

Request for City Council Action

Date: December 8, 2015

Agenda Section: Consent Agenda No.	Originating Department: Office of the City Manager
Item: Resolution authorizing the Mayor to execute a separation agreement with Kevin Baity No. 5.8	Approved:

Background:

Upon mutual agreement between the Carbondale City Council and Kevin Baity, Mr. Baity resigned from his position as Carbondale City Manager effective October 1, 2015. Mr. Baity had an employment contract with the City that provided for his resignation and certain benefits that arose upon his resignation. In consideration of Mr. Baity's resignation, the City Council deems it necessary to enter into a separation agreement with Mr. Baity to formalize the terms of the separation agreement, consistent with Mr. Baity's employment contract.

Recommended Action:

It is recommended that City Council authorize the Mayor to execute a separation agreement with Kevin Baity.

Engineering Approval Obtained	Finance Approval Obtained	Legal Approval Obtained	Approval Obtained	Manager's Approval Obtained
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Council Action: Motion by _____ 2nd by _____ to _____

RESOLUTION NO. 2015-R-_____

A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A SEPARATION AGREEMENT WITH KEVIN BAITY

WHEREAS, the City of Carbondale, Illinois, is a home rule unit of local government under the Illinois Constitution, 1970, Article VII, Section 6; and

WHEREAS, pursuant to Article VII, Section 6(a) of the Illinois Constitution, 1970, the City of Carbondale may exercise any power and perform any function pertaining to its government and affairs including, but not limited to, the power to regulate for the protection of the public, health, safety, morals and welfare; and

WHEREAS, upon mutual agreement with the City of Carbondale, Kevin Baity resigned his position as City Manager effective October 1, 2015; and

WHEREAS, the City Council of the City of Carbondale finds that it is in the best interest of the City for the Mayor to enter into a separation agreement with Kevin Baity.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CARBONDALE, ILLINOIS, AS FOLLOWS:

SECTION 1. That the City Council deems it is in the best interest of the citizens of the City of Carbondale to enter into a separation agreement with Kevin Baity, a copy of which is attached hereto.

SECTION 2. That the Mayor is hereby authorized to take any and all necessary, reasonable and proper action to carry out the intent and purpose of this Resolution.

SECTION 3. That this Resolution be spread at length upon the minute records of the City Council of the City of Carbondale, Illinois.

SECTION 4. That this Resolution shall take effect upon its passage, approval, recording, and publication in pamphlet form in accordance with law.

APPROVED: _____
John M. Henry, Mayor

ATTEST: _____
Jennifer R. Sorrell, City Clerk

APPROVED AS TO LEGALITY AND FORM:

P. Michael Kimmel, City Attorney

SEPARATION AGREEMENT

This separation agreement is made and entered into this _____ day of _____, 2015, by and between the City Council of the City of Carbondale, herein after referred to as City and Kevin Baity herein after referred to as Manager.

The City has asked the Manager to resign effective October 1, 2015. In consideration of the Manager resigning effective October 1, 2015, the City and the Manager do hereby agree as follows:

1. The City shall provide the Manager a severance package in accordance with the Employment Agreement between the City and the Manager dated January 11, 2012, at the current rate of pay of said Manager. This severance shall be paid over the course of the six month period ending March 31, 2016. The last paycheck will be issued on April 15, 2016.
2. The Manager shall be compensated for all accrued sick leave, vacation time, and birthday leave which is currently on record at the current rate of pay of said Manager. Payment shall be made in two equal payments; one made on or before December 14, 2015 and the remaining payment made after January 1, 2016 but before January 8, 2016.
3. Exhibit A, attached, constitutes the financial consideration contained in this severance agreement, to be paid to the Manager as directed.
4. The City agrees it will pay the Manager's tuition and fees for the Spring 2016 semester per the Employment Agreement. The Manager will provide a copy of the Bursar's statement to the City and the City will make payment directly to SIU. The Manager understands and agrees the 3% deferred compensation due him upon completion of the Master degree is hereby void.
5. For the six month period following the Manager's termination, the Manager shall be considered as a regular full time City employee and shall receive per the Employment Agreement, all of the usual and customary benefits received by other full time employees of the City including but not limited to:
 - (a) Health/dental/vision insurance for the Manager and his dependents. The City shall continue to pay 100% of all premiums.
 - (b) Life insurance in the amount received when he was Manager. The City shall continue to pay 100% of all premiums.
 - (c) Short term and long term disability. The City shall continue to pay 100% of all premiums.
6. The City agrees that it shall give the Manager the reference letter attached hereto as Exhibit B upon request of any prospective future employer of the Manager. A copy of Exhibit B signed by the Mayor shall be provided to the Manager upon execution of this agreement.

7. The City agrees that it shall perpetually defend the Manager and hold him harmless and shall indemnify him against any pending or future litigation, claims, demand, or other legal action, whether groundless or otherwise, arising out of the Manager's performance of duties, responsibilities or obligations or inactions during the course of his/her performance of duties, as set out in the Carbondale Revised Code, Section 11-1-6. Should the Manager be named as an individual and the City's insurance carrier or risk management agency issues a reservation of rights or other document advising the City it will neither defend nor indemnify such claim, the City, pursuant to Code Section 1-1-6, shall provide for the defense and pay for all said expense and indemnify such claim.
8. This agreement sets forth and establishes the entire understanding between the City and the Manager relating to the severance of the Manager by the City. Any prior discussions or representations by or between the parties are merged into and rendered null and void by this Agreement.
9. This agreement shall be binding on the City and the Manager as well as their heirs, assigns, personal representatives, and successors in interest.
10. If the invalidity or partial invalidity of any portion of this agreement is held invalid, the remaining provisions shall be in full force and effect as if they have been executed by both parties subsequent to the expungement or judicial modification of the invalid provision.
11. The City and the Manager do both agree that they will exercise good faith in the performance of all provisions of this Separation Agreement.
12. The Mayor shall immediately seal the Manager's personnel file and the Manager shall be the only person to authorize its release, except as subject to a valid Court Order or other Illinois law, requiring the file's release.
13. The Mayor shall be the spokesperson for the Council and the City concerning the employment of the Manager and his resignation and shall be the only person who can speak to the press during the severance period, concerning the employment and resignation. The Manager will not make or provide any statement to the press regarding the termination.

City of Carbondale:

John M. Henry, Mayor

ATTEST: _____
Jennifer R. Sorrell, City Clerk

Kevin Baity

APPROVED AS TO LEGALITY AND FORM:

P. Michael Kimmel, City Attorney

EXHIBIT A

Salary for 6 months (1044 hrs) \$54,496.80

Compensation for all Accrued Time through March 31, 2016

Sick Hrs (633.50 hrs)	\$33,068.70
Vacation Hrs (311.50 hrs)	\$16,260.30
Birthday Hrs (16.00 hrs)	<u>\$ 835.20</u>
Accrued Time Total	<u>\$50,164.20</u>
TOTAL Salary & Compensation	\$104,661.00

EXHIBIT B

DATE:

To Whom It May Concern,

As Mayor of the City of Carbondale, it is my pleasure to write this letter of Recommendation for Kevin Baity. During his time with the City, he served under three different Mayors and one Acting Mayor. I have had the pleasure of working directly with and viewing Mr. Baity's professionalism. His dedication, integrity and honesty make him a great asset to the community.

As City Manager, he established good relationships with his colleagues, developed strong leadership and interpersonal skills, logical thinking abilities, and the ability to work well with others has been praised by his colleagues.

I am confident that Mr. Baity will make a positive addition to your administration and community.

Sincerely,