in an amount equal to twice Manager's annual salary.

C. Retirement Plan. The City does not participate in the federal Social Security Program. Accordingly, Manager is entitled to participate in the City's existing Section 401(a) Social Security Replacement plan, and both Manager and City shall contribute to Manager's account at the then-current rate specified in the plan documents. Manager has chosen to enroll in the State PERS retirement system. The City shall provide for Manager's participate in the State PERS retirement system consistent with his eligibility and in the same manner available to other City employees.

D. Deferred Compensation: Manager is entitled to participate in the City's deferred compensation plan in the same manner as available to other City employees.

E. Other Benefits. The City agrees to provide other benefits not defined here but provided to other Burien employees and department directors in accordance with City Policy, (e.g. holidays, bereavement leave, jury duty, EAP, etc.).

F. Relocation and Relocation Expenses. The Manager shall relocate his residence within the corporate limits of the City not later than one year following the Effective Date. City shall reimburse Manager for the actual cost of such relocation, not to exceed three thousand five hundred dollars (\$3,500), upon presentation of proper receipts or other appropriate documentation.

G. Car Allowance and Mileage. Effective on the Effective Date, the City shall provide a monthly allowance of \$400.00 as full and complete payment for all automobile expenses incurred by Manager's use of his personal vehicle while on City business. Additional mileage charges shall not be reimbursed. Manager will be responsible at all times for full and proper maintenance and insurance costs of the vehicle.

H. Training and Professional Development: The City agrees to pay for and/or reimburse Manager for Travel and subsistence expenses of Manager for professional and official travel, meetings, and occasions to adequately continue the professional development of Manager and to pursue necessary official functions for City, including but not limited to the ICMA Annual Conference, WCCMA conferences, the state league of municipalities, and such other national, regional, state, and local governmental groups and committees in which Manager serves as a member.

7. Termination of Employment.

7.1 By City. It is recognized that this Agreement is a contract for personal services. Manager acknowledges that he is an "at will" employee and agrees that the City may terminate him at any time in the manner provided in RCW 35A.13.130.

7.1.1 Severance Pay. In the event that City elects to terminate Manager's employment for any reason other than for "cause" as defined below, Manager shall receive the equivalent of six months salary and shall receive six months of continued health insurance benefits (medical, dental and vision only) both commencing on the date of termination of employment. The salary equivalent shall be payable on regular City paydays.

The City's obligation to pay any such continued salary and health insurance severance benefits shall terminate if Manager accepts other employment within any period that any such salary and continued health insurance benefits are being paid, unless otherwise negotiated by the parties.

Manager shall be deemed terminated for "cause," and ineligible for severance benefits, if Manager is terminated for willful misconduct, including but not limited to commission of any criminal act.

7.2 By Manager. In the event Manager shall voluntarily terminate his employment with City, Manager agrees to provide City with not less than thirty days prior written notice of the effective date of such termination, in order to afford City a reasonable opportunity to find an interim or replacement City Manager. In the event a replacement is found who is able to commence employment prior to the expiration of the thirty-day notice period, the parties agree that they shall, in good faith, negotiate an earlier termination date.

7.3 Transition Time. Manager agrees to make himself available after separation for up to thirty (30) hours, as reasonably required by City, to assist in any transition to a subsequent City Manager.

8. General Provisions.

8.1 Entire Agreement. This Agreement constitutes the entire agreement between the parties and both parties acknowledge that there are no other agreements, oral or otherwise, that have not been fully set forth in the text of this Agreement.

8.2 Modification. The parties hereby further agree that this Agreement can be amended or modified only with the written concurrence of both parties.

8.3 Severability. If any provision or portion of this Agreement is held to be unconstitutional, invalid, or unenforceable, the City shall have the right, at its sole option, to continue the Agreement or declare the Agreement void and enter into negotiations with Manager for the execution of a new agreement.

8.4 Notices. Any notices required to be given under this Agreement shall be hand delivered to the following parties at the following addresses, unless written notice of a change in either such address is provided to the other:

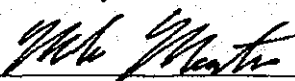
City: City of Burien  
415 SW 150th Street  
Burien, WA 98166

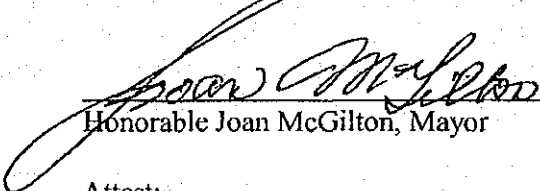
City Manager: Address as shown on the most current City Employee Roster at the time of mailing, or personally at City Hall.

DATED AND SIGNED THIS 20<sup>TH</sup> day of NOVEMBER, 2006.

CITY MANAGER


CITY OF BURIEN

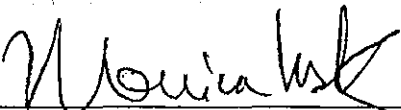
  
\_\_\_\_\_  
Michael H. Martin

  
\_\_\_\_\_  
Honorable Joan McGilton, Mayor

Approved as to Form:

Attest:

  
\_\_\_\_\_  
Christopher D. Bacha,  
Interim City Attorney

  
\_\_\_\_\_  
Monica Lusk,  
City Clerk

SECOND AMENDED CITY MANAGER EMPLOYMENT AGREEMENT  
BETWEEN  
MICHAEL H. MARTIN AND THE CITY OF BURIEN

THIS SECOND AMENDED AGREEMENT is made and entered into as of this \_\_\_ day of \_\_\_\_\_, 2011, by and between the City of Burien, Washington, a non-charter code city (“City”) and Michael H. Martin (“Manager”).

WHEREAS, the City and Manager entered into an employment agreement effective November 29, 2006 (“Original Agreement”), which set forth the terms under which the City would employ Manager for an indefinite period of time, and

WHEREAS, in 2008, the City Council conducted its annual review of the Manager’s performance and increased the Manager’s salary to \$131,250, effective February 16, 2008, which increase was reflected in a Personnel Action Form rather than an amendment to the Original Agreement, and

WHEREAS, on May 11, 2009, the City and Manager entered into an amended employment agreement (“Amended Agreement”), which added a new Section 5.5, amended Section 7.1.1, and added a new Section 8.5 to the Original Agreement, and

WHEREAS, Manager has complied with the provisions of the Amended Agreement, and the City Council has determined that the terms of the Amended Agreement are no longer necessary, and

WHEREAS, the City Council has conducted its annual review of the Manager’s performance and has determined that it is appropriate to increase the City Manager’s salary by a 1% COLA plus a 2% merit increase, for a total 3% ongoing increase to the City Manager’s base salary, which is to be effective on the Manager’s November 29, 2010 anniversary date.

Now, therefore, for good and valuable consideration as set forth above, the City and Manager agree to amend the Original Agreement as follows:

1. The Amended City Manager Employment Agreement between Michael H. Martin and the City of Burien, dated May 11, 2009, is hereby rescinded.
2. The original City Manager Employment Agreement between Michael H. Martin and the City of Burien, dated November 29, 2006, is hereby amended by increasing the annual

base salary in Section 4.1 to \$135,187.50, which salary increase shall be effective on the Manager's November 29, 2010 anniversary date.

DATED AND SIGNED THIS \_\_\_\_\_ day of \_\_\_\_\_, 2011.

CITY MANAGER

CITY OF BURIEN

\_\_\_\_\_  
Michael H. Martin

\_\_\_\_\_  
Honorable Joan McGilton, Mayor

Approved as to Form:

Attest:

\_\_\_\_\_  
Craig D. Knutson,  
City Attorney

\_\_\_\_\_  
Monica Lusk,  
City Clerk