

**EMPLOYMENT AGREEMENT
BETWEEN
THE CITY OF MADISON
AND
TIMOTHY J. COOLEY**

This Agreement made this _____ day of _____, _____, by and between the City of Madison, a municipal corporation of Dane County, Wisconsin (hereafter, the "City") and Timothy Cooley, a natural person (hereafter, the "Economic Development Division Director" or "Director").

WITNESSETH;

WHEREAS, the City desires to hire Timothy Cooley as an employee of the City of Madison to perform the services described herein on its sole behalf as the Economic Development Division Director, and

WHEREAS, Timothy Cooley represents that he possesses the necessary knowledge, skill, and experience to perform such services and is willing to perform such services as the Economic Development Division Director, and;

WHEREAS, Timothy Cooley has been duly selected and has been confirmed for appointment to the position of Economic Development Division Director by the Common Council of the City of Madison on _____, 2009 and

WHEREAS, the Common Council of the City has authorized the execution of the Agreement by Resolution No. _____.

NOW, THEREFORE, in consideration of the mutual covenants, terms, and agreements contained in this document, the receipt and sufficiency of which is mutually acknowledged, the parties do agree as follows:

I. ECONOMIC DEVELOPMENT DIVISION DIRECTOR HIRED

Timothy Cooley is hereby hired as a non-civil service employee of the City, holding the position of Economic Development Division Director pursuant to the terms, conditions and provisions of this Agreement. The Economic Development Division Director shall have and exercise full authority and discretion as a department head within the City's organizational structure and act as Appointing Authority for employees of the Economic Development Division in accordance with all appropriate City Ordinances and Mayor's Administrative Procedure Memoranda.

II. FUNCTIONS, DUTIES AND RESPONSIBILITIES OF THE ECONOMIC DEVELOPMENT DIVISION DIRECTOR

A. This is responsible managerial, professional and administrative work in planning, directing, coordinating and implementing the programs, services and activities of the Economic Development Division of the Planning and Community and Economic Development Department. This Division incorporates responsibility for the functions and staff of the Office of Business Resources, the Offices of Real Estate Services, and the Office of Economic Revitalization. This work places

considerable emphasis on creativity, initiative, and judgment. Work places emphasis on internal and external communications and related consensus building. This work is performed under the general leadership of the Director of Planning and Community and Economic Development, with a direct reporting relationship to the Mayor.

- B. The duties of the Director include: Manage and coordinate the activities of the Economic Development Division of the Department of Planning and Community and Economic Development. Hire, train, supervise, coordinate and evaluate staff. Develop and monitor Division budgets. Establish annual performance standards and goals. Serve as Project Manager at the direction of the Mayor and/or Department Director on high-level, complex or sensitive economic development projects. Manage and provide direction, leadership, information and recommendations to subordinate staff on assigned programs, projects and improvements to services. Develop and implement strategies to coordinate programs and the roles and responsibilities of staff. Foster collaboration in achieving goals and objectives.

Plan, formulate, coordinate and oversee the Division's projects and activities. Provide direction to staff and set standards and guidelines for providing various redevelopment, tax increment finance and housing revitalization programs and projects, including the coordination of staff services to the Community Development Authority. Ensure adherence to federal and State laws and policies on the acquisition of private property and the relocation of the occupants. Direct the procurement and administration of governmental and foundation grants and other financial resources. Develop and oversee financial assistance programs to assist in redevelopment revitalization, commercial district revitalization, and economic development initiatives, such as existing business development, new business creation and attraction, industry cluster development, and technology transfer. Specifically address the needs of small businesses to include start-up, growth, retention, etc. Oversee preparation of policies, programs and plans for boards, committee, and commissions to implement programs. Review and oversee implementation of policy change recommendations for loan programs, real estate acquisition procedures and economic development programs and projects.

Negotiate complex public and private real estate and economic development deals involving sensitive, high-level communication between the State, the County and neighboring communities, the University, and other entities. Coordinate and negotiate complex issues with neighborhood and community groups. Maintain close working relationships with other City agencies in achieving Division and City goals.

Facilitate the creation and implementation of diverse economic development and revitalization projects. Review recommendations on various loan proposals and provide recommendations on modifications or development of tax increment project plans and redevelopment plans for the redevelopment or economic development of the City.

Provide leadership in the preparation of related strategic plans and economic development initiatives. Promote new and expanded business opportunities through enhanced private and public sector cooperation. Promote and

coordinate economic development activities with business organizations, other City departments, other governmental agencies, private sector entities, and the public. Establish effective collaborations with private and public sector entities, including institutions of higher education, in matters of economic and workforce development.

Represent/promote program interests locally, regionally, and beyond through a broad spectrum of media (e.g., promotional literature, internet opportunities, trade shows, etc.). Represent program interests within the Mayor's management team, with the Economic Development Commission and before various boards, commissions, and business groups.

- C. The Director agrees to perform such functions and duties at a professional level of competence and efficiency. He shall abide by all requirements of the laws of the State of Wisconsin, and of the ordinances, resolutions, regulations, rules and practices of the City which exist at the time of execution of this Agreement or which may, hereafter, be enacted or amended by the State of Wisconsin or the City in the exercise of their lawful authority. In the event a provision of this Agreement conflicts with any City ordinance, resolution, regulation, rule or policy, the provision of the Agreement shall control, except that nothing herein shall be interpreted as modifying the obligations or terms of Madison General Ordinance 3.35.
- D. The Director shall devote full time to the duties and responsibilities provided herein and shall engage in no pursuit that interferes with them. The Mayor, however, may approve the Director's reasonable time away from the regular duties and responsibilities provided such time is approved in advance and taken as vacation leave or absence without pay.
- E. The standard City workweek is 38.75 hours. However, the Director shall have reasonable flexibility from this standard to accommodate additional time expended outside regular working hours required by attendance at meetings and the like. Such flexibility is not intended to provide or be used as additional vacation or other paid leave.
- F. The Director shall have no right to make contracts or commitments for or on behalf of the City except as preauthorized by statute, ordinance or express written consent of the City.
- G. The Director shall establish and maintain residency in the City of Madison.

III. COMPENSATION AND BENEFITS

- A. The Director's initial year's salary shall be based on an annualized rate of \$107,673 which shall be paid in approximately equal biweekly payments according to regular City payroll practices. The effective date of said salary shall be February 16, 2009. Annual salary adjustments beginning in 2010 and thereafter during the term of this Agreement may be made at the Mayor's discretion, subject to approval of the Common Council, as provided in the City's established managerial pay plan Sec. 3.54(6), MGO. The Director shall not be entitled to receive any additional overtime compensation, compensatory time off, or bonuses.

B. The Director shall, in addition to the compensation provided in Paragraph A above, and except as otherwise set forth in the Agreement, be entitled to the following benefits:

1. The Director shall receive the same benefits as all other non-represented professional employees in Compensation Group 18 as may be provided and/or modified by the Madison General Ordinances, Resolution of the Common Council, Administrative Procedure Memoranda or other official City action throughout the duration of this agreement.
2. In addition to the monetary compensation and benefits provided in paragraph 1, the Director shall be entitled to twenty-five (25) days of vacation in each year of this Agreement. Credited but unused vacation in excess of ten (10) days may be carried forward to the succeeding year with the approval of the Mayor. Except as otherwise provided, the Director shall be paid in full for credited but unused vacation existing at the expiration of this Agreement or upon the Director's retirement, when qualified for receipt of Wisconsin Retirement Fund benefits. In the event the Director leaves employment with the City, but does not retire, the Director shall be entitled to payment for one-half (50%) of any unused sick leave to which the Director would otherwise be entitled.
3.
 - (a) Be eligible to participate at City expense in professional seminars, conferences, workshops and related meetings consistent with the role as Director and in accordance with applicable Administrative Procedure Memoranda.
 - (b) Be reimbursed for relevant professional association dues.
 - (c) Be eligible to participate in the City CARS program.
4. The Director will be reimbursed for relocation expenses for the Director's relocation to the City of Madison in accordance with APM 2-1. The Director is responsible for obtaining two (2) bids for the move and submitting same to the City for authorization. Relocation expenses include: Commercial carrier expenses, personal transportation expense, temporary housing, and temporary storage of household items. The maximum reimbursement is \$15,000.

If the Director resigns during the first twelve (12) months, the City shall be reimbursed for the relocation expenses; up to twenty-four (24) months, the Director shall repay 50% of said total relocation expenses.

IV. TERM: RENEWAL OPPORTUNITY; NON-RENEWAL

- A. This Agreement shall take effect on February 16, 2009, and shall expire February 15, 2014, unless sooner terminated as provided herein.
- B. For a period of two (2) years from the effective date of this Agreement, the Director shall serve a probationary period. During the probationary period, the Director serves at the pleasure of the Mayor and may be removed at will by the

Mayor. The Mayor will give the Director four (4) weeks notice of removal. Following the probationary period, and for any renewal of this Agreement, the Director may only be removed as otherwise provided herein.

- C. The Mayor, in his/her sole discretion, may offer renewal of this Agreement to the Director. The Mayor shall notify the Director of the intent to renew the Agreement at least ninety (90) calendar days before the expiration of this Agreement. Failure to so notify the Director shall extend the term of this Agreement by the time of the delay in actual notification (but in no event for more than ninety (90) days) without change in the Director's anniversary date, and shall not act as a full renewal of the Agreement. Renewal of the agreement and of its provisions shall be subject to the approval of the Common Council. In the event the Common Council does not renew this Agreement, this Agreement will remain in effect for ninety (90) days following the non-renewal action by the Common Council or five (5) years from the date of this Agreement, whichever is later.
- D. The Mayor, in his/her sole discretion, may elect not to offer renewal of this Agreement to the Director. In such event, the Mayor shall notify the Director of the intent not to renew the contract at least ninety (90) calendar days before the expiration of this Agreement. Failure to so notify shall extend the term of this Agreement by the time of the delay in actual notification (but in no event for more than ninety (90) days) and shall not act as a renewal of the Agreement. At the expiration of the Agreement, the parties' rights, duties, responsibilities and obligations shall end. However, after the first renewal of this Agreement, the Director will, at the sole discretion of the Mayor, be eligible to take a voluntary demotion into any vacant or newly created position for which the Director is qualified.
- E. In the event of non-renewal of this Agreement, under either Paragraphs C or D above, the Mayor may, in his/her sole discretion, terminate this Agreement at any earlier date within ninety (90) days of the expiration of this Agreement, as determined by the Mayor. The early termination is to be accomplished by (a) notifying the Director of the date of early termination, and (b) committing to buy out the balance of this Agreement by paying the Director the balance due under this Agreement in a lump sum, including salary and leave benefits (vacation, floating holiday, paid leave, sick leave) earned or to be earned through the original term of this Agreement, together with payment of the City's share of any health insurance premiums or the provision for such payment through the original term of this Agreement. The buy-out may be for the full period left on this Agreement, or any portion of the final ninety (90) days thereof. If this Agreement is terminated early through the provisions of this buy-out clause, the Director's employment with the City ends as of the date of early termination.

V. PERSONNEL ACTIONS

The Director is subject to the Mayor's supervision and is, during the term of this Agreement, subject to the Mayor's authority to impose discipline on or to discharge the Director as is provided in Sec. 3.53(16) of the Madison General Ordinances, or as may be renumbered or amended hereafter. The Director shall be entitled to the procedural appeal and provisions contained in such subsection or as may be provided other non-represented employees at the time of imposition of suspension or discharge.

VI. CITY OBLIGATIONS AND RIGHTS

The City shall provide staff, equipment, supplies and space that it deems reasonable, in its sole discretion, for the conduct of the work of the Director. The City retains the sole right to determine the organizational structure and overall functioning of the Economic Development Division.

VII. REOPENING THE AGREEMENT

Either party may request that the Agreement be reopened for renegotiation if or when the Director's duties or responsibilities change significantly. A "significant" change in the Director's duties is defined as that degree of change in duties and responsibilities that would qualify a civil service position for reclassification pursuant to standard City personnel practices.

Factors that may be considered include the addition or deletion of duties, changes in Departmental/Divisional services or the addition or deletion of programs. If there is no agreement, the original Agreement shall control and shall not be reopened. Agreement changes, if any, and any resulting reclassification of the position shall not be deemed the creation of a new position so as to require competition.

VIII. LIABILITY PROTECTION

The City shall defend and indemnify the Director against and for any and all demands, claims, suits, actions and legal proceedings brought against him in his official capacity or personally for acts performed within the scope of his employment to the extent and only to the extent authorized by the Wisconsin Statutes in effect at the time of the act complained of and as may be provided by any City insurance coverage for employees at such time.

IX. Pursuant to Madison General Ordinance 3.35, the Director shall file a Statement of Economic Interests with the City Clerk within 14 days of his appointment. Each person required to file a Statement of Economic Interests shall annually file with the Clerk an updated Statement no later than April 30 of each year.

X. DOCUMENTS AND MATERIALS PROPERTY OF THE CITY

All of the documents, materials, files, reports, data and the like which the Director prepares or receives while this Agreement is in effect are the sole property of the City of Madison. The Director will not publish any such materials or use them for any research or publication without attribution to the City other than as work performed pursuant to the terms of this Agreement.

XI. APPEARANCE BEFORE ANY CITY ENTITY FOLLOWING SEPARATION FROM EMPLOYMENT

The Director shall be subject to the provisions of Madison General Ordinance 3.35.

XII. TERMINATION OF AGREEMENT

A. The Director may unilaterally terminate this Agreement during its term. If the Director unilaterally terminates this Agreement on less than ninety (90) calendar

days notice in writing to the Mayor, the Director shall forfeit all rights to recover the cash equivalent of accumulated sick leave, unused vacation leave, and all other future benefits. These forfeiture provisions shall not apply if the Director retires from this position (upon qualifying for receipt of benefits pursuant to the Wisconsin Retirement Fund requirements).

- B. The Director's discharge (as provided for in Madison General Ordinance 3.53(16) during the term of this Agreement shall be deemed a breach of material provision of the Agreement. In the event of a discharge or other breach of a material provision of the Agreement by the Director, the Director shall forfeit all compensation and benefits from the date of notification of the breach by the City. This action shall not impact the receipt of benefits earned during the total period of employment. In the event of an alleged breach of a material provision of this Agreement by either party, the concerned party shall notify the other party in writing within thirty (30) working days, which shall be followed by a meeting of the parties to resolve the alleged breach. In the event the issue is not resolved, the Director or the City may pursue contract remedies.

- C. The City retains the right, in its sole discretion, to abolish the position of Economic Development Division Director or to reorganize as it deems in the best interest of the City. In the event the City abolishes the position of Economic Development Division Director or reorganizes the (Department/Division) to the extent that the position of Economic Development Division Director is no longer required, this Agreement shall terminate and all rights, duties and obligations of the parties shall mutually end without recourse ninety (90) calendar days after final approval of such abolishment of position or reorganization by the Common Council, except as provided in Madison General Ordinance 3.35.

XIII. NO ASSIGNMENT OR SUBCONTRACT

The Director shall not assign or subcontract any interest or obligation under this Agreement.

XIV. AMENDMENT

This Agreement shall be amended only by written Addendum to Agreement of the parties approved and authorized for execution in the same fashion as this original Agreement.

XV. NO WAIVER

No failure to exercise and no delay in exercising any right, power or remedy on either party's part shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or remedy preclude any other or further exercise thereof, or the exercise of any other right, power, or remedy.

XVI. ENTIRE AGREEMENT

No agreements, oral or written, express or implied, have been made by either party hereto, except as expressly provided herein. All prior agreements and negotiations are superseded hereby. This Agreement and any duly executed addenda or amendments thereto constitute the entire Agreement between the parties hereto.

XVII. SEVERABILITY

In the event any provisions of this Agreement are determined by any court of law to be unconstitutional, illegal, or unenforceable, it is the intention of the parties that all other provisions of this Agreement shall remain in full force and effect.

XVIII. GOVERNING INTENT AND LAW

This Agreement shall be interpreted in the first instance in accordance with the spirit and intent of the Substitute Report of the Human Resources Committee Report approved by the Common Council on August 2, 1988 and shall be controlled, construed and enforced in accordance with the laws of the State of Wisconsin.

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective as of the day and year contained herein.

CITY OF MADISON
A Municipal Corporation

Witness

David Cieslewicz, Mayor

Witness

Maribeth Witzel-Behl, City Clerk

Witness

Timothy J. Cooley

APPROVED:

APPROVED AS TO FORM:

Dean Brassler, City Comptroller

Michael May, City Attorney