

EMPLOYMENT AGREEMENT

This Employment Agreement (the "Agreement"), is made and entered into this 28 day of April, 2022, between the Village of Stockbridge, Michigan, a Michigan municipal corporation, (the "Village") and Darwin D. P. McClary ("McClary" or "Village Manager").

RECITALS:

WHEREAS, the Village Charter in Section 2 of Chapter II of Public Act No. 3 of 1895 (MCL 62.2), as amended, and Stockbridge Code Ordinances Section 2-46 – 2-54 authorizes the Village Council to employ a Village Manager, who shall be the Chief Administrative Officer of the Village; and

WHEREAS, the Village desires to employ the services of McClary as Village Manager and McClary wishes to accept this employment.

NOW, THEREFORE, in consideration of the promises and mutual covenants contained in this Agreement the parties agree as follows:

Section 1. Duties.

1.1 McClary shall be employed by the Village as the Village Manager consistent with the terms and conditions of this Agreement and the powers and duties prescribed in the Charter and applicable sections of the Village Code, including those enumerated in Stockbridge Code Section 2-52, as amended. The Village Manager shall perform such other duties and functions as assigned by the Village Council from time to time.

1.2 An exception to Section 2-52 (2) shall be the Chief of Police, whom the Village Manager shall not manage, suspend, remove. The Chief of Police shall continue to report directly to the Village Council and the Village President shall be his immediate supervisor, under a separate contract with the Chief of Police that remains effective through February 15, 2025. This independent power of the Chief of Police shall include the Chief directly hiring, managing, suspending, and/or removing all the police officers of the Department as part of the Chief's responsibilities for the "efficient administration of the police department," under the Village Code of Ordinances, Chapter 2, Article VI, Sections 2-188 – 2-189.

Section 2. Salary.

2.1 The Village Manager shall receive an annual salary in the amount of \$80,000.00 payable in equal bi-weekly installments for services rendered pursuant to this Agreement. In the event of termination of employment or voluntary separation from employment, the Manager's salary shall be pro-rated to the effective date of his termination or voluntary separation.

2.2 The annual salary shall be reviewed on a yearly basis, except for an initial six (6) month review under paragraph 3.1

2.3 The Village Council may further increase the salary and/or other benefits of the Manager in such amounts and to the extent as the Village Council, in its sole discretion, may desire.

Section 3. Annual Evaluation.

3.1 Upon completion of six (6) months of service by the Village Manager, the Village Council may evaluate the performance of the Village Manager. Thereafter, the Village Council may evaluate the performance of the Village Manager annually in advance of the Village Manager's anniversary date (the "Evaluation"). The Evaluation shall be based upon goals, performance objectives, and the attainment of the Council's policy objectives using specific criteria developed jointly by the Village Council and the Village Manager. Based on the results of the Evaluation, the Village Council may, in its sole discretion, grant a salary increase and/or grant other benefits to the Village Manager.

Section 4. Retirement Benefits.

4.1 The Village will contribute ten (10%) percent of the Manager's base salary (\$8,000.00) annually to an ICMA 457 plan, made in bi-weekly payments. This shall be the sole retirement program that the Village offers to the Village Manager. The Village Manager will not participate in Michigan Employment Retirement System ("MERS"), which is the retirement program provided to other Village Department Heads.

Section 5. Professional Dues and Expenses.

5.1 The Village shall pay for all reasonable and customary professional dues and subscriptions necessary for the Village Manager's continuation and full participation in national, regional, state and local associations and organizations necessary and desirable for the Village Manager's continued professional growth and advancement and for the good of the Village up to One-Thousand Five-Hundred (\$1,500) Dollars per year of employment. These associations and organizations may include, but are not limited to ICMA, MLGMA, APA, and MPA.

5.2 The Village shall pay for the Village Manager's participation in local civic and non-profit job-affiliated organizations as approved by the Village Council.

Section 6. General Benefits.

6.1 The Village Manager shall not be provided the same economic fringe benefits as extended to other Village employees through the Village Personnel Manual, including the same holidays, bereavement, vacation, and sick time coverage. In lieu of those types of benefits and because of the unique nature of the Manager's position, notwithstanding

anything to the contrary within the Personnel Manual, the Village Manager shall be eligible for the following:

- 6.1.1 the Village Manager will be entitled solely to 280 hours of paid time off (PTO) per year. The hours are all available to the Village Manager on the first day of every year of employment under this contract, but if the Manager's employment is terminated for any reason during the year per paragraph 13 or the Manager voluntarily separates from his employment with proper notice during the year per paragraph 13.6, the hours are pro-rated to the date of separation of employment. The parties acknowledge that is pro-ration could result in the Village owing the Village Manager for additional PTO hours or the Village Manager owing the Village back for PTO hours used beyond his pro-rated amount as of the date of termination or separation. For purposes of calculating the pro-ration, the value of each PTO hour is agreed to be a gross amount of \$38.46 per hour [$\$80,000$ per year / 26 weeks / 10 days / 8 hours a working day]. PTO hours shall not roll over from year to year.
- 6.1.2 The Village shall pay the premiums for a term life insurance in the amount of \$200,000 insuring the life of the Village Manager and permitting the Village Manager to designate his or her beneficiary during the term of employment, up to \$250.00 per month in premiums. The life insurance premium payments shall be reported by the Village as additional taxable income to the Manager, to the extent required by law.
- 6.1.3 The Village Manager shall be entitled to health, dental and optical insurance in accordance with what the Village offers all other current employees. There shall be no financial incentive paid to the Manager for opting out of the offer of insurance.

Section 7. Travel.

7.1 The Village shall pay for the reasonable and customary travel expenses of the Village Manager for meetings and for seminars adequate to continue the professional development of Village Manager and to adequately pursue necessary official and other functions for the Village. Such professional meetings may include the International City/County Management Association, the Michigan Local Government Management Association, and the Michigan Municipal League.

7.2 Effective from and after April 28, 2022, the Village shall pay and the Village Manager shall receive a car allowance of \$400.00 per month. The Village Manager shall also receive a business mileage reimbursement at the then current Internal Revenue Service Business Standard Mileage Rate for business use of the Village Manager's motor vehicle. The monthly car allowance shall be less the applicable taxes to the extent required by law. The Village Manager shall maintain mileage records with regard to the business mileage reimbursement to the extent required by the Village auditor and the Internal

Revenue Service.

Section 8. Equipment.

8.1 The Village shall provide the Village Manager with electronic equipment necessary to perform his duties and to make himself available for such Village duties. At a minimum, equipment shall consist of a cellular telephone and a computer.

Section 9. Hours of Work.

9.1 It is recognized that the Village Manager must devote a great deal of time outside of normal office hours to the business of the Village, and to that end, the Village Manager will be allowed flexibility in maintaining office hours consistent with his responsibility as a professional, but the Manager shall be expected to appear at the following Village meetings after normal business hours:

- 9.1.1 Village Council regular and special meetings;
- 9.1.2 Village of Stockbridge Planning Commission Meetings;
- 9.1.3 Village of Stockbridge Zoning Board of Appeals Meetings;
- 9.1.4. Village of Stockbridge Downtown Development Authority regular and special Meetings as a voting member;
- 9.1.5 Village of Stockbridge Committee Meetings;

9.2 It is agreed between the parties that the Village Manager is exempt from the overtime provisions of the Federal Fair Labor Standards Act and that the Village Manager shall not be entitled to and shall not receive overtime compensation. It is understood that the Village Manager will work varied hours and is compensated on a salary basis. He shall regularly receive each pay period a predetermined amount based on the annual salary amount. This amount is not subject to reduction for any week in which work is performed based on variation in the hours worked, except as to unpaid leaves of absences authorized by the Village Council.

Section 10. Bonds.

10.1 The Village shall pay for the cost of any bonds required pursuant to the Charter or any third party insurance provider.

Section 11. Employment Exclusive.

11.1 The Village Manager shall remain in the exclusive employ of the Village and shall not accept any other employment during the term of this Agreement.

11.2 However, the Village Manager may engage in limited consulting and teaching opportunities outside of the normal work hours, provided that such activities do not conflict with the Village Manager's Official duties and responsibilities, upon the approval of the Village Council.

Section 12. Term.

12.1 This Agreement shall commence on April 28, 2022, and continue until the earlier of termination as provided in Section 13 of this Agreement or April 28, 2025.

Section 13. Termination.

13.1 The Village Manager shall serve at the pleasure of the Village Council. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the Village Council to terminate the services of the Village Manager at any time.

13.2 In the event the Village Council wishes to terminate the Village Manager, it shall do so in accordance with the provisions of Village Code Section 2-49.

13.3 In the event the Village Manager is terminated, the Village agrees to pay Village Manager severance pay in an amount equal to (a) six (6) month base salary, (b) plus or minus PTO hours (as pro-rated as described in paragraph 6.1.1). All severance payments shall be paid to the Village Manager in thirteen (13) bi-weekly pay periods upon his termination. The Village's duty to pay said severance shall be offset by any replacement income the Manager receives from any other source during the six (6) months of severance payments from the Village, including unemployment benefits. Manager shall have an affirmative duty to apply for any available unemployment benefits and to report all replacement income to the Village in a timely manner.

13.4 Notwithstanding the provisions of paragraph 13.3, in the event the Village Manager is terminated based upon conduct unbecoming a public official, including but not limited to criminal conduct or any act which is a violation of any law, the Village shall have no obligation to pay the Village Manager any severance pay, except any unused PTO hours (as pro-rated as described in paragraph 6.1.1). Further, the Manager's obligation to repay an PTO hours used prior to termination that exceed the pro-rated amount available to the Manager on the date of termination for said conduct shall remain to the Village.

13.5 Upon payment of severance pay pursuant to paragraph 13.3, the Village shall have no further financial obligations to the Village Manager. The severance pay shall constitute agreed, stipulated, and liquidated damages and constitute the maximum amount of financial liability for which the Village may be liable in the event of termination or breach of contract.

13.6 In the event that the Village Manager voluntarily resigns during the term of this Agreement, the Village Manager shall provide the Village with thirty (30) days advance written notice, unless the parties agree in writing to a different period of time. In the event of resignation by the Village Manager under this paragraph, the Village Manager shall not be entitled to receive the severance package specified in paragraph 13.3, but the Village and the Village Manager shall pro-rate the PTO hours, as discussed in paragraph 6.1.1.

13.7 In the event that the Village Manager voluntarily resigns with less than thirty (30) days advance written notice, the Village Manager shall not be entitled to receive the severance package specified in paragraph 13.3, nor shall the Village Manager receive payment of any pro-rated and unused accrued PTO. However, the Manager's obligation to repay PTO hours used prior to termination that exceed the pro-rated amount available to the Manger on the date of this termination shall remain to the Village.

13.8 Return of Property. Upon termination of employment, the Village Manager shall return all Village documents, correspondence, cell phones, electronic devices, access codes, files, papers, or property of any kind, in all type or nature relating to the Village, which the Village Manager may have in his possession or control.

Section 14. Conflict of Interest Prohibition.

14.1 The Village Manager shall not without the express prior approval of the Village Council, individually, as a partner, joint venture, officer or shareholder, invest or participate in any business venture conducting business in the corporate limits of the Village, except for stock ownership in any company whose capital stock is publicly held and regularly traded.

14.2 Except for purchase of a personal residence, the Village Manager shall not own or invest in any real property within the corporate limits of the Village, without prior notification to the Village Council.

Section 15. Miscellaneous.

15.1 Complete Agreement. It is understood and agreed that this document incorporates and includes all prior negotiations, correspondence, conversations, agreements, or understandings applicable to the matters contained herein and that the parties agree that there are no commitments, agreement, or understandings concerning the subject matter of this Agreement that are not contained in this document. It is understood and agreed that this Contract shall supersede and take precedence over any other document, handbook, manual, benefit plan or other material which could otherwise be construed as being contractual in nature, whether in existence prior to, currently or subsequent to the execution of this Contract, unless such other document, handbook, manual, plan or material is made expressly applicable to the Village Manager by formal resolution of the Village Council. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written. It is further understood that no Village official or personnel has authority to enter into any employment contract with the Village Manager for any specified period of time, or to make any agreement contrary to the provisions herein, except when the same is approved by the Village Council through a formal resolution.

15.2 Amendment. No modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed with the same formality and with equal dignity herewith.

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

15.4 No Waiver. The waiver by either party of a breach of any provision of this Agreement by the other shall not operate or be construed as a waiver of any subsequent breach by that party.

15.5 Non-Assignment. The rights and obligations herein granted are personal in nature and cannot be transferred or assigned by the Village Manager. This section shall not be construed to prohibit the delegation of duties to subordinate Village employees normally delegated by the Manager as part of his exercise of his supervisory authority.

15.6 Governing Law. This Agreement shall be governed by the laws of the State of Michigan as to all matters, including, but not limited to, matters of validity, enforceability, interpretation, construction, effect, performance, and remedies. It is further understood and agreed that it is the intention of the parties hereto that this Agreement and the performance hereunder and all suits and special proceedings hereunder be construed in accordance and pursuant to the laws of the State of Michigan, without regard to its conflict of Law principles. In the event that any action is brought under this Agreement in Federal Court, the venue for such action shall be the Federal Judicial District of Michigan, Western District, Southern Division. In the event any action is brought under this Agreement in the State of Michigan Courts, the venue for such an action shall be the Ingham County Court System.

15.7 Waiver of Jury Trial. Both the Village and the Village Manager knowingly, voluntarily, and irrevocably waive their right to a trial by jury in any civil proceedings that may be initiated by either party with respect to any term or condition of this Agreement.

15.8 Disregarding Titles. The titles of the sections set forth in this Contract are inserted for the convenience of reference only and shall be disregarded when construing or interpreting any of the provisions of this Contract.

15.9 Non-Discrimination. The Employee, as required by law, shall not discriminate against any person seeking services with the Village because of race, color, height, weight, marital status, religion, national origin, age, sex, or handicap. Breach of this covenant may be regarded as a material breach of this Contract.

15.10 Village Manager's Best Efforts. The Village Manager agrees that at all times he will faithfully and to the best of his ability, experience and talents, perform all the duties that may be required of him.

15.11 Compliance with the Law. The Village Manager shall perform all his/her respective duties and obligations hereunder in complete compliance with all applicable Federal, State and local statutes, laws, ordinances, rules and regulations.

15.12 Counterparts. This Agreement shall be executed in two or more counterparts, each of which when executed shall be deemed to be an original, and all of which when taken together shall constitute but one and the same agreement.

15.13 Notices. Any and all notices required by this Agreement shall be deemed to be sent or delivered when personally delivered to the recipients or when mailed first class, with proof of mailing and with proper first-class postage attached hereto, to the parties hereto at the addresses set forth below. Any notice required to be made within a stated period of time shall be considered timely made, if deposited before midnight of the last day of the stated period.

For the Village:

Village of Stockbridge Clerk
P.O. Box 155
Stockbridge, MI 489285

With a courtesy copy to:
John L. Gormley
Gormley & Johnson Law Offices
101 East Grand River Ave.
Fowlerville, MI 48836

For the Village Manager:

Darwin D. P. McClary
4904 Lake Point Drive
Waterford, MI 48329-1741

IN WITNESS WHEREOF, the Village, by signature of the Village President as authorized by motion adopted April 20, 2022, and Village Manager have signed and executed this Agreement the day and year first above written.

IN THE PRESENCE OF:

VILLAGE OF STOCKBRIDGE

By: Molly Howlett
Molly Howlett, President

By: Debbie Nogle
Debbie Nogle, Clerk

VILLAGE MANAGER

By: Darwin D. P. McClary
Darwin D. P. McClary