

**EMPLOYMENT AGREEMENT  
BETWEEN  
THE CITY OF MADISON  
AND  
JAMES A. HESS**

This Agreement made this 13th day of December, 2005, by and between the City of Madison, a municipal corporation of Dane County, Wisconsin (hereafter, the "City") and James A. Hess, a natural person (hereafter, the "Director"),

WITNESSETH;

WHEREAS, James A. Hess has held the position of Director of Monona Terrace since December 4, 2000, and

WHEREAS, the City desires to retain the Director as an employee of the City of Madison to perform the services described herein on its sole behalf as the Monona Terrace Director, and

WHEREAS, James A. Hess represents that he possesses the necessary knowledge, skill, and experience to perform such services and is willing to perform such services as the Monona Terrace Director, and

WHEREAS, James A. Hess has been duly selected and has been confirmed for appointment to the position of Monona Terrace Director by the Common Council of the City of Madison on December 13, 2005, and

WHEREAS, the Common Council of the City has authorized the execution of the Agreement by Resolution No. RES-05-00964.

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. DIRECTOR HIRED**

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

## II. FUNCTIONS, DUTIES AND RESPONSIBILITIES OF THE DIRECTOR

- A. The principal function of the Director is that of the Monona Terrace Director. This is responsible managerial and administrative work in developing, planning, organizing, directing, and controlling the diverse programs and operations of the Monona Terrace Community and Convention Center. This role encompasses significant responsibilities for comprehensive facility operation(s), sales/marketing and events management, tourism operations, community relations, community programming, fostering and maintaining inter-governmental cooperation, and fiscal and human resource planning and management. Work is performed with a high degree of judgment and discretion under the general direction of the Mayor and the oversight of the Monona Terrace Board.
- B. Manage, both directly and through subordinate managers, a diverse professional, technical, secretarial and maintenance staff. Plan and manage the sales/marketing, community programming, tourism, facility operations and the comprehensive activities of the Monona Terrace Community and Convention Center. Develop and implement affirmative action planning and oversee other personnel and labor management activities relating to staff. Plan, develop, justify and administer the annual business plan, sales and marketing plan, and operating and capital budgets of the center. Direct all strategic planning for Monona Terrace. Develop and manage quality control systems for products and services related to convention, community and tourism activities.

Develop and manage an endowment fund. Develop financial support programs for Monona Terrace (new Friends, program, etc.). The Executive Director will serve as an ex-officio member of the Executive Advisory Committee.

Plan, develop, recommend and coordinate policies relating to the management of the Convention Center (e.g., fee structures, space allocation, staff and service levels, facility and program development, public relations/marketing, and labor and vendor contracts, etc.). Ensure that the facility operates in compliance with City, County, State and federal laws, ordinances and rules, and with the City/Dane County agreement governing the Center.

Develop image/branding strategies and manage and control trademarks for Monona Terrace. Develop community-wide usage of the Convention Center facilities for the benefit of citizens and organizations in the area.

Represent the interests of the City and the Convention Center to City, County and State officials, the Monona Terrace Board, potential users, the community, tourists and the public. Plan and direct a continuous program of public information and outreach on the Convention Center and its

activities. Plan and direct promotional programs, fundraising activities and community involvement and usage of the facilities. Provide managerial assistance and advice to all user groups and their staff. Participate in downtown core planning/activities as manager of an anchor project.

Prepare and present periodic reports on Convention Center activities and financial status for the Monona Terrace Board, the Comptroller, the Mayor, County Executive and the Common Council. Develop and promote the tourism program for Monona Terrace. Plan, develop and manage a retail program for the facility, including product development, a gift shop, wholesale operations and a direct mail/Internet program.

Maintain liaison and cooperative working relationships with the Greater Madison Convention and Visitors Bureau or other assigned agency in terms of the long-range marketing of the Convention Center. Develop cooperative relationships and opportunities with other governmental entities and related venues in order to maximize the utilization of public resources.

Develop, manage and administer diverse contractual relationship with GMCVB, vendors, clients and special service entities on behalf of the City. Perform related work as required.

- C. The Director 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 3.47.
- D. The Director 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 Director'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. Any outside work for compensation must be approved by the Mayor, must not be done on City time, and must otherwise comply with all City ordinances and rules.
- E. The standard City work week is 38.75 hours. However, the Director 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 Director shall have no right to make contracts or commitments for or on behalf of the City except as pre-authorized by statute, ordinance or express written consent of the City or the authority of the City/Dane County Agreement and Bylaws of the Monona Terrace Board.
- G. The Director shall be subject to the City's residency requirement.

### III. COMPENSATION AND BENEFITS

- A. The Director's initial year's salary shall be based on an annualized rate of \$108,412, which shall be paid in approximately equal biweekly payments according to regular City payroll practices. The effective date of said salary shall be December 13, 2005. Annual salary adjustments 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, including sec. 3.38(6), MGO. The Director shall not be entitled to receive any additional overtime compensation, compensatory time off, or bonuses.
- B. The Director 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 Director shall receive the same benefits as all other non-represented professional 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.
  - 2. In addition to the monetary compensation and benefits provided in paragraph 1, the Director shall be entitled to twenty-five (25) days of vacation per year. Up to ten (10) days credited but unused vacation may be carried forward to the succeeding year. In rare instances, 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 Director shall be paid in full for credited but unused vacation existing at the expiration of this Agreement or upon the Director's retirement, when qualified for receipt of Wisconsin Retirement Fund benefits.
  - 3. Subject to Monona Terrace budgetary considerations, be eligible to participate at City expense in professional seminars, conferences, workshops, and related meetings consistent with the role as Director and according to applicable Administrative Procedure Memoranda.

4. Subject to Monona Terrace budgetary considerations, receive reimbursement for participation in community events, civic activities, professional engagements and other activities (e.g., Rotary) in which he engages primarily for the benefit and marketing of the Convention Center. Reimbursement shall include admission and subscription fees, membership fees and dues, and other related costs.
5. Participate in relevant professional organizations to be paid by the City for dues of up to \$1,000.
6. Be evaluated at least annually by the Mayor to assess work performance.

#### IV. TERM: RENEWAL OPPORTUNITY; NON-RENEWAL

- A. This Agreement shall take effect on December 13, 2005, and shall expire on December 12, 2010, unless sooner terminated as provided herein.
- B. The Mayor, after review and recommendation by the Monona Terrace Board, may offer renewal of this Agreement to the Director. The Mayor shall notify the Director of the intent to renew the Agreement at least ninety (90) calendar days before the expiration of this Agreement. Failure to so notify the Director 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 Director'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, with the concurrence of the Monona Terrace Board, may elect not to offer renewal of this Agreement to the Director. In such event, the Mayor shall notify the Director 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 Director 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 Director 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 Director of the date of early termination, and (b) committing to buy out the balance of this Agreement by paying the Director 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 Director's employment with the City ends as of the date of early termination.

- E. In all events, if due to exigencies in the renewal or non-renewal of this Agreement, the Mayor in his or her sole discretion, determines that it is necessary to allow the Director to continue in the Director's position beyond the termination date that would otherwise apply under paragraphs A-D above, the Mayor may do allow such an extension, but such an extension of this Agreement may be only for an additional ninety (90) days, and then this Agreement terminates.

#### V. PERSONNEL ACTIONS

The Director 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 Director as is provided in Sec. 3.35(16) of the Madison General Ordinances, or as may be renumbered or amended hereafter. The Director 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, provided, however, that concurrence of the Monona Terrace Board is required before the Director may be discharged.

#### 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 Director. The City retains the sole right to determine the organizational structure and overall functioning of the Monona Terrace Community and Convention Center.

#### VII. REOPENING THE AGREEMENT

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

Factors which 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 Director 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. DOCUMENTS AND MATERIALS PROPERTY OF THE CITY

All of the documents, materials, files, reports, data and the like which the Director prepares or receives while this Agreement is in effect are the sole property of the City of Madison. The Director 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.

#### X. APPEARANCE BEFORE ANY CITY ENTITY FOLLOWING SEPARATION FROM EMPLOYMENT

The Director shall be subject to the provisions of Madison General Ordinance 3.47.

#### XI. TERMINATION OF AGREEMENT

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

B. The Director's discharge (as provided for in Madison General Ordinance 3.35(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 Director, the Director 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 Director 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 Director may pursue contract remedies.

- C. The City retains the right, in its sole discretion, to abolish the position of Monona Terrace Director or to reorganize as it deems in the best interest of the City. In the event the City abolishes the position of Monona Terrace Director or reorganizes the Department/Division to the extent that the position of Monona Terrace Director is no longer required, this Agreement shall terminate and all rights, duties and obligations of the parties shall mutually end without recourse one hundred eighty (180) calendar days after final approval of such abolishment of position or reorganization by the Common Council, except as provided in Madison General Ordinance 3.47.

## XII. NO ASSIGNMENT OR SUBCONTRACT

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

## XIII. 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.

## XIV. 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.

## XV. 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.



XVI. 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.

XVII. 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 J. Cieslewicz, Mayor

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Ray Fisher, City Clerk

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Witness

\_\_\_\_\_  
James A. Hess, Monona Terrace Director

APPROVED:

APPROVED AS TO FORM:

\_\_\_\_\_  
Dean Brassler, City Comptroller

\_\_\_\_\_  
Michael P. May, City Attorney