

## CITY MANAGER EMPLOYMENT AGREEMENT

This City Manager Employment Agreement ("Agreement") is entered into this 4<sup>th</sup> day of Jan., 2015~~6~~ by and between the City of Hamilton, Ohio, a chartered municipal corporation organized under the laws of the State of Ohio, (hereinafter "City") and Joshua A. Smith (hereinafter "Manager").

WHEREAS, the Charter of the City of Hamilton, Ohio vests the administrative and executive powers of government in the position of City Manager; and

WHEREAS, the City has employed the services of Manager as City Manager of Hamilton, Ohio as provided in Article V of the Charter of the City of Hamilton; and

WHEREAS, Manager's employment with the City has been pursuant to the terms of that certain City Manager Employment Agreement dated as of July 27, 2010, as amended by that certain First Amendment dated as of May 8, 2013, and that certain Second Amendment (collectively, the "Original Agreement"); and

WHEREAS, it is the desire of the City Council: (1) to retain the services of Manager and to provide inducement for him to remain in such employment, (2) to make possible full work productivity by assuring Manager's morale and peace of mind with respect to future security, (3) to act as a deterrent against malfeasance or dishonesty for personal gain or otherwise on the part of the Manager, and (4) to provide a just means for terminating Manager's services at such time as he may be unable fully to discharge his duties or when City may desire to otherwise terminate his employment; and

WHEREAS, both parties desire to express their mutual intent to commit to a continuing employment relationship for an indefinite period in accordance with the parameters of the City Charter;

NOW, THEREFORE, the parties enter into this Agreement in exchange for and in consideration of the mutual promises and covenants contained herein.

### SECTION 1 – DUTIES

This Agreement supersedes and amends the Original Agreement in the entirety and is effective as of September 2, 2015 (the "Effective Date"). As of the Effective Date, the City employs Manager on the terms and conditions stated below to act as City Manager for the City of Hamilton, Ohio. Manager shall satisfactorily perform the duties of City Manager as more fully described in Article V and elsewhere in the Charter of the City of Hamilton, Ohio, and shall perform other legally permissible and proper duties and functions as the City Council shall from time to time assign.

## **SECTION 2 – TERM**

A. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the City Council to terminate the services of Manager at any time as that right is set forth in Section 5.01 of the Hamilton City Charter, subject only to the City's compliance with those termination and severance pay provisions set forth in Section 3 of this Agreement.

B. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the Manager to resign at any time from his position with the City, subject only to the provisions set forth in Section 3 of this Agreement.

C. Employment under this Agreement shall continue until terminated by either party as provided herein. Notice of termination by either party shall be in writing delivered by certified mail, return receipt requested, or personal delivery. Written notice of termination by the City shall require the signatures of a majority of the members of Council.

## **SECTION 3 – TERMINATION AND SEVERANCE PAY**

A. In the event Manager is terminated by the City Council during such time that Manager is willing and able to perform the duties of City Manager, then in that event the City agrees to pay Manager a lump sum cash payment equal to twelve (12) months' aggregate salary at the then current rate of pay and provide twelve (12) months of family health and dental benefits coverage, if desired by the Manager; twelve (12) months of life insurance coverage and deferred compensation, as well as a twelve (12)-month IRA contribution; twelve (12) months of car allowance; payment of accrued but unused vacation leave; and payment of one hundred (100%) percent of accumulated sick leave up to a maximum of one thousand two hundred (1,200) hours.

B. Provided however, that in the event Manager is terminated because of his conviction or plea of nolo contendere of any illegal act involving personal gain to him or moral turpitude on his part, then the City shall have no obligation to provide notice of termination or pay the compensation or benefits value as designated in this paragraph. In the event that Manager is terminated by City because he is charged with an illegal act involving personal gain to him or moral turpitude on his part, all severance payments set forth in this paragraph shall be paid to an escrow account until such time as the criminal charges are resolved. If the Manager is convicted, the City shall have no obligation to pay the compensation or benefits as designated in this paragraph. Furthermore, in the event that Manager is terminated by City as a result of misfeasance, malfeasance or nonfeasance of Manager either related or unrelated to criminal matters, all severance payments designated in this paragraph are to be paid to an escrow account until judicial determination that the termination was based upon reliable and probative evidence, at which point the City shall have no obligation to pay such compensation to Manager.

C. For purposes of this Agreement, termination shall be considered to have occurred when:

1. The majority of the City Council votes to terminate the Manager at a duly authorized public meeting for reasons not included in Section 3.B. above;

2. If the City, citizens or City Council acts to amend any provisions of the enabling legislation pertaining to the role, powers, duties, authority, responsibilities of the Manager's position that substantially changes the form of government, the Manager shall have the right to declare such amendments constitute termination;

3. If the City reduces the base salary, compensation, any other financial benefit or other benefits of the Manager, unless such reduction is applied in no greater percentage than the average reduction of all department heads, such action shall constitute a breach of this Agreement and will be regarded as termination;

4. If the Manager resigns following an offer to accept his resignation, whether formal or informal, by the majority of the City Council, then the Manager may declare termination as of the date of the suggestion; or

5. Breach of contract declared by either party with a thirty (30) day cure period for either Manager or City.

D. In the event Manager voluntarily resigns his position with the City, then Manager shall give the City a minimum of thirty (30) days advance written notice unless the parties agree otherwise.

#### **SECTION 4 – SALARY**

City agrees to pay Manager for his services rendered pursuant hereto an annual base salary of One Hundred Sixty Thousand Dollars (\$160,000.00).

In addition, City agrees to increase said base salary and/or other benefits of Manager in such amounts and to such an extent as the City Council may determine that it is desirable to do so on the basis of an annual salary review conducted pursuant to the provisions of Section 13 of this Agreement, or otherwise. City may reduce the base salary and/or other benefits of Manager in the same amount as a reduction across-the-board for all other City department heads without triggering the cash payment requirements set forth in Section 3, above.

#### **SECTION 5 – HOURS OF WORK AND OUTSIDE ACTIVITIES**

It is recognized that Manager must devote a great deal of his time outside normal work hours to business of the City, and to that end, and from time to time, Manager will be allowed to take such administrative leave as City Council shall deem appropriate during said normal office hours, provided that Manager fulfills his duties as Manager. The position of City Manager is exempt from overtime as outlined in the Fair Labor Standards Act.

Manager shall be permitted to engage in limited teaching or other business opportunities so long as those engagements do not interfere with or create a conflict of interest with his

responsibilities under this Agreement. In any such instance, Manager shall advise the Council of the nature and expected duration of the activity.

#### **SECTION 6 – AUTOMOBILE**

During Manager's employ, Manager shall provide a suitable personal vehicle for his use in conducting City business. All costs of providing and operating that personal vehicle, including but not limited to, fuel, maintenance and insurance shall be paid by the Manager. City shall be named as an additional insured on the insurance policy provided by the Manager in an amount of at least One Million Dollars (\$1,000,000.00) combined single limit coverage, said policy to be acceptable to the City Law Director. The cost, if any, of naming the City as an additional insured on said policy shall be paid by the City. City shall pay the Manager the sum of Six Hundred (\$600.00) Dollars per month for the provision and use of the personal vehicle of Manager's as provided herein. Such allowance may be adjusted periodically as agreed between the parties. The City will reimburse the Manager at the maximum applicable IRS rate while traveling outside of Butler County on City business.

#### **SECTION 7 – DUES AND SUBSCRIPTIONS**

City agrees to budget and pay the professional dues and subscriptions of Manager necessary for his continuation and full participation in national, regional, state and local City Manager associations as well as to pay the dues for Rotary Club membership. Dues and subscriptions for other organizations necessary and desirable for his continued professional participation, growth and advancement, and for the good of the City may be approved by City Council.

#### **SECTION 8 – PROFESSIONAL DEVELOPMENT**

A. City hereby agrees to budget and to pay the travel and subsistence expenses of Manager for professional and official travel, meetings and occasions adequate to continue the professional development of Manager and to adequately pursue necessary official and other functions for the City, including, but not limited to, the Annual Conference of the International City Management Association, the Ohio City Management Association, the Ohio Municipal League, and such other national, regional, state and local governmental groups and committees thereof of which Manager serves as a member.

B. City also agrees to budget and pay for the travel and subsistence expenses of Manager for short courses, institutes and seminars that are for his professional development and for the good of the City, not to exceed Seven Thousand Five Hundred and 00/100 (\$7,500.00) Dollars annually.

C. Payment under this Section shall be in accordance with applicable City ordinances and attendance at meetings or seminars involving overnight stay or travel other than by automobile and continuing education at the college or university level must receive prior notification to the Council.

## **SECTION 9 – VACATION AND SICK LEAVE**

Manager shall be entitled to the supplemental sick leave benefit set forth in Section 181.02 of the Codified Ordinances of the City of Hamilton, Ohio. Manager shall be entitled to six (6) weeks of vacation per year and shall earn sick leave at the rate set forth in applicable City ordinances. Manager shall be able to use these leaves in accordance with applicable City ordinances and policies.

In the event that Manager terminates his City employment at his own initiative, the pay due and owing the Manager for accrued but unused sick leave shall be twenty-five (25%) percent of the Manager's accumulated sick leave at his current salary up to a maximum accumulation of one thousand two hundred (1,200) hours, and accrued but unused vacation leave shall be fully paid to Manager.

## **SECTION 10 – HEALTH, DENTAL AND OTHER BENEFITS**

City agrees to provide family dental, hospitalization, surgical, and comprehensive medical benefits for Manager and his qualifying dependents equal to and upon the same terms as are provided other full-time City employees who are not represented by a collective bargaining agreement.

City agrees to provide life insurance equal to and upon the same terms as is provided to other full-time City employees who are not represented by a collective bargaining agreement.

## **SECTION 11 – RETIREMENT**

City agrees to make regular periodic payments to the State of Ohio Public Employees Retirement System in the amount required by law and as provided for other full-time employees.

## **SECTION 12 – OTHER BENEFITS**

A. Deferred Compensation. In addition to the compensation otherwise provided for in this Agreement, the City agrees to pay into a deferred compensation fund as designated by Manager on the first business day of each year on Manager's behalf a sum equal to the maximum contribution permitted to such funds as limited by Internal Revenue Service regulations.

B. Traditional Individual Retirement Account (IRA). City agrees to pay Manager on the first business day of each year a sum equal to the maximum contribution allowable (on a non tax-deductible basis) to a traditional IRA to be deposited by Manager in a traditional IRA account of his choosing.

C. Ohio Public Employees Retirement System Contribution Pick Up. City agrees to "pick up" the statutorily required contributions to the Ohio Public Employees Retirement System (OPERS). This "pick up" by the City is and shall be designated as public employee contributions and shall be in lieu of contributions to OPERS by the Manager (commonly referred to as the fringe benefit employer pick up).

**SECTION 13 – ANNUAL EVALUATION**

City and Manager agree to an annual evaluation based upon mutually established goals, said evaluation to be accomplished at such times as Council shall determine, but at least annually. The process at a minimum shall include the opportunity for both parties to: (1) prepare an evaluation, (2) meet and discuss the evaluation, and (3) summarize the evaluation results.

The current methodology for evaluation is an ICMA-accepted evaluation format applied by soliciting numeric scores from all seven (7) members of City Council. If the average of the numeric scores is equal to or greater than 4.0 but no more than 4.5, City shall offer Manager, and Manager may accept, a bonus of three (3%) percent of Manager’s then effective base salary. If the average of the numeric scores is greater than 4.5, City shall offer Manager, and Manager may accept, a bonus of five (5%) percent of Manager’s then effective base salary. If the average of the numeric scores is less than 4.0, no bonus shall be paid. If a bonus is offered and accepted, it shall be paid on January 15<sup>th</sup> of the year following the evaluation and shall be subject to all usual and customary payroll deductions. City may, in its discretion, modify the evaluation format from time to time.

**SECTION 14 – OPERS FORGIVABLE LOAN**

Manager desires to purchase five (5) years of retirement service from OPERS in connection with his prior service in other jurisdictions, at a cost to him of One Hundred Fourteen Thousand Seven Hundred Forty-Four and 00/100 (\$114,744.00) Dollars (the “OPERS Contribution”). City has agreed to loan the OPERS Contribution to Manager, without interest (the “Loan”) for the sole purpose of making the OPERS Contribution, which Manager agrees to make within ten (10) days of the City’s making of the Loan to the Manager. City will forgive the following percentages of the original balance of the Loan on the following dates:

<b><u>Percentage Forgiven</u></b>	<b><u>Date</u></b>
10%	September 3, 2016
15%	September 3, 2017
20%	September 3, 2018
25%	September 3, 2019
30%	September 3, 2020

If Manager is no longer employed with the City, prior to September 3, 2020, Manager shall immediately repay the then outstanding balance of the Loan (reduced by the applicable percentage above) to City. There shall be no proration based upon partial years. For example, if Manager voluntarily resigns on January 1, 2019, Manager shall immediately pay fifty (50%) percent of the Loan [or Fifty-Seven Thousand Three Hundred Seventy-Two and 00/100 (\$57,372.00) Dollars] to City. City may offset the unforgiven balance of the Loan against other sums then owing to Manager. Notwithstanding the provisions of this paragraph to the contrary, if Manager’s employment is terminated for any reason set forth in Section 3.C. (except with respect to Section 3.C.5., only if City is the breaching party), the entire remaining balance of the

Loan at such time shall immediately be forgiven. In no event shall the entire remaining balance be forgiven if Manager voluntarily resigns or is terminated for cause (including, among other things, those reasons described in Section 3.B.) or if Manager is no longer employed by the City for any reason not set forth in Section 3.C.5.

The City shall maintain a term life insurance policy on the life of the Manager, with the City as the beneficiary, in an amount sufficient to pay the outstanding balance of the Loan in the event of Manager's death. Manager shall cooperate in connection with the same, including, but not limited to, any consents to being insured and any required medical exam. In the event of Manager's death, Manager's estate and heirs shall not be responsible for repayment of the Loan.

#### **SECTION 15 – INDEMNIFICATION**

The City agrees that it shall defend, hold harmless and indemnify the Manager from any and all demands, claims, suits, actions, and legal proceedings brought against the Manager in his individual capacity or in his official capacity as agent and employee of the City pursuant to applicable City ordinances and state statutes. This indemnification includes all civil demands, claims, suits and legal proceedings, whether threatened or instituted, and also includes criminal legal proceedings, whether threatened or instituted, that arise from the acts or omissions of the Manager while acting within the scope of the Manager's employment with the City and in the good faith belief that such conduct was lawful and in the best interest of the City. This paragraph does not include defense or indemnification for exemplary or punitive damages and does not include defense or indemnification for any criminal legal proceedings wherein the criminal act or omission alleged involves a culpable mental state on the part of the Manager which is, or is equivalent to, "purposely" or "knowingly" or "recklessly" as those terms are defined in Ohio Revised Code Chapter 2901 as may be amended from time to time. Notwithstanding the above, the City shall not be required to indemnify Manager to the extent that Manager is covered by a policy of insurance for civil liability purchased by the City. To the extent that Chapter 185 of the Hamilton Codified Ordinances extends indemnification benefits to City employees in addition to those set forth in this Agreement, then those additional indemnification benefits shall likewise extend to the Manager. In no case will individual members of Council be personally liable for indemnifying the Manager against such demands, claims, suits, actions and legal proceedings. It is expressly recognized between the parties to this Agreement that the duty to provide for the defense of the Manager also applies to civil actions, administrative proceedings or legal proceedings threatened or commenced by or on behalf of the State or other political subdivision. It is further expressly recognized that the City has the right to settle or compromise unless said compromise or settlement is of a personal nature to Manager.

#### **SECTION 16 – OTHER TERMS AND CONDITIONS OF EMPLOYMENT**

The Council, after consultation with the Manager, shall fix any such other terms and conditions of employment as it may determine from time to time, relating to the performance of Manager, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this Agreement, the Charter of the City of Hamilton, Ohio or any other applicable law.

## **SECTION 17 – GENERAL PROVISIONS**

A. The text herein shall constitute the entire agreement between the parties and may only be amended by future written agreement of the parties. This Agreement sets forth all compensation and benefits of the Manager, and no other compensation or benefits are contemplated by this Agreement including those set forth in Chapter 181 of the Codified Ordinances of the City of Hamilton payable to other City employees. To the extent that any provisions in this Agreement conflict with ordinances of the City, this Agreement and the ordinance adopted to give this Agreement effect shall supersede ordinances in conflict thereto.

B. This Agreement shall be binding upon and inure to the benefit of the heirs, personal representatives, successors and assigns of the parties.

C. This Agreement shall be effective upon its execution by Manager and the City's representatives.

D. If any provision, or any portion thereof, contained in this Agreement is held to be unconstitutional, invalid or unenforceable, the remainder of this Agreement, or portion thereof, shall be deemed severable, shall not be affected and shall remain in full force and effect.

E. In the event that a disagreement arises between the parties concerning the application or interpretation of the terms of this Agreement and Manager prevails in a legal action brought in a court of competent jurisdiction to enforce the provisions of this Agreement, City shall reimburse Manager for incurred reasonable and necessary expenses of such litigation, including, but not limited to, attorney fees and court costs. The parties may also agree to mediation of any such disagreement concerning the application or interpretation of the terms of this Agreement.

F. This Agreement shall be construed and enforced in accordance with the laws of the state of Ohio.

G. This Agreement is expressly conditioned upon Manager's ability to perform the essential functions of the position of City Manager.

If the Manager is unable to perform the duties of his employment by reason of illness or incapacity for a period of more than sixty (60) days, then the City may terminate this Agreement and Manager's employment without any obligation on the City's part to comply with those termination and severance pay provisions set forth in Section 3.A. of this Agreement.

H. If Manager dies during the term of employment, City shall pay to the estate of Manager or Manager's designee (as designated by Manager in a writing signed by Manager and delivered to City prior to his death) the compensation which would otherwise be payable to the Manager up to the date on which his death occurs; provided, however, that the City shall have no obligation to comply with those termination and severance pay provisions set forth in Section 3.A. of this Agreement.

IN WITNESS WHEREOF, the City of Hamilton, Ohio has caused this Agreement to be signed and executed in these presents in triplicate on the date and year first stated above.

Signed in the presence of:

City of Hamilton, Ohio

Genie M. Churchman

By: Patrick Moeller  
Mayor Patrick Moeller

Genie M. Churchman

By: Robert Wile  
Vice Mayor Robert Wile

Genie M. Churchman

Robert Brown  
Councilmember Robert Brown

Genie M. Churchman

Timothy Naab  
Councilmember Timothy Naab

Genie M. Churchman

Carla Fiehrer  
Councilmember Carla Fiehrer

Joshua P. Merce

Archie Johnson  
Councilmember Archie Johnson

Joshua P. Merce

Kathleen Klink  
Councilmember Kathleen Klink

Amy K. Bach

Joshua A. Smith  
Joshua A. Smith  
1/4/16

Approved as to Form:

Heather Sanderson Lewis

Heather Sanderson Lewis,  
City Law Director