

**CITY OF CARBONDALE, ILLINOIS
CITY MANAGER EMPLOYMENT AGREEMENT**

THIS EMPLOYMENT AGREEMENT made and entered into by and between the City of Carbondale, Illinois, a municipal corporation, 200 South Illinois Avenue, Carbondale, Illinois, hereinafter referred to as "Employer" and Kevin Baity, hereinafter referred to as "Employee".

RECITALS:

WHEREAS, the City of Carbondale, Illinois, as Employer, is a council-manager form of government pursuant to the laws of the State of Illinois; and

WHEREAS, the Employer desires to employ the services of Employee as City Manager of the Employer under the terms and conditions provided for in Carbondale Revised Code, Sections 1-3A-1 through 1-3A-13; and

WHEREAS, it is the desire of the Employer to provide certain benefits, establish certain conditions of employment and to set working conditions for the Employee; and

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

WHEREAS, the Employee desires to accept employment as the City Manager of the City of Carbondale; and

WHEREAS, the parties hereto wish to reduce the employment relationship existing between them into written form;

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, the receipt and sufficiency of which the parties hereby acknowledge, the parties agree as follows:

SECTION 1. DUTIES

Employer hereby agrees to employ Employee as City Manager of the City of Carbondale to perform the functions and duties specified in Carbondale Revised Code Sections 1-3A-1 through 1-3A-13, and to perform such other legally permissible and proper duties and functions as the Council shall from time to time assign.

SECTION 2. TERM

A. This Agreement is an agreement for an indefinite term of employment, subject however, to the limitations, notices, requirements, payments and matters hereinafter set forth in Sections 3 and 4.

B. Nothing in this Agreement shall prevent, limit or otherwise interfere with the rights of the Council to terminate the services of the Employee at any time, subject only to the provisions set forth in Sections 3 and 4 of this Agreement.

C. Nothing in this Agreement shall prevent, limit or otherwise interfere with the rights of the Employee to resign at any time from his position with the City, subject only to the provisions set forth in Section 4 of this Agreement.

SECTION 3. SUSPENSION AND TERMINATION

The Employer may suspend or terminate the Employee at any time during the term of this Agreement, but only if:

A. A majority of the Council and Manager agree, or

B. After a public hearing, a majority of the Council votes to suspend or terminate Employee, however, Employee shall have been given written notice setting forth notice of the hearing at least ten days prior to such hearing by the Council members desiring to terminate the Employee.

C. In the event Employee voluntarily resigns his position with Employer, then Employee shall give the Employer at least 60 days written notice in advance, unless the parties otherwise agree. Failure of the Employee to give the required 60 days notice of resignation will result in a pro-rata reduction in benefits normally payable to resigning City employees, such as, but not limited to, accrued vacation payment, sick leave payment, and the like. Voluntary resignation by the Employee will result in a loss of all severance pay to him by the Employer.

SECTION 4. TERMINATION AND SEVERANCE PAY

In the event that Employee shall be terminated by the Council at any time other than for cause such as, but not limited to, the Employee's conviction of any illegal act involving personal gain to the Employee, the Employer shall give the Employee a lump sum cash settlement equal to six months aggregate salary and continue all benefits at the Employer's expense for a six month period; provided again, however, that in the event the Employee is terminated because of cause as set out above, then, in that event, the City shall have no obligation to pay the aggregate severance sum designated in this paragraph.

SECTION 5. DISABILITY

If the Employee is permanently disabled or otherwise unable to perform his duties because of sickness, accident, injury, mental incapacity or health for a period of four weeks beyond accrued sick leave, the Employer shall have the option to terminate this Agreement, subject to the severance pay requirements of Section 4. However, the Employee shall be compensated for any accrued sick leave, vacation, holidays, compensatory time and other accrued benefits.

SECTION 6. SALARY AND RESIDENCY REQUIREMENT

Employer agrees to pay the Employee for services rendered pursuant to this Agreement at an initial annual salary of One Hundred Five Thousand Dollars (\$105,000.00) per year to be distributed through the normal payroll system in installments at the same time as other City employees are paid. In addition, the Employer agrees to conduct an annual salary review of the Employee made at the same time as similar consideration is given to other City employees generally, and to increase the base salary and other benefits of the Employee in such amounts to such extent as the Council may from time to time determine desirable and appropriate. As a condition of employment, the Employee shall maintain a residency within the corporate limits of the City of Carbondale and remain a resident within the corporate limits of the City of Carbondale for the duration of this Agreement.

SECTION 7. PERFORMANCE EVALUATION

A. The City Council of the Employer shall review and evaluate the performance of the Employee after the initial three (3), six (6), and twelve (12) month periods at the start of this Agreement. The City Council of the Employer shall, thereafter, review and evaluate the performance of the Employee at least once annually. This review and evaluation shall be in accordance with specific criteria developed jointly by the Manager and the Council. The criteria may be added to or deleted from as the Council may from time to time determine, in consultation with the Employee. Further, the Mayor of the City shall provide the Employee with a written statement summary of the findings of the Council and provide an adequate opportunity for the Employee to discuss his evaluation with the Council.

B. Annually, the Council and Employee shall define such goals and performance objectives, which they determine necessary for the proper operation of the City and in the attainment of the Council's policy objectives, and shall further establish a relative priority among those various goals and objectives, such goals and objectives to be reduced to writing. They shall generally be attainable within the time limitations as specified and the annual operating and capital budgets and appropriations provided.

C. In effectuating the provisions of this Section, the Council and Employee mutually agree to abide by the provisions of applicable law.

SECTION 8. HOURS OF WORK

It is recognized that the Employee must devote a great deal of time outside the normal office hours to business of the City; and to that end, the Employee will be allowed to take compensatory time off as he shall deem appropriate during normal office hours, as approved in advance by the Mayor. It is not anticipated that this shall be an "hour for hour" arrangement, and the parties both understand that this employment is considered full time, and a primary employment of the Employee.

SECTION 9. OUTSIDE ACTIVITIES

The Employee shall not spend time teaching, consulting or other non-Employer connected business for pay without prior approval of the Council. Professionally related activities not for pay are authorized as long as they do not interfere with the performance of the Employee's professional duties.

SECTION 10. AUTOMOBILE

The Employee shall receive a monthly car allowance of Five Hundred Dollars (\$500.00) for business use of his personal car. Employee shall be responsible for paying for liability, property damage, and comprehensive insurance coverage upon any such vehicle and shall further be responsible for all expenses attendant to the purchase, operation, maintenance, repair and regular replacement of said vehicle. In addition, the Employer shall reimburse the Employee for fuel costs arising out of non-local, business trips for the benefit of the Employer.

SECTION 11. COMMUNICATION EQUIPMENT

The Employer shall provide a cell phone for use by the Employee in order for the Employee to perform the job and maintain communication. In addition, the Employer shall provide such other technology as is necessary for the Employee to accomplish his duties under this contract. It is mutually agreed by the parties that the Employee will use said cell phone and technology for business purposes pursuant to his employment.

SECTION 12. EDUCATION EXPENSES

A. Until the Employee obtains an MPA degree from SIUC, but in no event for a period of no more than four (4) years, beginning with the start of SIUC's 2012 Fall Semester, the Employer shall pay tuition and fees towards the required coursework for an MPA degree from SIUC for the Employee and shall allow the Employee release time as needed for the classes. The Employer shall pay tuition and fees directly to SIUC at the beginning of each semester. Employee must stay with the City for three years after the

completion of the MPA degree or the Employee agrees to pay back the Employer's expenses proportionally, up to three years after the post graduate employment. In the event the Employee's employment is terminated, without cause by the Employer prior to the completion of the MPA or completion of the three year post graduate employment, Employee shall not be liable for repayment of any paid expenses, to the City. In the event employment is terminated by the Employer or the Employee prior to the end of the four (4) year period, beginning with the start date of SIUC's 2012 Fall Semester, or the completion by the Employee of an MPA, whichever is sooner, the Employer shall not be liable to pay future tuition or fees.

SECTION 13. VACATION, SICK LEAVE AND OTHER BENEFITS

A. The Employee shall accrue, and have accredited to his personal account, vacation and sick leave consistent with the Non-bargaining Unit Personnel Rules and Regulations in effect on the date of the execution of this Agreement.

B. The Employee shall accrue and have credited to his personal account, sick leave at the same rate as other non-bargaining unit employees in Pay Grades 8 and 9 of Employer's Classification Plan. Prior to and upon termination of employment from the Employer, the Employee shall be compensated for all unused sick leave, vacation leave, and all other benefits in accordance with the Non-bargaining Unit Personnel Rules and Regulations in effect on the date of execution of this Agreement, and Illinois State law.

C. Employer agrees to provide and pay the premiums for health, hospitalization, surgical and comprehensive medical insurance for Employee and his dependents. Such insurance shall be through the company responsible for providing such insurance to all other non-bargaining unit employees in Pay Grades 8 and 9 of Employer's Classification Plan. Employee may choose which insurance option Employer will provide if more than one insurance option is available to employees in Pay Grades 8 and 9.

SECTION 14. RETIREMENT

A. Employer agrees to make contributions to Employee's retirement as is required by State and/or Federal law, including required contributions into the Illinois Municipal Retirement Fund as allowed under Illinois State law.

B. Upon completion of the MPA degree, in accordance with Section 12 above, the Employer agrees to contribute to a deferred compensation program, an amount equal to 3% of the Employee's annual salary, accrued from the date of this Agreement, which shall be only paid upon the completion of the MPA, and shall be payable to the Employee's deferred compensation account. Should the Employee not attain the MPA as set out under Section 12 above, no deferred money shall be paid. Upon completion of the MPA degree, in accordance with Section 12, the

Employer agrees to, thereafter, make additional annual contributions equal to 3% of the Employee's annual salary to the Employee's deferred compensation account.

SECTION 15. DUES AND SUBSCRIPTIONS

Employer agrees to budget and to pay for the professional dues and subscriptions of the Employee necessary for his continuation and full participation in national, regional, state and local associations and organizations necessary and desirable for his continued professional participation, growth and advancement, and for the good of the Employer.

SECTION 16. PROFESSIONAL DEVELOPMENT

Employer hereby agrees to budget for travel and subsistence expenses of Employee for professional travel, meetings and occasions adequate to continue the professional development of the Employee and to adequately pursue necessary official and other functions for the benefit of the Employer.

SECTION 17. INDEMNIFICATION

Employer shall defend, save harmless and indemnify Employee against any tort, professional liability claim or demand or other legal action whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of the Employee's duties as City Manager, except for willful and wanton or malicious acts. Employer will compromise and settle any such claim or suit and pay the amount of any settlement or judgment rendered thereon. Legal representation, provided by the Employer for the Employee, shall extend until a final determination of the legal action including any appeals brought by either party.

SECTION 18. BONDING

Employer shall bear the full cost of any fidelity or other bonds required of the Employee under any law or ordinance.

SECTION 19. OTHER TERMS AND CONDITIONS OF EMPLOYMENT

A. The Employer, in consultation with Employee, shall fix any such other terms and conditions of employment, as it may determine from time to time, relating to the performance of the Employee, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this Agreement, the Carbondale Revised Code or any other law.

B. In addition to the benefits specifically enumerated herein, all provisions of the Carbondale Revised Code and Non-Bargaining Unit Personnel Rules and Regulations

of Employer relating to vacation and sick leave, retirement and pension system contributions, holidays and other fringe benefits and working conditions as they now exist or hereinafter may be amended, shall apply to Employee as they do to other non-bargaining unit employees in Pay Grades 8 and 9 of the Employer's Classification Plan, except as provided in this Agreement.

SECTION 20. NOTICES

Notices pursuant to this Agreement shall be given by deposit in the custody of the United States Postal Service, postage prepaid, addressed as follows:

Employer: Mayor
City of Carbondale
P.O. Box 2047
Carbondale, Illinois 62902-2047

Employee: Kevin Baity
2018 East Creekwood Drive
Carbondale, Illinois 62901

Alternatively, notices required pursuant to this Agreement may be personally served in the same manner as is applicable to civil judicial practice. Notice shall be deemed given as of the date of personal service or as of the date of deposit of such written notice in the course of transmission in the United States Postal Service.

SECTION 21. GENERAL PROVISIONS

A. This Agreement sets forth the entire understanding of the parties. Any previous agreement or understanding between the parties regarding the subject matter addressed herein are merged into and superseded by this Agreement.

B. This Agreement is being delivered and is intended to be performed in the State of Illinois and shall be construed and enforced according to the laws of the State of Illinois, and both parties agree that the courts of Jackson County, Illinois, are the sole, correct courts of proper jurisdiction for any matter arising under state law and this Agreement.

C. The paragraph headings contained in this Agreement shall not be deemed to govern, limit, modify or in any manner affect the scope, meaning or intent of the provisions of this Agreement.

D. The foregoing recitals are hereby incorporated and made a part of this Agreement.

E. Employee acknowledges and agrees that the services to be rendered pursuant to this Agreement are unique and personal to him, and agrees that he may not assign any of his rights under this Agreement.

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

G. This Agreement shall become effective upon the date of execution by both parties.

IN WITNESS WHEREOF, the City of Carbondale, Illinois, has caused this Agreement to be signed and executed in its behalf by its Mayor and duly attested to by its City Clerk and the Employee has signed and executed this Agreement, both in duplicate, the _____ day of January, 2012.

EMPLOYER:

Joel Fritzler, Mayor

ATTEST: _____
Rachel E. Moore, City Clerk

EMPLOYEE:

Kevin Baity

APPROVED AS TO LEGALITY AND FORM:

P. Michael Kimmel, City Attorney