

CITY MANAGER EMPLOYMENT AGREEMENT

This City Manager Employment Agreement (“Agreement”) is entered into this 7th day of September, 2019, and, subject to such referendum period as may be required by law, is effective as of September 7, 2019, 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 and as amended in the entirety pursuant to that certain City Manager Employment Agreement dated effective as of September 2, 2015, as amended in the entirety pursuant to that certain City Manager Employment Agreement dated effective as of September 16, 2016, and as amended in the entirety pursuant to that certain City Manager Employment Agreement dated effective as of January 1, 2018, and as amended in the entirety pursuant to that certain City Manager Employment Agreement dated effective as of September 1, 2018 (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, subject to such referendum period as may be required by law, is effective as of September 7, 2019 (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. In the event Manager voluntarily resigns, Manager shall give the City a minimum of thirty (30) days' advance written notice unless the parties agree otherwise.

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. As used in this Section 3, the following definitions shall apply:

i. "For Legal Cause" shall mean the termination of Manager's employment with City, upon the vote of at least four (4) members of City Council voting at a duly authorized public meeting for the following: (a) conviction of or plea of nolo contendere to any felony; or (b) conviction of or plea of nolo contendere to any misdemeanor involving personal gain, dishonesty or moral turpitude.

ii. "For Just Cause" shall mean the termination of Manager's employment with City, upon the vote of at least five (5) members of City Council voting at a duly authorized public meeting for the following: (a) nonperformance of job duties; or (b) allegations of nefarious conduct, personal gain, dishonesty or moral turpitude.

iii. A "Trigger" shall be any of the following:

a. If the City terminates the employment of the Manager For Just Cause;

b. If the City, citizens or City Council acts to amend any provisions of the enabling legislation pertaining to the role, powers, duties, authority or responsibilities of the Manager's position that substantially changes the form of government;

c. 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; or

d. If the Manager resigns following an offer to accept his resignation, whether formal or informal, by the vote of a majority of the City Council.

iv. "Severance Payment" shall mean an amount equal to the Manager's aggregate monthly salary at Manager's then current rate of pay multiplied by the applicable Number of Months.

v. "Number of Months" shall be fourteen (14) as of September 7, 2019 plus one additional month on September 7, 2020 and one additional month each successive September 7 anniversary date of Manager's employment with the City thereafter, up to a maximum of 18 months as of September 7, 2023.

B. The parties agree that Manager's employment may only be terminated by the City For Legal Cause or For Just Cause.

C. In the event of a Trigger, City agrees to pay Manager the Severance Payment in one lump sum within thirty (30) days of the date of the Trigger. In addition to the Severance Payment, City shall provide continuation of Manager's health insurance, life insurance and dental benefits coverage, if desired by the Manager, for the applicable Number of Months; payment of accrued but unused vacation leave and personal days in a lump sum payment; and payment of one hundred (100%) percent of accumulated sick leave up to a maximum of one thousand two hundred (1,200) hours in a lump sum payment. Manager's health insurance, life insurance and dental benefits coverage shall cease upon Manager obtaining full-time employment elsewhere.

D. Notwithstanding the foregoing, in the event the Trigger is that the City terminated the employment of the Manager For Just Cause because he is criminally charged with an act that would justify termination For Legal Cause if convicted, the Severance Payment and other benefits described in Section 3.C. shall be paid to an escrow account until such time as the criminal charges are resolved. If the Manager thereafter is convicted or enters a plea of nolo contendere, the City shall have no obligation pursuant to Section 3.C. Furthermore, in the event that the employment of the Manager is terminated For Just Cause by City as a result of misfeasance, malfeasance or nonfeasance of Manager related to criminal matters that would justify a termination For Legal Cause, all Severance Payments and other benefits described in Section 3.C. 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 pursuant to Section 3.C.

E. For clarity, in no event shall Manager be entitled to the Severance Payment or other benefits if he voluntarily resigns (whether or not for other employment), except to the extent that Section 12.D. below may otherwise apply, or if the City terminates Manager's employment For Legal Cause.

SECTION 4 – SALARY

City agrees to pay Manager for his services rendered pursuant hereto an annual base salary of Two Hundred Sixteen Thousand Two Hundred Ninety-Nine Dollars (\$216,299.00). Manager understands and acknowledges that Manager's base salary is designed so as to include previous taxable payments to him for deferred compensation contributions, traditional individual retirement account contributions and personal vehicle allowances.

In addition, City agrees to increase said base salary, without further amendment of this Agreement, by an amount equal to two-percent (2%) of Manager's then current base salary on the basis of an annual evaluation conducted pursuant to the provisions of Section 13 of this Agreement or otherwise. Provided, City Manager must achieve an average of the numeric scores that is equal to or greater than 4.0 on the annual evaluation to receive said increase. Any two-percent (2%) increase due the City Manager under the terms of this paragraph shall be effective as of the beginning of the pay period that begins as close to, but not before September 7 of the year in which the Manager qualifies for the increase. 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. The City will reimburse the Manager at the maximum applicable IRS mileage 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 Annual Conference of the Ohio City Management Association and one of the following annually: the Urban Land Institute Spring or Fall Meeting, the National League of Cities City Summit or the Annual Meeting of the Government Finance Officer Association. In addition, any national, regional, state and local governmental groups and committees thereof of which Manager serves as a member or needs to attend for economic development purposes.

B. [INTENTIONALLY OMITTED]

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, five (5) personal days 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 (including any permissible "catch-up" contributions starting at age 50).

B. Ohio Public Employees Retirement System Contribution Pick Up. The 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).

C. Supplemental Retirement Plan. City has established and sponsored a qualified retirement plan under Section 401(a) of the Internal Revenue Code. The plan is called the City of Hamilton Supplemental Retirement Bonus Plan (the "Supplemental Retirement Plan"). The purpose of the Supplemental Retirement Plan is to induce the service or encourage the continued service of key employees in order that the interests of City may be advanced. Manager is eligible for participation under the terms of the Supplemental Retirement Plan. The City may elect to allocate sums in any year on a non-recurring basis, in its discretion. The annual allocations may be made each January and any allocated funds shall be invested in VT Vantagepoint Model Portfolio Conservative Growth Fund or ICMA-RC approved funds, as agreed to by Manager and City Council.

Manager's allocations will vest only if Manager remains employed as City Manager by City through September 30, 2024 (the "Vesting Date"). In no event will Manager vest in any portion of his allocations if his employment as City Manager with City terminates for any reason prior to the Vesting Date.

Execution of this Agreement hereby manifests Manager's election to participate in the

Supplemental Retirement Plan under the terms listed above. Notwithstanding anything in this Agreement, the terms of the Supplemental Retirement Plan govern Manager's participation in the Supplemental Retirement Plan. Manager should carefully review the Supplemental Retirement Plan for a complete understanding of the terms and conditions of participating in the Supplemental Retirement Plan. A copy of the Supplemental Retirement Plan has been made available to Manager for review and will be on file at the City.

D. Terminal Payment. In addition to the other payments and benefits provided to Manager hereunder, City is desirous of providing Manager a significant benefit upon successful completion of an agreed upon term of service intended to encourage continuation of his employment with the City. As a result, if, during the term of Manager's employment with the City, Manager voluntarily terminates employment with the City after age fifty-six (56), then the City agrees to pay Manager a "Terminal Payment" calculated by multiplying Manager's aggregate monthly salary at the then current rate of pay by eighteen (18). The Terminal Payment provided in this Section C. shall be payable in equal bi-weekly installments over eighteen (18) months, subject to all customary tax and payroll withholdings. In addition to the Terminal Payment, City shall provide continuation of Manager's health insurance, life insurance and dental benefits coverage, if desired by the Manager, for eighteen (18) months; continuation of all required OPERS and deferred compensation contributions; payment of accrued but unused vacation leave and personal days in a lump sum payment; and payment of one hundred (100%) percent of accumulated sick leave up to a maximum of one thousand two hundred (1,200) hours in a lump sum payment. Manager's health insurance, life insurance and dental benefits coverage shall cease upon Manager obtaining full-time employment elsewhere. Manager shall provide written verification to the Mayor of the City that Manager is not providing services to another governmental entity (either as an employee, consultant, contractor or otherwise) within one hundred (100) miles of the City. In the event Manager fails to so certify or if Manager is providing services to another governmental entity within one hundred (100) miles of the City, the bi-weekly Terminal Payment and all other benefits provided in this Section C. shall terminate. Manager acknowledges that the benefit provided pursuant to this Section C. is extraordinary and would not have been offered to Manager but for the possibility of continued long-term employment of the Manager by the City. Manager shall be entitled to no other benefits upon his voluntary termination of employment after age fifty-six (56), except as may be specifically set forth in this Agreement.

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 less than 4.5, City shall offer Manager, and Manager may accept, a bonus of four (4%) percent of Manager's then effective base salary. If the average of the numeric scores is equal to or greater than 4.5 but less than 4.8, 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 month scores is equal to or greater than 4.8, City shall offer Manager, and Manager may accept, a bonus of six (6%) 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 15th 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 previously purchased 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 loaned the OPERS Contribution to Manager, without interest (the "Loan") for the sole purpose of making the OPERS Contribution. City has forgiven and will forgive the following percentages of the original balance of the Loan on the following dates:

<u>Percentage Forgiven</u>	<u>Date</u>
10%	September 3, 2016
15%	September 3, 2017
5%	September 3, 2018
10%	September 3, 2019
15%	September 3, 2020
20%	September 3, 2021
25%	September 3, 2022

If Manager is no longer employed with the City, prior to September 3, 2022, 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 seventy (70%) percent of the Loan [or Eighty Thousand Three Hundred Twenty and 80/100 (\$80,320.80) 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, or if Manager resigns due to a material breach by the City, 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 (without a material breach by the City) or is terminated For Cause.

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

To the extent permitted by law, 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. Subject to such referendum period as may be required by law, this Agreement shall be effective September 7, 2019.

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 Sections 3.A. or 3.D. 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 Sections 3.A. or 3.D. of this Agreement.

(SIGNATURE PAGE TO FOLLOW)

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:

Nicholas Darnabas

Amy K. Bach

~~Joshua A. Smith~~

Approved as to Form:

[Signature]

Letitia S. Block,
City Law Director

City of Hamilton, Ohio

By: [Signature]
Mayor Patrick Moeller

By: [Signature]
Vice Mayor Michael Ryan

[Signature]
Councilmember Carla Fiehrer

[Signature]
Councilmember Robert Brown

[Signature]
Councilmember Matthew Von Stein

[Signature]
Councilmember Kathleen Klink

[Signature]
Councilmember Timothy Naab

[Signature]
Joshua A. Smith