

**EMPLOYMENT AGREEMENT
BETWEEN
THE CITY OF MADISON
AND
MARIBETH L. WITZEL-BEHL**

This Agreement made this 19th day of July, 2011, by and between the City of Madison, a municipal corporation of Dane County, Wisconsin (hereafter, the "CITY") and Maribeth L. Witzel-Behl, a natural person (hereafter, the "City Clerk"),

WITNESSETH;

WHEREAS, the City desires to hire the City Clerk as an employee of the City of Madison to perform the services described herein on its sole behalf as the City Clerk, and

WHEREAS, the City Clerk represents that she possesses the necessary knowledge, skill, and experience to perform such services and is willing to perform such services as the City Clerk, and

WHEREAS, the City Clerk has been duly selected and has been confirmed for appointment to the position of City Clerk by the Common Council of the City of Madison on July 19, 2011, and

WHEREAS, the Common Council of the City has authorized the execution of the Agreement by Resolution No.

NOW, THEREFORE, in consideration of the mutual covenants, terms, and agreements contained in this document, the receipt and sufficiency of which is mutually acknowledged, the parties do agree as follows:

I. CITY CLERK HIRED

The City Clerk is hereby hired as a non-civil service employee of the City, holding the position of City Clerk pursuant to the terms, conditions and provisions of this Agreement. The City Clerk shall have and exercise full authority and discretion as a Department Head within the City's organizational structure and act as Appointing Authority for employees of the City Clerk's Office in accordance with all appropriate City Ordinances and Mayor's Administrative Procedure Memoranda.

II. FUNCTIONS, DUTIES AND RESPONSIBILITIES OF THE CITY CLERK

A. General Responsibilities:

This is responsible managerial work in planning, coordinating and implementing the programs, operations, and services of the City Clerk's Office consistent with governing State Statutes and City Ordinances. This managerial

role shall include: The administration and recording of the proceedings of the Common Council; development and implementation of election processes and procedures; issuance of City licenses and permits; maintenance of a centralized information bureau as the custodian of official City of Madison documents; and related policy development and direction. This department head role requires working in close cooperation with other City managers. Under the direction of the Mayor, the City Clerk shall exercise considerable judgment and discretion in meeting established objectives.

B. Examples of Duties and Responsibilities:

The City Clerk's duties and responsibilities shall include: Plan, coordinate and manage the implementation of the programs, operations and services of the Clerk's Office. Manage professional and administrative staff both directly and through subordinate supervisor. Provide for effective employee relations. Direct the programs, operations, and services of the City Clerk's Office both directly and through a subordinate supervisor. Carry out all related statutory responsibilities and duties of a City Clerk. Serve as Clerk of the Common Council. Direct the preparation of Common Council agendas, minutes and proceedings; maintain the official records of the City and publish all official notices; serve as the recipient of all official communications; administer the City's legislative tracking system (Legistar).

Plan and direct all City elections and supervise the registration of voters. Provide lobby law oversight. Direct the issuance of City licenses and permits; oversee the examination and correction of the assessment roll; prepare and file corrected statements of assessments and exemptions and special district supplement; survey owners of exempt properties to confirm exemptions; prepare report of exempt property; charges back refunded or rescinded taxes; develop and/or facilitate the development of related processes and procedures. Develop and maintain a high level of awareness of related professional standards and the effective integration of evolving technologies and methods. Maintain effective cooperative relationships both internally and with other governmental agencies.

Direct the general administration of the department to include the development and implementation of the departmental budget, personnel administration, etc.

Provide related high-level expertise and consultation to the Mayor and Common Council. Represent the interests of the organization in a wide variety of internal and external settings.

Prepare and present relevant written and oral reports. Perform and/or oversee special studies. Maintain necessary records, files, and statistics.

Perform related work as required.

- C. The City Clerk agrees to perform such functions and duties at a professional level of competence and efficiency. She shall abide by all requirements of the laws of the State of Wisconsin, and of the ordinances, resolutions, regulations, rules and practices of the City which exist at the time of execution of this Agreement or which may, hereafter, be enacted or amended by the State of Wisconsin or the City in the exercise of their lawful authority. In the event a provision of this Agreement directly conflicts with any City ordinance, resolution, regulation, rule or policy, the provision of the Agreement shall control, except that nothing herein shall be interpreted as modifying the obligations or terms of Madison General Ordinance 3.35.
- D. The City Clerk shall devote full time to the duties and responsibilities provided herein and shall engage in no pursuit which interferes with them. The Mayor, however, may approve the City Clerk's reasonable time away from the regular duties and responsibilities provided such time is approved in advance and taken as vacation leave or absence without pay. Further, the Mayor may authorize other limited outside professional activities on City time provided that they are determined to be of benefit to the City and the City Clerk is not compensated for such activities. Nothing herein limits the City Clerk from performing outside services for compensation, provided such outside services have been approved by the Mayor, are not done on City time, and otherwise comply with City ordinances and rules.
- E. The standard City work week is 38.75 hours. However, the City Clerk shall have reasonable flexibility from this standard to accommodate additional time expended outside regular working hours required by attendance at meetings and the like. Such flexibility is not intended to provide or be used as additional vacation or other paid leave.
- F. The City Clerk shall have no right to make contracts or commitments for or on behalf of the City except as preauthorized by statute, ordinance or express written consent of the City.
- G. The City Clerk shall continue to reside within the City of Madison for the duration of this contract.

III. COMPENSATION AND BENEFITS

- A. The City Clerk's initial year's salary base shall be based on an annualized rate of \$85,028, which shall be paid in approximately equal bi-weekly payments according to regular City payroll practices beginning on the effective date of this Agreement. The City Clerk shall receive an additional \$5000 salary increase after one (1) year. Annual salary adjustments including 2011 and thereafter may be made at the Mayor's discretion, subject to approval of the Common Council, as provided in the City's established managerial pay plan. The City Clerk shall not be entitled to receive any additional overtime compensation, compensatory time off, or bonuses.

- B. The City Clerk shall, in addition to the compensation provided in Paragraph A above, and except as otherwise set forth in the Agreement, be entitled to the following benefits:
1. The City Clerk shall receive the same benefits as other professional non-represented employees in Compensation Group 18 as may be provided by the Madison General Ordinances, Resolution of the Common Council, Administrative Procedure Memoranda or other official City action subject to paragraph II. G. above.
 2. In addition to the monetary compensation and benefits provided in paragraph 1, the City Clerk shall be entitled to twenty-five (25) days of vacation in each year of this agreement. Credited but unused vacation in excess of ten (10) days may be carried forward to the succeeding year with the approval of the Mayor. Except as otherwise provided, the City Clerk shall be paid in full for credited but unused vacation existing at the expiration of this Agreement or upon the City Clerk's retirement, when qualified for receipt of Wisconsin Retirement Fund benefits. In the event the City Clerk leaves employment with the City, but does not retire, the City Clerk shall be entitled to payment for one-half (50%) of any unused sick leave to which the City Clerk would otherwise be entitled.
 3. The City Clerk shall be eligible to participate at City expense in professional seminars, conferences, workshops and related meetings consistent with the role as City Clerk and in accordance with applicable Administrative Procedure Memoranda.
 4. The City Clerk shall be reimbursed for relevant professional association dues.

IV. TERM: RENEWAL; NON-RENEWAL; BUYOUT

- A. This Agreement shall take effect on September 19, 2011 and shall expire September 19, 2016, unless sooner terminated as provided herein.
- B. The Mayor in his/her sole discretion, may offer renewal of this Agreement to the City Clerk. The Mayor shall notify the City Clerk in writing of the intent to renew the Agreement at least ninety (90) calendar days before the expiration of this Agreement. Failure to so notify the City Clerk shall extend the term of this Agreement by the time of the delay in actual notification (but in no event for more than ninety (90) days) without change in the City Clerk's anniversary date, and shall not act as a full renewal of the Agreement. Renewal of the Agreement and of its provisions shall be subject to the approval of the Common Council. In the event the Common Council does not renew this Agreement, this Agreement will remain in effect for ninety (90) days following

the non-renewal action by the Common Council or five (5) years from the date of this Agreement, whichever is later.

- C. The Mayor, in his/her sole discretion, may elect not to offer renewal of this Agreement to the City Clerk. In such event, the Mayor shall notify the City Clerk in writing of the intent not to renew the contract at least ninety (90) calendar days before the expiration of this Agreement. Failure to so notify shall extend the term of this Agreement by the time of the delay in actual notification (but in no event for more than ninety (90) days) and shall not act as a renewal of the Agreement. At the expiration of the Agreement, the parties' rights, duties, responsibilities and obligations shall end. However, the City Clerk will, at the sole discretion of the Mayor, be eligible to take a voluntary demotion into any vacant or newly created position for which the City Clerk is qualified.
- D. In the event of non-renewal of this Agreement, under either Paragraphs B or C above, the Mayor may, in his/her sole discretion, terminate this Agreement at any earlier date within ninety (90) days of the expiration of this Agreement, as determined by the Mayor. The early termination is to be accomplished by (a) notifying the City Clerk of the date of early termination, and (b) committing to buy out the balance of this Agreement by paying the City Clerk the balance due under this Agreement in a lump sum, including salary and leave benefits (vacation, floating holiday, paid leave, sick leave) earned or to be earned through the original term of this Agreement, together with payment of the City's share of any health insurance premiums or the provision for such payment through the original term of this Agreement. The buy-out may be for the full period left on this Agreement, or any portion of the final ninety (90) days thereof. If this Agreement is terminated early through the provisions of this buy-out clause, the City Clerk's employment with the City ends as of the date of early termination.

V. PERSONNEL ACTIONS

The City Clerk is subject to the Mayor's supervision and is, during the term of this Agreement, subject to the Mayor's authority to impose discipline on or to discharge the City Clerk as is provided in Sec. 3.53(16) of the Madison General Ordinances, or as may be renumbered or amended hereafter. The City Clerk shall be entitled to the procedural appeal and provisions contained in such subsection or as may be provided other non-represented employees at the time of imposition of suspension or discharge.

VI. CITY OBLIGATIONS AND RIGHTS

The City shall provide staff, equipment, supplies and space, which it deems reasonable, in its sole discretion, for the conduct of the work of the City Clerk. The City retains the sole right to determine the organizational structure and overall functioning of the City Clerk's Office.

VII. REOPENING THE AGREEMENT

Either party may request that the Agreement be reopened for renegotiation if or when the City Clerk's duties or responsibilities change significantly. A "significant" change in the City Clerk's duties is defined as that degree of change in duties and responsibilities that would qualify a civil service position for reclassification pursuant to standard City personnel practices.

Factors that may be considered include the addition or deletion of duties, changes in Departmental/Divisional services or the addition or deletion of programs. If there is no agreement, the original Agreement shall control and shall not be reopened. Agreement changes, if any, and any resulting reclassification of the position shall not be deemed the creation of a new position so as to require competition.

VIII. LIABILITY PROTECTION

The City shall defend and indemnify the City Clerk against and for any and all demands, claims, suits, actions and legal proceedings brought against her in her official capacity or personally for acts performed within the scope of his employment to the extent and only to the extent authorized by the Wisconsin Statutes in effect at the time of the act complained of and as may be provided by any City insurance coverage for employees at such time.

IX. DISCLOSURE OF ECONOMIC INTERESTS

Pursuant to Madison General Ordinance 3.35, the City Clerk shall file a Statement of Economic Interests with the City Clerk's Office within 14 days of her appointment. Each person required to file a Statement of Economic Interests shall annually file with the Clerk's Office an updated Statement no later than April 30 of each year.

X. DOCUMENTS AND MATERIALS PROPERTY OF THE CITY

All of the documents, materials, files, reports, data and the like which the City Clerk prepares or receives while this Agreement is in effect are the sole property of the City of Madison. The City Clerk will not publish any such materials or use them for any research or publication without attribution to the City other than as work performed pursuant to the terms of this Agreement. The Clerk shall complete and file an oath of office pursuant to sec. 62.09(4), Wis. Stats.

XI. APPEARANCE BEFORE ANY CITY ENTITY FOLLOWING SEPARATION FROM EMPLOYMENT

The City Clerk shall be subject to the provisions of Madison General Ordinance 3.35.

XII. TERMINATION OF AGREEMENT

- A. The City Clerk may unilaterally terminate this Agreement during its term. If the City Clerk unilaterally terminates this Agreement on less than ninety (90) calendar days notice in writing to the Mayor, the City Clerk shall forfeit all rights to recover the cash equivalent of accumulated sick leave, unused vacation leave, and all other future benefits. These forfeiture provisions shall not apply if the City Clerk retires from this position (upon qualifying for receipt of benefits pursuant to the Wisconsin Retirement Fund requirements).
- B. The City Clerk's discharge (as provided for in Madison General Ordinance 3.53(16)) during the term of this Agreement shall be deemed a breach of material provision of the Agreement. In the event of a discharge or other breach of a material provision of the Agreement by the City Clerk, the City Clerk shall forfeit all compensation and benefits from the date of notification of the breach by the City. This action shall not impact the receipt of benefits earned during the total period of employment. In the event of a breach of a material provision of this Agreement by the City, the City Clerk shall notify the Mayor in writing within thirty (30) working days, which shall be followed by a meeting of the parties to resolve the alleged breach. In the event the issue is not resolved, the City Clerk may pursue contract remedies.
- C. The City retains the right, in its sole discretion, to abolish the position of City Clerk or to reorganize as it deems in the best interest of the City. In the event the City abolishes the position of City Clerk or reorganizes the Department to the extent that the position of City Clerk is no longer required, this Agreement shall terminate and all rights, duties and obligations of the parties shall mutually end without recourse ninety (90) calendar days after final approval of such abolishment of position or reorganization by the Common Council, except as provided in Madison General Ordinance 3.35.

XIII. NO ASSIGNMENT OR SUBCONTRACT

The City Clerk shall not assign or subcontract any interest of obligation under this Agreement.

XIV. AMENDMENT

This Agreement shall be amended only by written Addendum to Agreement of the parties approved and authorized for execution in the same fashion as this original Agreement.

XV. NO WAIVER

No failure to exercise and no delay in exercising any right, power or remedy on either party's part shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or remedy preclude any other or further exercise thereof, or the exercise of any other right, power, or remedy.

XVI. ENTIRE AGREEMENT

No agreements, oral or written, express or implied, have been made by either party hereto, except as expressly provided herein. All prior agreements and negotiations are superseded hereby. This Agreement and any duly executed addenda or amendments thereto constitute the entire Agreement between the parties hereto.

XVII. SEVERABILITY

In the event any provisions of this Agreement are determined by any court of law to be unconstitutional, illegal, or unenforceable, it is the intention of the parties that all other provisions of this Agreement shall remain in full force and effect.

XVIII. GOVERNING INTENT AND LAW

This Agreement shall be interpreted in the first instance in accordance with the spirit and intent of the Substitute Report of the Human Resources Committee Report approved by the Common Council on August 2, 1988 and shall be controlled, construed and enforced in accordance with the laws of the State of Wisconsin.

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective as of the day and year contained herein.

CITY OF MADISON
A Municipal Corporation

Witness

Paul R. Soglin, Mayor

Witness

City Clerk's Office

Witness

Maribeth L. Witzel-Behl, City Clerk

APPROVED:

APPROVED AS TO FORM:

Finance Director

Michael P. May, City Attorney