

EMPLOYMENT AGREEMENT  
BETWEEN  
THE CITY OF MADISON  
AND  
CHRISTOPHER M. KELLEY

This Agreement made this 1<sup>st</sup> day of May, 2012 by and between the City of Madison, a municipal corporation of Dane County, Wisconsin (hereafter, the "CITY") and Christopher M. Kelley, a natural person (hereafter, the "SUPERINTENDENT"),

WITNESSETH;

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

WHEREAS, the Superintendent represents that he possesses the necessary knowledge, skill, and experience to perform such services and is willing to perform such services as the Streets Superintendent, and

WHEREAS, the Superintendent has been duly selected and has been confirmed for appointment to the position of Streets Superintendent by the Common Council of the City of Madison on May 1, 2012; and

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

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. STREETS SUPERINTENDENT HIRED

Christopher M. Kelley is hereby hired as a non-civil service employee of the City, holding the position of Streets Superintendent pursuant to the terms, conditions and provisions of this Agreement. The Streets Superintendent 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 Streets Division in accordance with all appropriate City Ordinances and Mayor's Administrative Procedure Memoranda.

II. FUNCTIONS, DUTIES AND RESPONSIBILITIES OF THE STREETS SUPERINTENDENT

A. General Responsibilities:

This is responsible managerial and professional work in the administration of Streets Division services and activities for the City of Madison. Under the general policy direction of the Mayor, this position has primary responsibility for

planning, organizing, directing, controlling, and managing the programs, activities and staff of the Streets Division, including street repair and maintenance; street cleaning; snow and ice control; solid waste management; and other related programs and activities.

B. Examples of Duties and Responsibilities:

Manage Streets Division supervisory, skilled, semi-skilled and administrative staff. Serve as Appointing Authority for the Streets Division. Hire, train, motivate, supervise, evaluate and discipline staff. Respond to employee grievances. Maintain applicable occupational health and safety standards. Direct the preparation of the division's operating and capital budgets. Justify requests and perform fiscal administration and control, including periodic monitoring of expenditures.

Oversee the solid waste management program including refuse, brush, large item, leaf, and yard waste collection, disposal, and recycling. Direct the street repair and maintenance and street cleaning programs; waste transfer and brush processing operation; snow and ice control; weed control; stump removal; graffiti removal; and other related programs and activities.

Determine division goals and communicate to staff. Develop and/or oversee the development of implementation plans and related work methods, policies and procedures, and monitor and evaluate the results. Plan and implement organizational changes. Oversee program planning activities including activities involving team efforts.

Act as a liaison to the Mayor's Office, other departments and agencies, and the Common Council on issues relating to Streets Division operations. Investigate and/or assign complaints involving division services. Represent the division officially before boards, committees, commissions, etc. Serve as the Executive Secretary of the Solid Waste Advisory Committee. Represent the division on various management committees. Attend public meetings and speak to professional and civic organizations on various phases of the division's work. Represent the division as it relates to requests from various media outlets.

Manage the coordination of divisional activities with other City, County, and State agencies and departments. Prepare periodic management reports.

Perform related work as required.

- C. The Superintendent 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 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 Superintendent 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 Streets Superintendent'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 work week is 38.75 hours. However, the Superintendent 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 Superintendent 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 Superintendent shall continue to reside within the City of Madison for the duration of this contract.

### III. COMPENSATION AND BENEFITS

- A. The Superintendent's initial annual salary shall be based on an annualized rate of \$108,000 which shall be paid in approximately equal bi-weekly payments according to regular City payroll practices beginning on the effective date of this Agreement. Annual salary adjustments 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 Superintendent shall not be entitled to receive any additional overtime compensation, compensatory time off, or bonuses.
- B. The Superintendent 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 Superintendent 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. hereof.
  - 2. In addition, the Superintendent shall be entitled to twenty-seven (27) days of vacation annually during the term of this contract. 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 Superintendent shall be paid in full for credited but unused vacation existing at the expiration of this Agreement or upon the Superintendent's retirement, when qualified for receipt of Wisconsin Retirement Fund benefits. In the event the Director leaves employment with the City, but does not retire, the Director shall also be entitled to payment for one-half (50%) of any unused sick leave to which the Director would otherwise be entitled.

3. The Superintendent shall be eligible to participate at City expense in professional seminars, conferences, workshops and related meetings consistent with the role as Streets Superintendent and in accordance with applicable Administrative Procedure Memoranda.
4. The Superintendent shall be reimbursed for relevant professional association dues.
5. The Superintendent shall be eligible for use of a City personally assigned vehicle.

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

- A. This Agreement shall take effect on April 29, 2012 and shall expire April 29, 2017, unless sooner terminated as provided herein.
- B. For a period of six-months from the effective date of this agreement, the Director shall serve a probationary period. During the probationary period, the Director serves at the pleasure of the Mayor and may be removed at will by the Mayor. The Mayor will give the Director four (4) weeks notice of removal. Following the probationary period, and for any renewal of this Agreement, the Director may only be removed as otherwise provided herein.
- C. The Mayor in his/her sole discretion, may offer renewal of this Agreement to the Superintendent. The Mayor shall notify the Superintendent 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 Superintendent 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 Superintendent'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 Superintendent. In such event, the Mayor shall notify the Superintendent 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 Superintendent 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 Superintendent 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 Superintendent of the date of early termination, and (b) committing to buy out the balance of this Agreement by paying the Superintendent 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 Superintendent's employment with the City ends as of the date of early termination.

## V. PERSONNEL ACTIONS

The Superintendent 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 Superintendent as is provided in Sec. 3.53 (16) of the Madison General Ordinances, or as may be renumbered or amended hereafter. The Superintendent 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 Superintendent. The City retains the sole right to determine the organizational structure and overall functioning of the Streets Division.

## VII. REOPENING THE AGREEMENT

Either party may request that the Agreement be reopened for renegotiation if or when the Superintendent's duties or responsibilities change significantly. A "significant" change in the Superintendent'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 Superintendent 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. DISCLOSURE OF ECONOMIC INTERESTS

Pursuant to Madison General Ordinance 3.35, the Superintendent shall file a Statement of Economic Interests with the City Clerk within 14 days of his 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. APPEARANCE BEFORE ANY CITY ENTITY FOLLOWING SEPARATION FROM EMPLOYMENT

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

#### XI. DOCUMENTS AND MATERIALS PROPERTY OF THE CITY

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

#### XII. TERMINATION OF AGREEMENT

A. The Superintendent may unilaterally terminate this Agreement during its term. If the Superintendent unilaterally terminates this Agreement on less than ninety (90) calendar days notice in writing to the Mayor, the Superintendent 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 Superintendent retires from this position (upon qualifying for receipt of benefits pursuant to the Wisconsin Retirement Fund requirements). If the Director unilaterally terminates this agreement on ninety (90) or more calendar days notice in writing to the Mayor, the Director shall have rights to be paid the cash equivalent of accumulated sick leave, unused vacation, and all other future benefits accumulated at the time of the unilateral termination.

- B. The Superintendent'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 Superintendent, the Superintendent 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 Superintendent 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 Superintendent may pursue contract remedies.
- C. The City retains the right, in its sole discretion, to abolish the position of Superintendent or to reorganize as it deems in the best interest of the City. In the event the City abolishes the position of Streets Superintendent or reorganizes the Division to the extent that the position of Streets Superintendent 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 Superintendent 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

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Witness

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Paul R. Soglin, Mayor

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Witness

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Maribeth L. Witzel-Behl, City Clerk

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Witness

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Christopher M. Kelley, Streets  
Superintendent

APPROVED:

APPROVED AS TO FORM:

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David P. Schmiedicke, Finance Director

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Michael P. May, City Attorney