

# CITY OF BAINBRIDGE ISLAND CITY COUNCIL AGENDA BILL



## PROCESS INFORMATION

Subject: Amendment to City Manager's Contract	Date: February 1, 2012
Agenda Item: Study Session	Bill No.: 12-012
Proposed By: City Council	Referral(s):

## BUDGET INFORMATION

Department:	Fund:	Munis Contract #
Expenditure Req:	Budgeted? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Budget Amend. Req? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

## REFERRALS/REVIEW

Study Session	Recommendation:
City Manager <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	Legal <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
	Finance <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A

## DESCRIPTION/SUMMARY

### Action Item:

Consideration of amendment to City Manager's contract.

## RECOMMENDED ACTION

### Motion:

I move that the City Council approve the amendment to the City Manager's contract and authorize the Mayor to sign it.

**TRANSITION ADDENDUM  
TO  
EMPLOYMENT AGREEMENT**

THIS TRANSITION ADDENDUM TO EMPLOYMENT AGREEMENT (this “Addendum”) is made and entered into effective as of February 1, 2012, by and between the City of Bainbridge Island, Washington, a code city of the State of Washington (“City” or “Employer”) and Brenda Bauer (“Employee”).

**RECITALS**

A. The City employs Employee as its City Manager pursuant to the Employment Agreement between Employee and the City, effective May 31, 2010 (“Employment Agreement”).

B. The City and the Employee, however, now desire to go in different directions. In order to do so, the City and the Employee agree to effect a smooth transition as the City searches for a new city manager in accordance with the terms and conditions set forth in the Employment Agreement and in this Addendum.

NOW, THEREFORE, for good and valuable consideration, the receipt, sufficiency and adequacy of which is hereby acknowledged, the parties agree as follows:

1. Notice of the City’s Intent to Search for a New City Manager

- 1.1. Pursuant to Sections 2.C and 6.C of the Employment Agreement, the City provides, and the Employee acknowledges receipt of, notice that the City intends to conduct a search for a replacement city manager.
- 1.2. The notice provided in Section 1.1 of this Addendum is without cause.
- 1.3. Accordingly, under Section 6.C of the Employment Agreement, Employee is entitled to six month’s severance pay and benefits as described in Section 6.E of the Employment Agreement, provided that the Employee signs an additional legal release as required by Section 6.F<sup>1</sup> of the Employment Agreement at the end of her employment, substantially in the form of Section 5 of this Addendum.

2. Transition Period

- 2.1. During the time the City is conducting a search for a replacement city manager and transferring responsibilities to a new city manager (“Transition Period”), Employee shall continue to perform her normal duties and responsibilities as city manager, until such time as she resigns, her

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<sup>1</sup> Section 6.C of the Employment Agreement incorrectly references this release requirement as being in “Section 6.E.”

employment is terminated, or substantial responsibilities are transferred to a new city manager.

- 2.2. The City will commence the search for a replacement city manager during this Transition Period and Employee agrees to cooperate and assist in that search and selection process.
- 2.3. Employee shall further assist the City in effecting a smooth transition of Employee's duties and responsibilities to a new city manager when a new city manager is identified.
- 2.4. The Employee and City will mutually agree on a prioritization of the Employee's work program during the Transition Period.
- 2.5. The Employee and City will mutually agree on a statement regarding this transition and on a statement regarding the search for a new city manager, and these statements will become the official statements by the City and the Employee on the transition and the search for a new city manager.
- 2.6. During the Transition Period and following the end of Employee's employment, the City agrees not to disparage Employee and Employee agrees not to disparage the City, its officials and employees, including written or oral comments or statements that may be reasonably be expected to have an adverse affect in any manner on the conduct of the City's operations or on the business or professional reputation of the City, including its officials and employees, past or present, or on the professional reputation of the Employee.

### 3. Termination Notices

- 3.1. The notice provision of Section 6.A applicable to the Employee in the Employment Agreement will continue to apply. Accordingly, the Employee may resign at any time by providing at least 30 days' advance written notice of the effective date of her resignation. Because the City has already provided notice to the Employee that it intends to conduct a search for a new City Manager, provided the Employee provides 30 days' advance written notice of resignation and signs the additional legal release as required by Section 6.F of the Employment Agreement at the end of her employment, the Employee shall receive the 6 months severance pay and benefits described in Section 1.3 of this Addendum and Section 6.E of the Employment Agreement.
- 3.2. The notice provision of Section 6.A applicable to the City in the Employment Agreement, however, is amended as follows: The City may terminate Employee only upon at least ninety (90) days' advance written notice to the Employee.

#### 4. Compensation and Benefits

- 4.1. Employee shall continue to receive the normal compensation and benefits during the Transition Period, as set forth in the Employment Agreement.
- 4.2. In the event of the Employee's resignation during the Transition Period, the City reserves the right, in its discretion, to earlier terminate Employee's employment and to pay Employee the regular salary and benefits through the effective resignation date, in lieu of her working the entire notice period.
- 4.3. In the event the City, prior to the end of a 90-day notice period, decides to terminate the Employee's employment or transfers substantial responsibilities to a new city manager, the City reserves the right, in its discretion, to either terminate Employee's employment or reduce the hours of her employment and to pay Employee her regular salary and benefits through the 90-day notice period, in lieu of her working, or working full time, during the entire 90-day notice period.
- 4.4. In the event the City terminates Employee's employment or transfers substantial responsibilities to a new city manager prior to the end of the 90-day notice period, the City will, in addition to paying Employee her regular salary and benefits through the 90-day notice period, also add the insurance benefits provided in Sections 4.I and 4.J of the Employment Agreement and add the City's portion of the Employee's pension payments to the salary and other benefits provided in the 6-month severance payments to Employee set forth in Section 6 of the Employment Agreement.
- 4.5. In the event any of the provisions of Section 4 are triggered, Employee will also receive the 6 months severance pay and benefits described in Section 1.3 of this Addendum and Section 6.E of the Employment Agreement.

#### 5. Release of Claims

- 5.1. Employee hereby releases the City and each of its past and present elected officials, officers, agents, employees, representatives, administrators, fiduciaries and attorneys from any and all claims of any kind, known or unknown, that arose on or before this Addendum. The City hereby releases Employee and her spouse, domestic partner, children, heirs, beneficiaries, assigns, and attorneys from any and all claims of any kind, known or unknown, that arose on or before this Addendum. These mutual releases do not apply to any failure to adhere to the terms of this Addendum or claims that accrue after this Addendum is signed.
- 5.2. The claims released include, without limitation, claims of wrongful termination, claims of constructive discharge, claims arising out of agreements, representations or policies related to employment, claims arising

under federal, state or local laws or ordinances prohibiting discrimination or harassment or requiring accommodation on the basis of age, race, color, national origin, religion, sex, disability, marital status, sexual orientation or any other status, claims of failure to accommodate a disability or religious practice, claims for violation of public policy, claims of retaliation, claims for wages or compensation of any kind (including overtime claims), claims of tortious interference with contract or expectancy, claims of fraud or negligent misrepresentation, claims of breach of privacy, defamation claims, claims of intentional or negligent infliction of emotional distress, claims for attorneys' fees or costs, and any other claims that are based on any legal obligations that arise out of or are related to Employee's employment relationship with City.

- 5.3. Employee specifically waives any rights or claims under the Washington Law Against Discrimination (RCW 49.60), the Washington Prohibited Employment Practices Law (RCW 49.44), the Washington Minimum Wage Act (RCW 49.46), the Civil Rights Act of 1964 (including Title VII of that Act), the Equal Pay Act of 1963, the Age Discrimination in Employment Act of 1967 (ADEA), the Americans with Disabilities Act of 1990 (ADA), the Family and Medical Leave Act of 1993 (FMLA), the Employee Retirement Income Security Act of 1974 (ERISA), RCW 35.13.130 - .140, and all similar federal, state and local laws.
- 5.4. Employee and the City agree not to seek any personal recovery (of money damages, injunctive relief or otherwise) for the claims released in this Agreement, either through any complaint to any governmental agency or otherwise. Employee and the City agree never to start any lawsuit or arbitration asserting any of the claims released in this Addendum. Employee and the City represent and warrant that they have not initiated any complaint, charge, lawsuit or arbitration involving any of the claims released in this Addendum.
- 5.5. Employee and the City represent and warrant that they have all necessary authority to enter into this Addendum and that Employee has not transferred any interest in any claims to a spouse/domestic partner, or to any third party.
- 5.6. This Agreement does not affect rights, if any, to receive pension plan benefits, medical plan benefits, life and/or disability insurance benefits under the applicable plan or workers' compensation benefits, or to make claims related to those benefits. This Addendum also does not affect rights, if any, under agreements, bylaw provisions, insurance or otherwise, to be indemnified, defended or held harmless by City in connection with claims that may be asserted against Employee by third parties arising out of Employee's employment by City.
- 5.7. Employee and the City understand that they are releasing potentially unknown claims, and that they have limited knowledge with respect to some

of the claims being released. Employee and the City acknowledge that there is a risk that, after signing this Addendum, they may learn information that might have affected their decision to enter into this Agreement. Employee and the City assume this risk and all other risks of any mistake in entering into this Addendum. Employee and the City agrees that this release is fairly and knowingly made.

5.8. Following the term of the Employment Agreement and this Addendum, the City shall not oppose Employee's application for unemployment compensation benefits.

5.9. Employee acknowledges having received full payment of all compensation of any kind (including wages, salary, vacation, sick leave, and incentive compensation) due to date as a result of employment by City, except as otherwise provided in this Addendum. At the end of her employment, Employee shall receive payment for accrued but unused vacation time pursuant to Section 4.B of the Employment Agreement.

#### 6. No Admission of Liability

6.1. Neither this Agreement nor the payments made under this Agreement are an admission of liability or wrongdoing by the City or the Employee.

#### 7. Cooperation Regarding Other Claims.

7.1. If during the transition period or after the end of Employee's employment any claim is asserted by or against the City as to which Employee has relevant knowledge, Employee will reasonably cooperate with the City in the prosecution or defense of that claim, including by providing truthful information and testimony as reasonably requested by the City. Employee shall be paid as a consultant at a reasonable hourly rate for any such assistance provided after the end of her employment.

#### 8. General Provisions

8.1. Modification. This Agreement may be amended or modified only with the written concurrence of both parties.

8.2. Severability. If any provision or portion of this Addendum is held to be unconstitutional, invalid or unenforceable, the other provisions will remain in effect.

8.3. Headings Not Controlling. The headings in this Addendum are for convenience only and shall not affect the meaning of the terms as set out in the text.

8.4. Governing Law. The Employment Agreement and this Addendum are governed by the laws of the state of Washington that apply to contracts executed and to be performed entirely within the state of Washington.

8.5. Attorneys' Fees. In any dispute involving this Addendum, the party who substantially prevails shall be entitled to recover reasonable attorneys' fees, costs and disbursements from the other party.

9. Independent Legal Counsel

9.1. Employee has had the opportunity to consult with an attorney before signing this agreement.

10. Complete Agreement

10.1. The Employment Agreement and this Addendum are the final and complete agreement between the City and the Employee on all subjects related to the Employee's relations with the City and replaces all prior discussions, representations, agreements, policies and practices.

**CITY OF BAINBRIDGE ISLAND**

**EMPLOYEE**

By: \_\_\_\_\_

\_\_\_\_\_  
Brenda Bauer

Name: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_