

EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT (the "Agreement") is made and entered into as of August 1, 2016, by and between the **CITY OF LOWELL**, a Michigan municipal corporation (the "City"), 301 East Main Street, Lowell, Michigan 49331 and **MICHAEL T. BURNS** ("Mr. Burns") 14436 Vauxhall Drive, Sterling Heights, Michigan 48313.

RECITALS

- A. The City desires to employ the services of Mr. Burns as City Manager of the City.
- B. Mr. Burns desires to be employed as City Manager of the City.
- C. The City and Mr. Burns desire to provide for certain terms and conditions of such employment.

NOW, THEREFORE, in exchange for consideration in, or referred to by, this Agreement the City and Mr. Burns agree as follows:

Section 1. Duties and Responsibilities. The City hereby agrees to employ Mr. Burns full-time and Mr. Burns agrees to be so employed as the City Manager of the City pursuant to the terms and conditions of this Agreement. Mr. Burns agrees to remain in the exclusive employ of the City, unless otherwise specifically agreed to in advance in writing by the City Council, through the term of this Agreement or, if earlier, until the employment relationship is terminated pursuant to the terms of this Agreement. The term "employ" shall not be constructed to include occasional sports officiating or related activities performed on Mr. Burns' own time, so long as his engagement in such activities does not detract from his performance of his duties and responsibilities for the City, if such activities will require Mr. Burns to be absent from the City during regular business hours of the City he shall give advanced notice to the City Council.

As City Manager, Mr. Burns shall perform the duties and responsibilities specified in the City Charter, the City Code of Ordinances and Attachment I attached hereto along with such other legally permissible and proper duties and responsibilities as the City Council may, from time to time assign. Mr. Burns shall undertake such duties and assume such responsibilities at all times in compliance with the International City Managers Association Code of Ethics (the "ICMA Code of Ethics").

Mr. Burns shall maintain a log of the time spent performing the duties as City Manager. The log shall identify the specific duty or duties, the date performed and the time spent performing. Mr. Burns shall make the log available for review by the City Council upon request.

Section 2. Term of Employment. Mr. Burns' term of employment is for an indefinite period beginning September 6, 2016, as provided by the City Charter, subject to the conditions contained herein. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the City Council to terminate the services of Mr. Burns at any time, subject to the City Charter, applicable law and the provisions set forth in this Agreement.

Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of Mr. Burns to resign at any time subject to the provisions set forth in this Agreement.

Section 3. Compensation. During his employment as City Manager, Mr. Burns shall receive a salary of (a) \$72,664.32 (\$89,000 annual amount prorated for the remaining 298 days of the City's 2017 fiscal year) for the period commencing September 6, 2016, and ending June 30, 2017, (b) \$91,670 for the annual period commencing July 1, 2017, and ending June 30, 2018, and (c) \$94,420 for the annual period commencing July 1, 2018, and ending June 30, 2019. This Agreement shall renew annually (for a one year period) on its anniversary date, July 1, 2017, and each year thereafter, unless terminated by the City or Mr. Burns as provided herein. Thereafter, provided Mr. Burns shall remain in the employ of the City as City Manager, the City Council shall annually review Mr. Burns' compensation as a part of his annual performance evaluation and determine Mr. Burns' compensation for the succeeding annual period. The City shall pay Mr. Burns incrementally on the same basis as other City employees, i.e. every two weeks.

Section 4. Termination of Employment. Mr. Burns' employment with the City is "at will" and his employment shall continue so long as the services rendered by him pursuant to this Agreement are satisfactory to the City. Mr. Burns and the City shall have the right to terminate this Agreement as follows:

- a. Mr. Burns may resign as City Manager at any time upon at least 30 days' advanced notice to the City.
- b. Upon the death or disability retirement of Mr. Burns.
- c. The City may terminate the services of Mr. Burns as City Manager without cause. Termination "without cause" shall be defined as any termination which does not constitute "for cause" termination as defined in this Agreement. Further, Mr. Burns shall be deemed terminated "without cause" if the City acts to substantially alter, reduce or diminish any of the material terms and/or conditions of his employment or this Agreement, to reduce or diminish his compensation and/or benefits as defined in this Agreement, or to materially alter the terms and/or conditions of his employment or this Agreement or otherwise force Mr. Burns to resign his employment.
- d. The City may terminate the services of Mr. Burns as City Manager for cause. The term "for cause" shall mean (i) being charged with a high misdemeanor or felony, (ii) a violation of the ICMA Code of Ethics or (iii) a breach of the terms and conditions of this Agreement.

Section 5. Severance Pay. In the event Mr. Burns is terminated by the City while he is willing and able to perform the duties of City Manager, the City agrees, subject to the immediately succeeding sentence, to (a) compensate Mr. Burns for six months' salary which amount shall be paid on an every two week basis during such six months, (b) to pay Mr. Burns for accumulated unused vacation leave and (c) to continue to provide health care coverage or the then established payment in lieu of coverage, at the election of Mr. Burns, then being provided or

offered to other City employees. If during such six month period Mr. Burns shall be employed elsewhere (excluding any part-time employment related to sports officiating or related activities), the amount of salary or wage compensation from such employment shall offset dollar-for-dollar the amount the City is required to pay and the City shall no longer be required to provide health care coverage or make any payment to him in lieu of coverage. In the event Mr. Burns resigns pursuant to Section 4.a. hereof (with or without the required notice) or is terminated by the City Section 4.d. hereof or upon the occurrence of a termination pursuant to Section 4.c. hereof, the City shall have no obligation to pay Mr. Burns the severance payments or to continue the health care benefits or any payment in lieu of coverage.

Section 6. Performance Evaluations; Annual Goals and Objectives. Initially Mr. Burns shall meet with the City Council at the three month and six month anniversary of his employment for an informal review and evaluation of his performance as City Manager. Thereafter, the City Council shall review and evaluate the performance of Mr. Burns as City Manager at least annually in advance of the adoption of the City's annual operating budget beginning with the 2018 City fiscal year budget. Such annual review and evaluation shall be conducted in accordance with specific criteria developed jointly by the City and Mr. Burns. Said criteria may be added to, deleted from or revised as the City may, from time to time, determine in consultation with Mr. Burns. Further, the City Council shall provide Mr. Burns with a written summary of its evaluation and provide an opportunity for Mr. Burns to discuss his evaluation with the City Council.

Annually, the City Council and Mr. Burns shall jointly identify such goals and performance objectives which they determine necessary for the proper operation of the City and in the attainment of the City Council's policy objectives and shall further establish a relative priority among those various goals and objectives. Said goals and objectives shall be reduced to writing and should generally be attainable within the time limitations specified and the City annual operating and capital budgets and appropriations.

Section 7. Vacation Leave. Mr. Burns shall receive 12.5 days' vacation leave, for the employment period commencing September 6, 2016, and ending June 30, 2017, 15 days' vacation leave for the employment period commencing July 1, 2017, and ending June 30, 2018, and 20 days' vacation leave for the employment period commencing July 1, 2018 and ending June 30, 2019. Thereafter, provided he shall not annually receive less than 20 vacation leave days, Mr. Burns shall be entitled to the same vacation leave policy as other full-time management level employees of the City (excluding those employees of the City Department of Light and Power). The use, retention and payment of vacation leave shall be the same as that applicable to all other full-time management level employees of the City.

Section 8. Sick and Leave Time. Mr. Burns shall be entitled to the same sick and leave policy as other full-time management level employees of the City (excluding those employees of the City Department of Light & Power).

Section 9. Retirement Contribution. Effective September 6, 2016, Mr. Burns shall be deemed a member of the City's employee pension system. The City shall pay the amount of the "normal actuarial contribution" as established to the City's employee pension system to a retirement plan of Mr. Burns' choosing.

Section 10. Professional Development. The City shall budget for and pay on behalf of Mr. Burns' dues as required to maintain membership in the Michigan Local Government Management Association (MLGMA), the International Association of City/County Managers (ICMA) and such other organizations approved by the City from time-to-time.

The City further specifically agrees to reimburse Mr. Burns up to \$1,500 of documented expenses related to registration fees, travel, lodging and meals for attendance at the International City Managers Association Annual Conference to be held in Kansas City, Missouri on September 25-28, 2016. The five business days he will be absent from the City shall not count against his vacation leave.

Section 11. Vehicle Allowance. During the term of this Agreement Mr. Burns shall receive a motor vehicle allowance of \$475 per month as compensation for the business use of his personal vehicle.

Section 12. Cell Phone Usage. The City shall provide Mr. Burns with the use of a cellular (or similar) telephone for use in connection with his provision of services pursuant to this Agreement in accordance with the City's telephone usage policy as may be in effect from time to time.

Section 13. General Expenses. The City recognizes that certain expenses of a generally job affiliated nature will be incurred by Mr. Burns and shall be reimbursed to or paid for him for such general expenses that are reasonable and necessary to be incurred in the performance of duties and the acceptance of responsibilities under this Agreement upon receipt of satisfactory document of such expenses.

Section 14. General Conditions of Employment. Except as otherwise specifically provided elsewhere in this Agreement, the City shall provide Mr. Burns with any and all benefits, including, but not limited to, retirement, health insurance, dental insurance, life insurance and short and long term disability benefits that from time to time apply to other management level employees of the City (except those employees of the City's Department of Light and Power).

Section 15. Residency. The City encourages Mr. Burns to reside within the City limits and Mr. Burns agrees to do so once he finds suitable housing within the City. Until then, Mr. Burns agrees that his residence shall not be more than 20 miles from the City limits.

Section 16. Moving Expenses. The City agrees to reimburse Mr. Burns moving expenses from his current residence in the amount not to exceed \$3,000 based on the lowest of two written estimates provided to the City.

Section 17. Indemnification. The City shall defend, save harmless and indemnify Mr. Burns against any tort, professional liability claim or demand or other legal action, whether groundless or otherwise, arising out of any alleged act or omission occurring in the performance of Mr. Burns' duties and/or assumption of responsibilities as City Manager. The City shall actively defend or cause to be defended any such claim or lawsuit and may compromise or settle any such claim or suit (in its discretion) and will pay the amount of any settlement or judgment rendered. The City may withhold said indemnification only in the event that the litigation and/or

claim arises out of illegal or immoral activity committed by Mr. Burns. In such event, the City's obligations under this Section 17 are totally voluntary and within the sole discretion of the City. The obligation of the City under this Section 17 shall continue after Mr. Burns is no longer employed by the City for any claim, demand or action arising during the term of his employment with the City.

Section 18. Bonding. The City shall bear the full cost of any fidelity or other bonds required of Mr. Burns under any law or ordinance.

Section 19. Applicable Law. The validity, construction and enforcement of this Agreement shall be governed and construed in accordance of the laws of the State of Michigan.

Section 20. Additional Provisions. This Agreement shall be subject to the following additional provisions:

a. This Agreement is the entire agreement between the City and Mr. Burns and it supersedes any prior or contemporaneous agreements, understandings or arrangements whether written or oral.

b. This Agreement may not be amended or modified except in writing signed by both the City and Mr. Burns.

c. One or more copies of this Agreement may be executed and any executed copy or any photostatic copy may be used and enforced as an original copy.

d. Any provision of this Agreement which is found to be illegal or void by a court of competent jurisdiction shall be treated as never having been a part of this Agreement and will have no effect on the remaining provisions of this Agreement.

e. This Agreement shall be construed, interpreted and enforced under the laws of the State of Michigan.

IN WITNESS WHEREOF, the City and Mr. Burns have executed this Agreement as of the first day written above.

CITY OF LOWELL

By: _____

Jeff Altoft, Mayor

Attest: _____

Susan Ullery, City Clerk

MICHAEL T. BURNS

A handwritten signature in black ink, consisting of stylized initials 'MTB' followed by a horizontal flourish.

Michael T. Burns

ATTACHMENT I

CITY MANAGER

SUMMARY

Plan and develop diverse city service programs to meet community needs. Organize and direct the operation of city departments and the implementation of city policy. Perform related work as required.

SUPERVISION RECEIVED

Organizational goals and policies are set by the City Council. This employee is responsible for organizing and supervising city operations to attain required objectives and is held accountable for results. The work is usually checked through conferences with the Mayor and the Council, inspections and the review of reports.

SUPERVISION EXERCISED

This employee supervises directly or indirectly through department heads all city employees and functions as the appointing authority in matters related to the selection, development and disciplining of city staff.

RESPONSIBILITIES AND ESSENTIAL DUTIES AND FUNCTIONS

An employee in this position may be called upon to do any or all of the following essential duties: (These examples do not include all of the duties, which the employee may be expected to perform.)

- 1 Plan and develop diverse city service programs to meet community needs.
 - a. Initiate and participate in studies to establish or revise city services and facilities to best meet the needs of the community and to improve the efficiency of city operations.
 - b. Supervise the development of budget forecasts. Develop proposals for funding through city funds and supplemental grants and aid from other sources. Assist the Council in its budget deliberations.
 - c. Advise and assist the City Council in its policy deliberations. Compile agendas and related background materials. Schedule hearings and meetings with individuals. Research information and data. Maintain knowledge of state and federal proposals and policies impacting local government. Recommend policy and courses of action as requested.
 - d. Represent the city at important meetings and conferences related to the negotiation of contracts and agreements and presentation of the official city position on financial and controversial issues.

- e. Investigate or follow up complaints related to city policy and services. Recommend or initiate remedial action as required.
 - f. Coordinate city support in community events and activities.
2. Organize and direct operation of city department; implement policy.
- a. Supervise and participate in organization and staffing of city departments. Initiate or evaluate proposals to reorganize staff and revise operational systems to reduce costs or improve services.
 - b. Supervise/participate in selection, training and evaluation of staff. Supervise administration of employee compensation and benefit programs. Represent management in negotiation of collective bargaining agreements. Implement and enforce city personnel policy.
 - c. Administer city budget as approved by the City Council. Control receipts and expenditures and recommend courses of action to resolve budget imbalances.
 - d. Advise and assist administrative staff and department heads in resolving difficult operational problems. Evaluate progress and performance of departments through periodic conferences, inspections and the review of reports.
 - e. Coordinate city operations with those of other governmental agencies in the area. Participate in the negotiation and administration of mutual assistance agreements and contracts for the delivery of municipal services.
 - f. Coordinate activities of the City Attorney, engineering firms and other consultants and liability insurance carriers.
 - g. Develop long term capital improvement plans for the City. Insure the capital and other objectives are accomplished in a timely and cost effective manner.
 - h. Respond to complaints from the public in a timely and professional manner.
3. Responsible for city planning activities.
- a. Review and recommend site plans for approval to the Planning Commission.
 - b. Meet with developers.
 - c. Assist the Planning Commission and Zoning Board of Appeals.
4. Coordinate economic development activities. Serve as Executive Director of the Downtown Development Authority (DDA).
5. May act as City Clerk.
6. Perform related work as required.