

**EMPLOYMENT AGREEMENT
BETWEEN
THE CITY OF MADISON
AND
ROBERT F. PHILLIPS**

This Agreement made this 24th day of February, 2010, by and between the City of Madison, a municipal corporation of Dane County, Wisconsin (hereafter, the "City") and Robert F. Phillips, a natural person (hereafter, the "City Engineer").

WITNESSETH;

WHEREAS, the City desires to hire Robert F. Phillips as an employee of the City of Madison to perform the services described herein on its sole behalf as the City Engineer, and

WHEREAS, Robert F. Phillips represents that he possesses the necessary knowledge, skill, and experience to perform such services and is willing to perform such services as the City Engineer, and

WHEREAS, Robert F. Phillips has been duly selected and has been confirmed for appointment to the position of City Engineer by the Common Council of the City of Madison on February 23rd, 2010, 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 ENGINEER HIRED

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

II. FUNCTIONS, DUTIES AND RESPONSIBILITIES OF THE CITY ENGINEER

The principal function of the City Engineer shall be the management of the Engineering Division.

A. General Responsibilities:

This is highly responsible administrative and professional civil engineering work as the head of the City's Engineering Division. The work involves the planning, directing and implementation of City public works/construction projects, particularly those of the Engineering Division; the supervision of Division staff; the provision of technical

engineering advice and recommendation to City officials; and the performance of related administrative and technical activities. The work is performed with substantial independence in accordance with City policies and regulations and under the administrative review of the Mayor.

B. Examples of Duties and Responsibilities:

Plan, schedule, coordinate and direct the implementation of public works projects, particularly those of the Engineering Division. Furnish engineering services to other City agencies as needed.

Hire, train, direct, monitor and evaluate a diverse staff both directly and through subordinates. Confer with and advise subordinates on high level issues relevant to the design, construction, inspection and scheduling of City streets, sewers, solid waste facilities, water supply facilities, building facilities, and other City public works activities. Review plans, reports and budget estimates.

Provide recommendations and technical engineering advice to City Board and Commissions including the Board of Public Works, Commission on the Environment, and the Board of Estimates regarding services and construction projects administered by the Engineering Division. Attend public meetings, including the Common Council, to speak on various phases of engineering projects. Serve as Executive Secretary to the Board of Public Works.

Meet with representatives of municipalities and County, State and Federal agencies, to schedule and coordinate large transportation, wastewater, mapping and GIS, and building projects which receive funding from outside City sources.

Serve as manager of the Madison Stormwater Utility, Madison Sewer Utility, and the Retired Landfills (Landfill Remediation Fee).

Prepare budgets and rate structures for the Madison Sewer Utility including the management of the maintenance of the public sewerage and drainage system.

Administer the Division including approving payrolls, overseeing budget preparation and monitoring, functioning as Appointment Authority and performing other necessary administrative and supervisory tasks.

Perform related work as required.

- C. The City Engineer agrees to perform such functions and duties at a professional level of competence and efficiency. The City Engineer 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 be in control, except that nothing herein shall be interpreted as modifying the obligations or terms of Madison General Ordinance 3.35.

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

III. COMPENSATION AND BENEFITS

- A. The City Engineer's salary shall be based on an annualized rate of \$122,000, which shall be paid in approximately equal biweekly payments according to regular City payroll practices. The effective date of said salary shall be February 24, 2010, annual salary adjustments beginning in 2011 during the term of this Agreement may be made at the Mayor's discretion and subject to approval of the Common Council, as provided in the City's established managerial pay plan. If the City Engineer successfully completes the two (2) year probationary period described herein, the City Engineer's salary shall be increased by 3% the pay period following successful completion of the two (2) year probationary period. The City Engineer shall not be entitled to receive any additional overtime compensation, compensatory time off, or bonuses.
- B. The City Engineer 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 City Engineer 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 subject to paragraph II. G. hereof.
 - 2. In addition to the monetary compensation and benefits provided in paragraph 1, the City Engineer shall be entitled to twenty-seven (27) days of vacation each year. 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 City Engineer shall be paid in full for credited but unused vacation existing at the expiration of this Agreement or upon the City Engineer retirement, when qualified for receipt of Wisconsin Retirement Fund benefits. In the event the City Engineer leaves employment with the City, but does not retire, the City Engineer shall be entitled to payment for one-half (50%) of any unused sick leave to which the City Engineer would otherwise be entitled.

3. The City Engineer will be eligible to participate at City expense in professional seminars, conferences, workshops, and related meetings consistent with the role as Manager and according to applicable Administrative Procedure Memoranda.
4. The City Engineer will be reimbursed for relevant professional association dues.
5. The City Engineer will be eligible to be a CARS monitor in the City CARS program.
6. The City Engineer will be reimbursed for full participation in an agency membership to the American Public Works Association and have dues and membership fees up to \$250.00 per annum paid to the American Society for Civil Engineers.

IV. TERM: RENEWAL OPPORTUNITY; NON-RENEWAL

- A. This Agreement shall take effect on February 24, 2010, and shall expire February 23, 2015, unless sooner terminated as provided herein.
- B. For a period of two (2) years from the effective date of this agreement, the City Engineer shall serve a probationary period. During the probationary period, the City Engineer serves at the pleasure of the Mayor and may be removed at will by the Mayor. The Mayor will give the City Engineer four (4) weeks' notice of removal. Following the probationary period the City Engineer may only be removed as otherwise provided herein.
- C. The Mayor, in his/her sole discretion, may offer renewal of this Agreement to the City Engineer. The Mayor shall notify the City Engineer of the intent to renew the Agreement at least ninety (90) calendar days before the expiration of this Agreement. Failure to so notify the City Engineer 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 City Engineer'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 City Engineer. In such event, the Mayor shall notify the City Engineer 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 City Engineer 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 City Engineer 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 City Engineer of the date of early termination, and (b) committing to buy out the balance of this Agreement by paying the City Engineer 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 City Engineer's employment with the City ends as of the date of early termination.

V. PERSONNEL ACTIONS

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

VII. REOPENING THE AGREEMENT

Either party may request that the Agreement be reopened for renegotiation if or when the City Engineer's duties or responsibilities change significantly. A "significant" change in the City Engineer'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 City Engineer against and for any and all demands, claims, suits, actions and legal proceedings brought against him/her in his/her official capacity or personally for acts performed within the scope of his /her 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 City Engineer shall file a Statement of Economic Interests with the City Clerk with fourteen (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 City Engineer prepares or receives while this Agreement is in effect are the sole property of the City of Madison. The City Engineer 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 City Engineer shall be subject to the provisions of Madison General Ordinance 3.35.

XII. TERMINATION OF AGREEMENT

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

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

Witness

Maribeth Witzel-Behl, City Clerk

Witness

Robert F. Phillips, City Engineer

APPROVED:

APPROVED AS TO FORM:

Dean Brassler, City Comptroller

Michael P. May, City Attorney