

Request for City Council Action

Date: June 6, 2016

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| Agenda Section: General Business No. 4 | Originating Department: City Attorney's Office / Mayor's Office |
| Item: Resolution Authorizing the Mayor to Enter Into a Contract with Gary Williams as City Manager No. 4.1 | Approved: |

Background:

Upon the departure of the former City Manager, the City Council appointed Gary Williams as Acting City Manager and then subsequently appointed him Interim City Manager effective October 20, 2015.

The City Council deems it is in the best interest of the City for the Mayor to enter into a contract with Gary Williams as City Manager.

Recommended Action:

It is recommended that the City Council approve the resolution authorizing the Mayor to enter into a contract with Gary Williams as City Manager.

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| 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. 2016-R-_____

A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO A CONTRACT WITH GARY WILLIAMS AS CITY MANAGER

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, the position of City Manager for the City of Carbondale needs to be filled; and

WHEREAS, the City Council of the City of Carbondale appointed Gary Williams as Interim City Manager effective October 20, 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 contract with Gary Williams as City Manager.

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 contract with Gary Williams as City Manager, 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:

Lenoard "Jamie" Snyder, City Attorney

**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" or "City" and Gary Williams, 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 Carbondale City Council, hereinafter referred to as "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 30 days written notice in advance, unless the parties otherwise agree. Failure of the Employee to give the required 30 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

A. 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 three months aggregate salary and benefits, and continue payment of all health insurance premiums for the Employee and his dependents at the Employer's expense for a three 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.

B. In the event the Employee is terminated by the Employer during the six (6) months immediately following the seating and swearing-in of one or more new Council members, and during such time that Employee is willing and able to perform his duties under this Agreement, then, Employer agrees to compensate Employee a lump sum cash settlement equal to six months aggregate salary and benefits, and continue all health insurance premiums for the Employee and his dependents at the Employer's expense for a six month period.

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 Thirty Thousand Dollars (\$130,000.00) 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 beginning in April, 2017 and shall, thereafter, review and evaluate the performance of the Employee at least once annually before the close of the City's fiscal year. 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, 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, recognizing the importance of constant communication and maximum productivity, shall provide Employee a cell phone and laptop computer for business and personal use. In addition, the Employer shall provide such other technology as is necessary for the Employee to accomplish his duties under this contract and to maintain communication with Employer's staff and officials as well as other individuals who are doing business with the Employer.

SECTION 12. 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 13. RETIREMENT

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.

SECTION 14. 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 15. 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 16. 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 17. BONDING

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

SECTION 18. 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 19. 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:

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| Employer: | Mayor City of Carbondale P.O. Box 2047 Carbondale, Illinois 62902-2047 |
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Employee: Gary Williams
[REDACTED]
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 20. 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 June, 2016.

EMPLOYER:

John "Mike" Henry, Mayor

ATTEST: _____
Jennifer R. Sorrell, City Clerk

EMPLOYEE:

Gary Williams

APPROVED AS TO LEGALITY AND FORM:

Lenoard "Jamie" Snyder, City Attorney