

**EMPLOYMENT AGREEMENT
BETWEEN
THE CITY OF MADISON
AND
DAVID M. GAWENDA**

This Agreement made this 16th day of April, 2013 by and between the City of Madison, a municipal corporation of Dane County, Wisconsin (hereafter, the "City") and David M. Gawenda, a natural person (hereafter, the "City Treasurer " or "Treasurer").

WITNESSETH;

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

WHEREAS, the Treasurer represents that he possesses the necessary knowledge, skill, and experience to perform such services and is willing to perform such services as the City Treasurer, and;

WHEREAS, Treasurer has been duly selected and has been confirmed for appointment to the position of City Treasurer by the Common Council of the City of Madison on April 16, 2013, 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 TREASURER HIRED

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

II. FUNCTIONS, DUTIES AND RESPONSIBILITIES OF THE CITY TREASURER

A. General Responsibilities:

This is responsible managerial work in planning, coordinating and implementing the programs, operations, and services of the City Treasurer's Office consistent with governing State Statutes and City Ordinances. This managerial position shall direct the collection, deposit, and disbursement of City funds consistent with governing professional standards and the public interest, incorporating oversight of strategic cash management and investment strategies. This department head role requires working in close cooperation with other City managers. Under the direction of the Mayor, the City Treasurer shall exercise considerable judgment and discretion in meeting established objectives.

B. Examples of Duties and Responsibilities:

Plan, coordinate, and manage the implementation of the programs, operations, services and staff of the City Treasurer's Office. Provide for effective employee relations.

Direct the programs, operations, and services of the City Treasurer's Office. Carry out all related statutory responsibilities and duties of City Treasurer. Serve as custodian of all City funds. Continuously update the cash flow budget to reflect changes in income and expenditures. Monitor cash flow and transfer of funds between investment accounts to maximize investment earnings; determine daily cash needs of the City; adjust investment pool balances and other investment accounts to meet cash needs of the City; allocate daily idle funds to either short-term (money market accounts or daily repurchase agreements with the bank) or longer-term investments. Research and execute all investment transactions with brokerage firms; monitor investment maturities and insure these funds are promptly wired to the City's account; calculate interest income of all investments. Act as liaison with banking and brokerage officials. Verify and authorize payment of interest on City bonds.

Work with other City agencies to prepare tax roll (comprised of real estate and personal property taxes, special assessments and charges). Supervise the collection of annual property taxes; settle with other municipalities for their share of taxes. Pursue the collection of delinquent personal property taxes.

Supervise the disbursement of all City funds. Supervise and control the daily collection of all City revenues to insure that they are properly accounted for; monitor, organize, execute and account for investment transactions and the earnings; explain and/or define Treasury operating procedures or policies to property owners, developers, department/division personnel and elected officials.

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 Treasurer agrees to perform such functions and duties at a professional level of competence and efficiency. The Treasurer 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 Madison General Ordinance 3.35.

- D. The Treasurer 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 Treasurer'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 Treasurer is not compensated for such activities. Nothing herein limits the Treasurer 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 workweek is 38.75 hours. However, the Treasurer 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 Treasurer 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 Treasurer shall continue to reside within the City of Madison for the duration of this contract.

III. COMPENSATION AND BENEFITS

- A. The Treasurer's salary shall be based on an annualized rate of \$101,407.28 which shall be paid in approximately equal biweekly payments according to regular City payroll practices. The effective date of said salary shall be May 26, 2013. Annual salary adjustments 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. The Treasurer shall not be entitled to receive any additional overtime compensation, compensatory time off, or bonuses.
- B. The Treasurer 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 Treasurer 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 subject to paragraph II (G) above.
 - 2. The Treasurer shall be entitled to twenty-seven (27) 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 Treasurer shall be paid in full for credited but unused vacation existing at the expiration of this Agreement or upon the Treasurer's retirement, when qualified for receipt of Wisconsin Retirement Fund benefits. In the event the

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

3. The Treasurer shall be eligible to participate at City expense in professional seminars, conferences, workshops and related meetings consistent with the role as Treasurer and in accordance with applicable Administrative Procedure Memoranda.
4. The Treasurer shall be reimbursed for relevant professional association dues.
5. The Treasurer shall be eligible to be a CARS monitor in the City CARS program.

IV. TERM: RENEWAL OPPORTUNITY; NON-RENEWAL

- A. This Agreement shall take effect on May 26, 2013, and shall expire May 25, 2018, unless sooner terminated as provided herein.
- B. The Mayor, in his/her sole discretion, may offer renewal of this Agreement to the Treasurer. The Mayor shall notify the Treasurer of the intent to renew the Agreement at least ninety (90) calendar days before the expiration of this Agreement. Failure to so notify the Treasurer 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 Treasurer'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 Treasurer. In such event, the Mayor shall notify the Treasurer 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. The Treasurer 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 Treasurer 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 Treasurer of the date of early termination, and (b) committing to buy out the balance of this Agreement by paying the Treasurer 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 Treasurer's employment with the City ends as of the date of early termination.

V. PERSONNEL ACTIONS

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

VII. REOPENING THE AGREEMENT

Either party may request that the Agreement be reopened for renegotiation if or when the Treasurer's duties or responsibilities change significantly. A "significant" change in the Treasurer'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 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 Treasurer 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. STATEMENT OF INTEREST FORM

Pursuant to Madison General Ordinance 3.35, the Treasurer 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. DOCUMENTS AND MATERIALS PROPERTY OF THE CITY

All of the documents, materials, files, reports, data and the like which the Treasurer prepares or receives while this Agreement is in effect are the sole property of the City of Madison. The Treasurer 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 Treasurer shall be subject to the provisions of Madison General Ordinance 3.35.

XII. TERMINATION OF AGREEMENT

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

B. The Treasurer'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 Treasurer, the Treasurer 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 Treasurer or the City may pursue contract remedies.

C. The City retains the right, in its sole discretion, to abolish the position of City Treasurer or to reorganize as it deems in the best interest of the City. In the event the City abolishes the position of City Treasurer or reorganizes the (Department/Division) to the extent that the position of City Treasurer 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 Treasurer 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

Maribeth L. Witzel-Behl, City Clerk

Witness

David M. Gawenda, Treasurer

APPROVED:

APPROVED AS TO FORM:

David P. Schmidicke, Finance Director

Michael P. May, City Attorney