

**EMPLOYMENT AGREEMENT
BETWEEN
THE CITY OF MADISON
AND
MICHAEL P. MAY**

This Agreement made this ___ day of _____, 2009, by and between the City of Madison, a municipal corporation of Dane County, Wisconsin (hereafter, the "City") and Michael P. May, a natural person (hereafter, the "City Attorney").

WITNESSETH;

WHEREAS, the City desires to hire Michael P. May as an employee of the City of Madison to perform the services described herein on its sole behalf as the City Attorney, and

WHEREAS, Michael P. May represents that he possesses the necessary knowledge, skill, and experience to perform such services and is willing to perform such services as the City Attorney, and

WHEREAS, Michael P. May has been duly selected and has been confirmed for appointment to the position of City Attorney by the Common Council of the City of Madison on _____, 2009, 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 ATTORNEY HIRED

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

II. FUNCTIONS, DUTIES AND RESPONSIBILITIES OF THE CITY ATTORNEY

The principal function of the City Attorney shall be the management of the City Attorney's Office.

- A. The City Attorney shall plan, organize, direct, and evaluate all activities of the staff of the City Attorney's Office; provide leadership and direct all activities of the legal staff in prosecuting and defending cases arising out of a violation of City ordinances and/or in which the City is involved as a party; represent the interests of the City in all legal matters before any court or tribunal; and recommend, supervise, and evaluate the services of outside counsel, as appropriate.

The City Attorney shall provide leadership in the development and codification of all legal opinions prepared by the City Attorney's Office; provide high-level expertise and/or provide leadership in consulting with and advising City officials in complex legal matters.

The City Attorney shall serve as official reviser of the Ordinances; manage the development and codification of the City Ordinances; manage the preparation of all resolutions, deeds, contracts, and other legal documents and/or review all such documents for appropriate form and legality; pass upon titles; oversee all proceedings relating to the issuance of general obligation and revenue bonds, the condemnation of lands and properties, and the annexation and/or acquisition of territory; and perform and/or oversee the legal and procedural aspects relating to economic development and City financing and other complex projects.

The City Attorney shall attend Common Council meetings and serve as general counsel and parliamentarian for the City of Madison.

The City Attorney shall manage the operations of the City Attorney's Office, including the development and administration of the budget, the development and administration of office policies and the general administration of the office.

The City Attorney shall serve on and participate in and/or lead teams, committees, and problem solving efforts, as assigned by the Mayor.

The City Attorney shall perform related work as required.

- B. The City Attorney agrees to perform such functions and duties at a professional level of competence and efficiency. The City Attorney 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.

- C. The City Attorney 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 Attorney'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.
- D. The standard City work week is 38.75 hours. However, the City Attorney 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.
- E. The City Attorney 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.
- F. The City Attorney shall be subject to the City's residency requirement.

III. COMPENSATION AND BENEFITS

- A. The City Attorney's initial year's salary shall be based on an annualized rate of \$139,391.72, which shall be paid in approximately equal biweekly payments according to regular City payroll practices. The effective date of said salary shall be May 17, 2009. 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 City Attorney shall not be entitled to receive any additional overtime compensation, compensatory time off, or bonuses.
- B. The City Attorney shall, in addition to the compensation provided in Paragraph A above, and except as otherwise set forth in this Agreement, be entitled to the following benefits:
 - 1. The City Attorney 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 in the following areas: Rights provided disabled employees, holiday, military, jury and bereavement leave, and paid time off; "floating holidays", life insurance options; option to participate in the dental program; sick leave accumulation, annual sick leave payoff and payoff and conversion upon retirement (subject to the forfeiture provisions contained in this Agreement); wage insurance options; Wisconsin Retirement Fund; deferred compensation options; health insurance options; worker's compensation and worker's compensation supplement; unemployment compensation; participation in the

CARS programs; pre-tax "flexible spending" program options; and authorized leaves without compensation.

2. In addition to the monetary compensation and benefits provided in paragraph 1, the City Attorney shall be entitled to twenty-seven (27) days of vacation in each year of this agreement. 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 City Attorney shall be paid in full for credited but unused vacation existing at the expiration of this Agreement or upon the City Attorney's retirement, when qualified for receipt of Wisconsin Retirement Fund benefits.
3. The City Attorney shall be entitled to participate, at City expense, in professional seminars, workshops, and related meetings consistent with the role of City Attorney and according to applicable Administrative Procedure Memoranda, including attendance at 2 (two) annual conferences of the International Municipal Lawyers Association and attendance at the State Bar of Wisconsin Annual convention and the League of Municipalities Municipal Attorneys Institute legal seminars.
4. Membership in the Wisconsin State Bar and Section, American Bar Association and Dane County Bar Association dues will be paid at City expense.
5. Be evaluated at least annually by the Mayor to assess work performance. This feedback shall include the establishment of goals and assessment of challenges and accomplishments.
6. The City Attorney shall be reimbursed for relevant professional association dues.

IV. TERM: RENEWAL OPPORTUNITY; NON-RENEWAL

- A. This Agreement shall take effect on May 17, 2009, and shall expire on May 16, 2014, unless sooner terminated as provided herein.
- B. The Mayor, in his/her sole discretion, may offer renewal of this Agreement to the City Attorney. The Mayor shall notify the City Attorney 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 Attorney 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 Attorney's anniversary date, and shall not act as a full renewal of this Agreement. Renewal of this 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 City Attorney. In such event, the Mayor shall notify the City Attorney 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 this Agreement. At the expiration of this Agreement, the parties' rights, duties, responsibilities and obligations shall end. However, after the first renewal of this Agreement, the City Attorney 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 Attorney is qualified.

V. PERSONNEL ACTIONS

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

VII. REOPENING THE AGREEMENT

Either party may request that the Agreement be reopened for renegotiation if or when the City Attorney's duties or responsibilities change significantly. A "significant" change in the City Attorney'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 City Attorney 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 City Attorney prepares or receives while this Agreement is in effect are the sole property of the City of Madison. The City Attorney 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. TERMINATION OF AGREEMENT

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

If the City Attorney unilaterally terminates this agreement on 90 or more calendar days notice in writing to the Mayor, the City Attorney shall have rights to be paid the cash equivalent of accumulated sick leave, unused vacation leave, and all other future benefits.

B. The City Attorney'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 Attorney, the City Attorney 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 Attorney may pursue contract remedies.

- C. The City retains the right, in its sole discretion, to abolish the position of City Attorney or to reorganize as it deems in the best interest of the City. In the event the City abolishes the position of City Attorney or reorganizes the City Attorney's Office to the extent that the position of City Attorney 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 3.35.

XI. NO ASSIGNMENT OR SUBCONTRACT

The City Attorney shall not assign or subcontract any interest or obligation under this Agreement.

XII. 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.

XIII. 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.

XIV. 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.

XV. 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.

XVI. 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

Michael P. May, City Attorney

APPROVED:

APPROVED AS TO FORM:

Dean Brassler, City Comptroller

Michael P. May, City Attorney