

**EMPLOYMENT AGREEMENT
BETWEEN
THE CITY OF MADISON
AND
BRADLEY J. MURPHY**

This Agreement made this 3rd day of August, 2009, by and between the City of Madison, a municipal corporation of Dane County, Wisconsin (hereinafter, the "City") and Bradley J. Murphy, a natural person (hereinafter, the "Director").

WITNESSETH:

WHEREAS, the Director has held the position and performed the duties of the Director of the Planning Division since July 10, 1989; 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 Director of the Planning Division of the City's Department of Planning and Community and Economic Development; and

WHEREAS, the Director has been confirmed for re-appointment to the position of Planning Division Director by the Common Council of the City of Madison on August 3, 2009.

WHEREAS, the Common Council of the City has authorized the execution of this 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. DIRECTOR HIRED

The Director is hereby hired as a non-civil service employee of the City, holding the position of Planning Division 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 Planning Division.

II. FUNCTIONS, DUTIES AND RESPONSIBILITIES OF THE DIRECTOR

- A. This is highly responsible managerial work in directing the strategic, operational, and financial management of the activities of the Planning Division. This Division is primarily responsible for the development of the City's long-range comprehensive master plans, mid-range planning elements, land use plans, special project and physical development planning, current land use planning (development review), preservation planning, neighborhood planning, urban design, City Arts, the department's geographic information system (automated

mapping and shared data systems) and a metropolitan-wide comprehensive and cooperative transportation planning program through the Madison Area Transportation Planning Board (A Metropolitan Planning Organization). This work is characterized by a high degree of independence and initiative in planning, organizing, directing and evaluating the programs and operations of the Planning Division. Work is performed under the direction of the Director of Planning and Community and Economic Development.

B. The Director's duties and responsibilities shall be to:

Plan, organize, direct, and evaluate the programs and operations of the Planning Division. Direct Planning Division staff to develop and maintain the City's Long-Range Comprehensive and Master Plans and mid-range plan elements, neighborhood plans and corridor plans, preservation plans, redevelopment plans and urban design strategies; the review preparation of recommendations on all land use and development, annexation and subdivision requests to the Common Council; the maintenance and update of the City's related development ordinances; and the development and maintenance of the department's geographic information systems, including automated mapping, geographic database and demographic information systems. Maintain current awareness of related planning, land use and zoning laws, policies, practices and programs.

Identify and evaluate program and policy alternatives and formulate recommendations for review by the Plan Commission, Urban Design Commission, Landmarks Commission, Madison Area Transportation Planning Board (A Metropolitan Planning Organization), City Arts Commission, Long-Range Transportation Planning Commission, Ho-Chunk/City of Madison Joint Planning Committee, other standing and ad hoc committees, and the Mayor and Common Council.

Direct the Planning Division staff in providing primary administrative and professional staff support and professional recommendations on land use, annexation, subdivision platting, and other development, programming and policy issues that come before the Common Council, Plan Commission, Urban Design Commission, Landmarks Commission, Madison Area Transportation Planning Board, Long-Range Transportation Planning Commission, City Arts Commission, Ho-Chunk Nation/City of Madison Joint Planning Committee, and other standing committees. Advise, counsel, coordinate and provide professional services to the Common Council, boards and commission, ad hoc committees and other agencies and groups as appropriate. Provide a high degree of professional expertise in interpreting ordinances and City policies to guide the physical development of the City and to carry out the unit's programs.

Exercise independent judgment and initiative in facilitating, advising, consulting, and negotiating with property owners and developers, consultants and realtors, neighborhood associations, community groups, City elected officials and other units of government on land use, development and community planning issues.

Represent the Department and the City in negotiations with other units of government, neighborhood groups, community groups, developers, and property owners on land use, development, jurisdiction and service delivery issues. Maintain necessary liaison with other units of the department, other City departments, other units of government, and other City organizations.

Manage and administer the Planning Division of the Department of Planning and Community and Economic Development. Hire, train, supervise, coordinate, coach and discipline professional, technical and clerical staff. Perform related management functions in the areas of personnel, affirmative action and labor relations.

Develop, administer and monitor the Planning Division budget and establish annual unit performance standards and goals with the Director of the Department of Planning and Community and Economic Development. Prioritize Division work plan tasks, review and evaluate Division programs, services and work procedures and implement changes as appropriate. Prepare periodic status reports and special budgetary, narrative and statistical reports as appropriate.

Serve as project manager for special projects at the direction of the Department Director, the Mayor and Common Council. Coordinate and provide unit and interdepartmental staff support for staff teams and ad hoc committees.

Perform related work as required.

- C. The Director agrees to perform such functions and duties at a professional level of competence and efficiency. The Director 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 this Agreement shall control, except as provided in Madison General Ordinance 3.35.
- D. The Director shall devote full time to the duties and responsibilities provided herein and shall engage in no pursuit that interferes with them. The Director of the Department of Planning and Community and Economic Development may approve the Director's reasonable time away from the regular duties and responsibilities. The Director shall seek the Director of the Department's approval of such time in advance and such time will be taken as vacation leave or absence without pay.
- 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 preauthorized by statute, ordinance or express written consent of the City.
- G. The Director shall be subject to the City's residency requirement.

III. COMPENSATION AND BENEFITS

- A. The Director's initial year's salary base shall be based on an annualized rate of \$116,218.18, which shall be paid in approximately equal bi-weekly payments according to regular City payroll practices. Annual salary adjustments beginning in 2010 may be made at the Mayor's discretion, subject to approval of the Common Council, as provided in the City's established managerial plan. 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 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 Director shall:
 - a. Be entitled to twenty seven (27) days of vacation in each year of this Agreement. Credited but unused vacation may be carried forward to the succeeding year with the approval of the Director of the Department of Planning and Development. Except as otherwise provided, the Director shall be paid in full for credited but unused vacation or upon the Director's retirement, when qualified for receipt of Wisconsin Retirement Fund benefits.
 - b. Be eligible to participate in the City CARS Program.
 - c. 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 and be reimbursed for dues of the following professional organizations: American Planning Association,

American Institute of Certified Planners, Wisconsin Chapter of the
American Planning Association.

IV. TERM; RENEWAL OPPORTUNITY; NON-RENEWAL

- A. This Agreement shall take effect on August 3, 2009, and shall expire on August 2, 2014, unless sooner terminated as provided herein.
- B. The Mayor, in his/her sole discretion, 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, in his/her sole discretion, may elect not to offer renewal of the 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 delay in actual notification (but in no event for more than ninety (90) days) and shall not act as 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 Director of the date of early termination, and (b) committing to buy out the balance of this Agreement by paying to 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, Director's employment with the City ends as of the date of early termination.

V. PERSONNEL ACTIONS

The Director is subject to the Director of the Department of Planning and Community and Economic Development's supervision and is, during the term of this Agreement, subject to the Director of the Department of Planning and Development's authority to impose discipline on or to discharge the Director as is provided in Section 3.53(16) of the Madison General Ordinances, or as may be renumbered or amended hereafter. Discharge of the Director requires the concurrence of the Mayor. The Director shall be entitled to the procedural and appeal 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 Director and of the Planning Division. The City retains the sole right to determine the organizational structure and overall functioning of the Planning Division.

VII. REOPENING THE AGREEMENT

Either party may request that the Agreement be reopened for renegotiation 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 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 Unit 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 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. DISCLOSURE OF ECONOMIC INTERESTS

Pursuant to Madison General Ordinance 3.47, the Planning Division Director 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. APPEARANCE BEFORE ANY CITY ENTITY FOLLOWING SEPARATION FROM EMPLOYMENT

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

XI. 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.

XII. 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 Director of the Department of Planning and Community and Economic Development, 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 resigns the position and qualifies for receipt of benefits pursuant to the Wisconsin Retirement Fund requirements.
- B. The Director's discharge (as provided for in MGO 3.53(16) during the term of this Agreement shall be deemed a breach of a 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 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, either party may pursue contract remedies.
- C. The City retains the right, in its sole discretion, to abolish the position of Planning Division Director or to reorganize as it deems in the best interest of the City. In the event the City abolishes the position of Planning Division Director or reorganizes the Division to an extent that the position of Director 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 Director shall not assign or subcontract any interest or 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 addendums 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.

(signatures on following page)

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

Bradley J. Murphy

Approved:

Approved as to form:

Dean Brasser, City Comptroller

Michael May, City Attorney