

FIRST ADDENDUM TO EMPLOYMENT AGREEMENT

THIS ADDENDUM TO EMPLOYMENT AGREEMENT made and entered into on this 1st day of August, 2024 by and between the **VILLAGE OF LAKE ORION**, a Michigan Municipal Corporation ("Village") and **DARWIN D. P. MCCLARY** ("Manager"), shall amend the original Agreement between the parties dated October 20, 2022 only as to the following:

SECTION 7. SALARY

For all services which the Manager renders under the Agreement dated October 20, 2022, the Village agrees to pay Employee an annual salary of Ninety-Five Thousand Five Hundred Dollars (\$95,500) commencing on July 1, 2024.

SECTION 11. HOLIDAY AND VACATION LEAVE

The number of paid holidays the Manager shall be entitled to will increase from Thirteen (13) to Fourteen (14) to reflect the change previously approved by the Village Council for non-union and union employees generally.

SECTION 13. DISABILITY, HEALTH AND LIFE INSURANCE

The Manager elects not to accept the village's health insurance. An annual health insurance opt out payment equal to 40% of the State of Michigan public employee health care contribution hard cap amount for the level of insurance coverage the Manager is eligible to receive will be paid by the Village.

SECTION 14. RETIREMENT

The Village agrees to increase the Village's contribution to the Manager's retirement from 15% of base salary to 25% of base salary.

All other terms and conditions of the Agreement executed October 22, 2022 shall remain the same.

IN WITNESS WHEREOF, the Village of Lake Orion has caused this First Addendum to Agreement to be signed and executed on its behalf by its Village President, and duly attested by its Village Clerk, and the Employee has signed and executed this agreement, both in duplicate, the day and year first above written.

VILLAGE OF LAKE ORION, a Municipal Corporation

August 1, 2024

By: 
Darwin D. P. McClary

August __, 2024

By: 
Jerry Narsh, Village President

August __, 2024

By: 
Sonja Stout, Village Clerk

APPROVED BY LAKE ORION VILLAGE COUNCIL ON
07/22/2024

COPY

VILLAGE OF LAKE ORION VILLAGE MANAGER EMPLOYMENT AGREEMENT

THIS AGREEMENT is made as of the date it is fully signed and is between the Village of Lake Orion, Oakland County, Michigan, a Michigan municipal corporation, whose address is 21 East Church Street, Lake Orion, Michigan 48362, hereinafter referred to as "Village", and Darwin D. P. McClary, whose address is [REDACTED], Ypsilanti, MI 48197, hereinafter referred to as "Manager."

RECITALS:

WHEREAS, pursuant to Section 3.7 of the Village Charter, the Village Council desires to employ Manager to hold the office of and serve at the pleasure of the Council, as Village Manager of the Village of Lake Orion; and,

WHEREAS, Manager has been selected by the Council on the basis of training, experience and ability in work which would qualify him for the position of Village Manager, and Manager desires to accept employment as Village Manager of the Village of Lake Orion; and,

WHEREAS, the Parties to this Agreement desire to set forth the terms, conditions, benefits and other provisions that the Village Council and Manager have agreed upon with respect to Manager's employment by the Village as Village Manager;

NOW THEREFORE, in consideration of the promises and mutual agreements herein, the parties agree as follows:

SECTION 1. DUTIES

The Village agrees to employ Manager and Manager agrees to serve as the Village Manager of the Village of Lake Orion to perform the functions and duties specified in the Charter and Code of Ordinances for and of the Village of Lake Orion, and such other legally permissible and proper duties and functions as the Village Council shall from time to time assign to the Manager. Effective upon commencement of the Term of employment under this Agreement, Manager shall not maintain or be engaged in any other full or part time employment or business.

SECTION 2. TERM

- A. The term of this Agreement shall be for an indefinite term commencing on the date the Manager begins employment with the Village and the Manager shall serve at the pleasure of the Village Council, subject to the provisions in Sections 4 and 5.
- B. Nothing in this Agreement shall prevent, limit, or otherwise interfere with the rights of the Village Council to terminate the services of the Manager at any time, subject to the provisions in Sections 4 and 5.



- C. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the Manager to resign at any time, subject only to the provisions set forth in Section 5.

SECTION 3. SUSPENSION

The Village may suspend the Manager with full pay and benefits at any time during the term of this Agreement by a majority vote of the Village Council.

SECTION 4. TERMINATION

- A. The Manager shall serve at the pleasure of the Village Council and may be terminated without cause by a majority vote of the Village Council. Such a termination shall be effective no earlier than 30 days after the Manager receives written notice of the termination and the severance pay specified in Section 5.
- B. The Manager may be terminated for cause by a majority vote of the Village Council after the Manager has been given written notice stating the cause for termination at least ten (10) days prior to a hearing by the Village Council at which Manager shall have the opportunity to be heard. Cause for termination under this Section is defined as a failure to perform duties, after written notice from the Village and reasonable opportunity to correct performance or for a conviction of a crime, a violation of the standards of conduct for public officers under MCL 15.342, breach of this Agreement, malfeasance, misfeasance, and nonfeasance, or a violation of any federal, state, county or other governmental law or regulation while acting as Village Manager. In the event the Manager is terminated based upon cause, the Village shall have no obligation to pay the Manager any severance pay or payment for any accrued vacation, PTO, holiday, sick, compensatory or personal leave time that may otherwise be payable to the Manager.

SECTION 5. TERMINATION PROVISIONS

- A. In the event the Manager is terminated without cause at a time when the Manager is willing and able to perform the duties under this Agreement, the Village agrees to pay the Manager a lump sum cash payment equal to six (6) months' base salary as severance pay.
- B. The Manager may resign effective no earlier than 30 days, or such other period of time as the Manager and Village Council agree, after written notice of the resignation is given to the Village Council by delivery to the Village Clerk. Failure of the Manager to give the required 30 day prior notice of resignation will result in forfeiture of the right to payment for any accrued vacation, PTO, holiday, sick, compensatory or personal leave time that may otherwise payable to resigning Village department heads.

- C. By agreement of the Manager and Village Council, the Manager may continue to serve as Village Manager after the otherwise effective date of a termination without cause or resignation in which event the Manager's then-current salary and benefits shall be continued.

SECTION 6. DISABILITY

Subject to and consistent with, the requirements of federal and state law and the severance pay requirements of Section 5A, if the Manager is permanently disabled or is otherwise unable to perform the duties required because of sickness, accident, injury, mental incapacity, or health for a period of four (4) successive weeks beyond the amount of any accrued sick, vacation, personal and compensatory leave time, the Village Council may terminate this Agreement. In such case, the Village will take steps necessary to ensure that Manager receives any short term disability and long term disability payments the Manager would be eligible for and the Manager shall be compensated for any accrued sick, vacation, personal and compensatory leave time and other accrued benefits in the same manner as department heads who resign.

SECTION 7. SALARY

The Village agrees to pay the Manager an annual salary for services rendered pursuant to this Agreement, to be distributed through the Village's normal payroll system, in an amount to be determined annually by the Village Council. Upon commencement of Manager's employment under this Agreement, the annual base salary shall be \$85,000.00. The annual determinations of the base salary for the fiscal year that begins July 1 shall be made by the Village Council no later than the last regular Council meeting in March of that year, taking into account the performance evaluations described in Section 8. Any increases in the base salary and/or other benefits of the Manager shall be in such amounts and to such extent as the Village Council may determine desirable or appropriate.

SECTION 8. PERFORMANCE EVALUATIONS

The Village Council shall review and evaluate the performance of the Manager as provided in this Section. During the first year of service, the evaluation shall be done after six (6) months, and then on an annual basis in March of each year. Performance evaluations are intended to provide a means for communication between the Village Council and Manager, and shall be conducted in a manner determined by the Village Council. The review shall include a review of performance since the last evaluation and an identification by the Council of goals, objectives and expectations for and of the Manager that will be included as criteria in the next performance evaluation. The performance evaluation tools and methods shall be mutually agreed upon.

SECTION 9. HOURS OF WORK

The duties of the Manager require a great deal of time outside the normal established Village operating days and hours, and include attendance at meetings and providing necessary administrative support to the Village Council, Planning Commission, Board of Zoning Appeals, Downtown Development Authority, Parks & Recreation Advisory Committee and other existing or future Village boards and

commissions. With prior notice to the Village Council, the Manager may designate another employee or consultant of the Village to attend a meeting when the Manager is unable due to a conflict with other Village business, scheduled vacation or illness. The Village Clerk is to be notified of scheduled vacation, personal, sick or other times the Manager is out of the office. The Village acknowledges and agrees that the Manager is being employed in a bonafide, executive, administrative and professional capacity and to that end the Manager shall be allowed to establish an appropriate work schedule to accommodate for the duties requiring time spent outside of normal business hours.

SECTION 10. AUTOMOBILE ALLOWANCE

The Manager shall receive a monthly automobile allowance of \$600.00 for the use of his personal vehicle for village business, payable with the first payroll each month. Such allowance shall be used to purchase, lease, or own, operate, and maintain a vehicle. The monthly allowance shall be increased annually by 5%. The Manager shall be responsible for paying for liability, property damage, and comprehensive insurance coverage upon such vehicle and shall further be responsible for all expenses attendant to the purchase, operation, maintenance, repair, and regular replacement of said vehicle.

SECTION 11. HOLIDAY AND VACATION LEAVE

The Manager shall be entitled to thirteen (13) paid holidays to be taken in the same manner and subject to the same limitations as provided for the Village's department heads and in accordance with the Village's policy in effect from time to time. These include the Day before New Year's Day, New Year's Day, Martin Luther King, Jr., Day, Presidents Day, Good Friday, Memorial Day, Independence Day, Labor Day, Veteran's Day, Thanksgiving Day, Day after Thanksgiving Day, Day before Christmas Day and Christmas Day.

In addition, the Manager shall receive 25 days of paid PTO leave per year, increased by 5 days per year thereafter up to maximum of 40 days to be used at his discretion credited on the first day of employment and on the anniversary date of each year thereafter. No carryover of PTO days will be allowed and payment shall not be received for any unused PTO days at the time of termination of employment.

SECTION 12. GENERAL/SICK LEAVE

The Manager shall be credited with 40 hours of sick leave on the first day of employment and annually thereafter. Sick leave will be carried over at the end of each fiscal year.

Upon termination from Village employment, retirement or death, the Village will pay 50% of the unused sick leave hours to the Manager or the Manager's designated beneficiary up to the maximum of 100 hours, or, in the event of no designated beneficiary, the Village shall pay the same to the Manager's estate.

SECTION 13. DISABILITY, HEALTH AND LIFE INSURANCE

The Manager shall be entitled to the Group Term Life Insurance Benefits for a Class 1 Employee under the Village of Lake Orion's Group Policy held with American United Life Insurance Company.

The Manager shall be entitled to health and disability benefits equal to those provided to the Village's salaried employees. If the Manager elects not to accept the village's health insurance, a health insurance opt out payment equal to 40% of the health insurance premium that would have been paid by the Village for that full-time Employee for health insurance during the prior calendar year shall be paid to any full-time Employee who received no health insurance benefit during said year, (quarterly) in a separate check by the first pay period in January, April, July and October. The reimbursement will be a maximum of \$6,000 per calendar year. An opt out form must be signed by the Manager and it shall remain in effect until it is rescinded by the Manager. If the Manager signed the opt out form subsequently has a spouse who loses his/her health insurance coverage, the Manager may opt into the Village's health insurance plan and be paid on a pro-rata basis for the months he/she opted out. Manager, according to Blue Cross/Blue Shield requirements, must opt in within 30 days of loss of coverage or wait until the new open enrollment period.

SECTION 14. RETIREMENT

The Village agrees to an immediate vesting contribution on behalf of the Manager, in an amount which is equal to 15% of the Village Manager's base salary to a legal and appropriate retirement program as selected by the Manager and the Village Council. Contributions to the Manager retirement shall be payable in equal increments each payroll period. The Village agrees to consider periodic increases in the amount of contribution, based upon performance and taking into consideration any current statutory limitations. This shall be the sole retirement program that the Village that will be providing to the Manager. The Manager shall not be entitled to participate in the Michigan Employment Retirement System ("MERS") or any other retirement program otherwise provided to any other Village employee.

SECTION 15. DUES AND SUBSCRIPTIONS

On an annual basis, the Village agrees to paying for the following professional dues and subscriptions of the Manager and any other organizations, upon approval of Council, which will contribute to the continued professional participation, growth and advancement of the Manager, and for the good of the Village: (1) Michigan Municipal Executives and (2) International City/County Management Association; and (3) The Michigan Public Employer Labor Relations Association.

SECTION 16. PROFESSIONAL DEVELOPMENT

On an annual basis, the Village agrees to pay for the Manager's travel and subsistence expenses for his attendance at the ICMA annual conference and MME Winter Institutes and agrees to consider budgeting and paying for the travel and subsistence expenses of the Manager for other professional and office travel, meetings, and occasions which the Village deems adequate to

continue the professional development of the Manager, and to pursue those official and other functions specifically designated by the Village which are deemed by the Village Council to be necessary. The adequacy of the budget and the extent of the expenses will be determined solely by the Village Council.

SECTION 17. INDEMNIFICATION

The Village shall defend, save harmless and indemnify the Manager against any professional liability claim and demand or other legal action by a third party whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of the Managers duties. The Village may, in its sole discretion, compromise and settle any such claim or suit and pay the amount of any settlement or judgment rendered thereon. Notwithstanding anything herein to the contrary, the Village will not indemnify the Manager for any acts which are determined by judgment of a court to be criminal acts or intentional torts.

SECTION 18. BONDING

The Village shall bear the full cost of any fidelity or any other bonds required of the Manager under any law or ordinance.

SECTION 19. OTHER TERMS AND CONDITIONS OF EMPLOYMENT

- A. The Village Council, in 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 the Manager, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this Agreement, the Village Charter or any other law.
- B. All provisions of the Village Charter and Code, and regulations and rules of the Village relating to other fringe benefits and working conditions, as they now exist or hereafter may be amended, also shall apply to the Manager as they would to any other full-time employee of the Village, except as herein provided or as specifically noted otherwise.

SECTION 20. NOTICES

Notices pursuant to this Agreement shall be given in writing either personally or by certified mail with the United States Postal Service, postage pre-paid to:

(1) VILLAGE: Village Clerk, 21 East Church Street, Lake Orion, Michigan 48362.

(2) MANAGER: Darwin D. P. McClary, [REDACTED], Ypsilanti, MI 48197

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 United States Postal Service.

SECTION 21. GENERAL PROVISIONS

- A. The text herein shall constitute the entire Agreement between the parties.
- B. No modification of this agreement shall be valid unless such modification is approved by the Council, in writing and signed by the Village and Manager.
- C. This Agreement shall be binding upon and inure to the benefit of the heirs, successors and assigns of the Manager and the Village.
- D. If any provisions, or any portion thereof contained in the Agreement is held 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. This Agreement shall be governed by the laws of the State of Michigan, County of Oakland.

IN WITNESS WHEREOF, the Village of Lake Orion has caused this Agreement to be signed on its behalf by its Village President and Village Clerk, and the Manager has signed this Agreement on the dates indicated.

October 20, 2022

By:



Darwin D. P. McClary

October 25, 2022

By:



Ken Van Portfliet, Village President

October 25, 2022

By:



Susan Galezka, Village Clerk