

**EMPLOYMENT AGREEMENT
BETWEEN
THE CITY OF MADISON
AND
TOM HEIKKINEN**

This Agreement made this _____ day of _____, _____, by and between the City of Madison, a municipal corporation of Dane County, Wisconsin (hereafter, the "City") and Tom Heikkinen, a natural person (hereafter, the "Water Utility General Manager" or "General Manager").

WITNESSETH;

WHEREAS, the City desires to hire Tom Heikkinen as an employee of the City of Madison to perform the services described herein on its sole behalf as the Water Utility General Manager, and

WHEREAS, Tom Heikkinen represents that he possesses the necessary knowledge, skill, and experience to perform such services and is willing to perform such services as the Water Utility General Manager and;

WHEREAS, Tom Heikkinen has been duly selected and has been confirmed for appointment to the position of Water Utility General Manager by the Common Council of the City of Madison on _____, 2008, 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. WATER UTILITY GENERAL MANAGER HIRED

Tom Heikkinen is hereby hired as a non-civil service employee of the City, holding the position of Water Utility General Manager pursuant to the terms, conditions and provisions of this Agreement. The Water Utility General Manager 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 Water Utility Department in accordance with all appropriate City Ordinances and Mayor's Administrative Procedure Memoranda.

II. FUNCTIONS, DUTIES AND RESPONSIBILITIES OF THE WATER UTILITY GENERAL MANAGER

A. The principal function of the General Manager is that of chief executive of Madison Water Utility responsible for performing the duties generally described in Chapter 13, Madison General Ordinances. The position involves administrative, managerial and professional work in directing the overall operations of the City of Madison's Water Utility. The work involves the financial, technical, maintenance and repair, operational, developmental, public relations, and administrative

functions of the Utility. This position reports to the Board of Water Commissioners and the Mayor, and works as a member of the Public Works team. The work involves the exercise of independent judgment and discretion in carrying out responsibilities under broad policies established by the Water Board, the City Common Council, the Public Service Commission of Wisconsin and the Wisconsin Department of Natural Resources.

- B. The duties of the General Manager include: Overseeing the activities and operations of Madison Water Utility and its staff. Meeting with the Utility Management Team and staff to discuss operational and administrative issues. Monitoring activities; reviewing suggestions, ideas, and potential improvements in operations; and developing, initiating and implementing policy and operational improvements. Developing and implementing rules, regulations and administrative policies for all units. Hiring, directing, monitoring and evaluating a diverse staff of employees, both directly and through subordinates. Functioning as appointing authority, approving payrolls and performing other necessary supervisory functions. Dealing with employee grievances directly or through subordinate staff. Performing related management functions in the areas of personnel, affirmative action and labor relations. Overseeing budget preparation and monitoring. Preparing and presenting budget recommendations to the Board of Water Commissioners, the Mayor and the Common Council. Overseeing bond issues and other financial matters of the Utility. Overseeing the preparation of rate change requests and other related reports and requests to the Public Service Commission and the Wisconsin Department of Natural Resources. Representing the Water Utility at a variety of City and public meetings, and making public presentations as necessary. Ensuring the provision of an adequate and safe water supply for domestic, industrial, and fire protection purposes. Planning for prolonged drought, energy shortages, urban development and expansion and other occurrences which may disrupt/affect water supply or water needs, including maintenance of a Water Utility master plan and acquisition of property to meet future needs. Monitoring and overseeing drinking water quality, water treatment operations, and quality of the distribution system. Coordinating water works services, maintenance functions and other activities with other governmental units, utilities and private sector users. Initiating and defending rate reform, alternative financing methods, customer education, and customer service programs and activities. Functioning as part of the Public Works Management Team. Maintaining awareness of advances in the technological and administrative activities of other utilities, especially water utilities, and maintaining awareness and compliance with applicable federal and State laws, rules and regulations. Encouraging staff to maintain professional expertise and skills. Performing related work as required.
- C. The General Manager agrees to perform such functions and duties at a professional level of competence and efficiency. He 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 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 General Manager shall devote full time to the duties and responsibilities provided herein and shall engage in no pursuit that interferes with them. The Mayor, however, may approve the General Manager'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.
- E. The standard City workweek is 38.75 hours. However, the General Manager 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 General Manager 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 General Manager shall establish and maintain residency in the City of Madison.

III. COMPENSATION AND BENEFITS

- A. The General Manager's initial year's salary shall be based on an annualized rate of \$114,500, which shall be paid in approximately equal biweekly payments according to regular City payroll practices. The effective date of said salary shall be August 4, 2008. Annual salary adjustments beginning in 2009, and thereafter during the term of this Agreement 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 Sec. 3.54(6), MGO. The General Manager shall not be entitled to receive any additional overtime compensation, compensatory time off, or bonuses.
- B. The General Manager 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 General Manager shall receive the same benefits as all other non-represented professional employees in Compensation Group 18 as may be provided and/or modified by the Madison General Ordinances, Resolution of the Common Council, Administrative Procedure Memoranda or other official City action throughout the duration of this agreement.
 - 2. In addition to the monetary compensation and benefits provided in paragraph 1, the General Manager shall be entitled to 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 General Manager shall be paid in full for credited but unused vacation existing at the expiration of this Agreement or upon the General Manager's retirement, when qualified for receipt of Wisconsin Retirement Fund benefits. In the event the General Manager leaves employment with the

City, but does not retire, the General Manager shall be entitled to payment for one-half (50%) of any unused sick leave to which the General Manager would otherwise be entitled.

3.
 - (a) Be eligible to participate at City expense in professional seminars, conferences, workshops and related meetings consistent with the role as General Manager and in accordance with applicable Administrative Procedure Memoranda.
 - (b) Be reimbursed for relevant professional association dues.
 - (c) Be eligible to participate in the City CARS program.
4. The General Manager will be reimbursed for relocation expenses for the General Manager's relocation to the City of Madison in accordance with APM 2-1. The General Manager is responsible for obtaining two (2) bids for the move and submitting same to the City for authorization. Relocation expenses include: Commercial carrier expenses, personal transportation expense, temporary housing, and temporary storage of household items. The maximum reimbursement is \$18,000. This may include travel expenses and lodging for the General Manager and members of his immediate family to make one (1) trip to Madison to look for homes.

If the General Manager resigns during the first twelve (12) months, the City shall be reimbursed for the relocation expenses; up to twenty-four (24) months, the General Manager shall repay 50% of said total relocation expenses.

IV. TERM: RENEWAL OPPORTUNITY; NON-RENEWAL

- A. This Agreement shall take effect on August 4, 2008, and shall expire August 3, 2013 unless sooner terminated as provided herein.
- B. For a period of two (2) years from the effective date of this Agreement, the General Manager shall serve a probationary period. During the probationary period, the General Manager serves at the pleasure of the Mayor and may be removed at will by the Mayor. The Mayor will give the General Manager two (2) weeks notice of removal. Following the probationary period, and for any renewal of this Agreement, the General Manager may only be removed as otherwise provided herein.
- C. The Mayor, in his/her sole discretion, may offer renewal of this Agreement to the General Manager. The Mayor shall notify the General Manager of the intent to renew the Agreement at least ninety (90) calendar days before the expiration of this Agreement. Failure to so notify the General Manager 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 General Manager'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.

- D. The Mayor, in his/her sole discretion, may elect not to offer renewal of this Agreement to the General Manager. In such event, the Mayor shall notify the General Manager 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, after the first renewal of this Agreement, the General Manager 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 General Manager is qualified.
- E. In the event of non-renewal of this Agreement, under either Paragraphs C or D 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 General Manager of the date of early termination, and (b) committing to buy out the balance of this Agreement by paying the General Manager 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 General Manager's employment with the City ends as of the date of early termination.

V. PERSONNEL ACTIONS

The General Manager 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 General Manager as is provided in Sec. 3.53(16) of the Madison General Ordinances, or as may be renumbered or amended hereafter. The General Manager 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 that it deems reasonable, in its sole discretion, for the conduct of the work of the General Manager. The City retains the sole right to determine the organizational structure and overall functioning of the Water Utility Department.

VII. REOPENING THE AGREEMENT

Either party may request that the Agreement be reopened for renegotiation if or when the General Manager's duties or responsibilities change significantly. A "significant" change in the General Manager'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 General Manager against and for any and all demands, claims, suits, actions and legal proceedings brought against him in his 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. Pursuant to Madison General Ordinance 3.35, the General Manager shall file a Statement of Economic Interests with the City Clerk within 14 days of his/her appointment. Each person required to file a Statement of Economic Interests shall annually file with the Clerk 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 General Manager prepares or receives while this Agreement is in effect are the sole property of the City of Madison. The General Manager 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.

XI. APPEARANCE BEFORE ANY CITY ENTITY FOLLOWING SEPARATION FROM EMPLOYMENT

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

XII. TERMINATION OF AGREEMENT

- A. The General Manager may unilaterally terminate this Agreement during its term. If the General Manager unilaterally terminates this Agreement on less than ninety (90) calendar days notice in writing to the Mayor, the General Manager 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 General Manager retires from this position (upon qualifying for receipt of benefits pursuant to the Wisconsin Retirement Fund requirements).

- B. The General Manager'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 General Manager, the General Manager 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 an alleged breach of a material provision of this Agreement by either party, the concerned party shall notify the other party 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 General Manager or the City may pursue contract remedies.
- C. The City retains the right, in its sole discretion, to abolish the position of Water Utility General Manager or to reorganize as it deems in the best interest of the City. In the event the City abolishes the position of Water Utility General Manager or reorganizes the (Department/Division) to the extent that the position of Water Utility General Manager 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 General Manager 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

David Cieslewicz, Mayor

Witness

Maribeth Witzel-Behl, City Clerk

Witness

Tom Heikkinen

APPROVED:

APPROVED AS TO FORM:

Dean Brasser, City Comptroller

Michael May, City Attorney