

**EMPLOYMENT AGREEMENT
BETWEEN
THE CITY OF MADISON
AND
WILLIAM R. CLINGAN**

This Agreement made this _____ day of _____, 2007 by and between the City of Madison, a municipal corporation of Dane County, Wisconsin (hereafter, the "City") and William R. Clingan, a natural person (hereafter, the "Economic and Community Development Unit Director" or "Director").

WITNESSETH;

WHEREAS, the City desires to hire William R. Clingan as an employee of the City of Madison to perform the services described herein on its sole behalf as the Economic and Community Development Unit Director, and

WHEREAS, William R. Clingan represents that he possesses the necessary knowledge, skill, and experience to perform such services and is willing to perform such services as the Economic and Community Development Unit Director, and

WHEREAS, William R. Clingan has been duly selected and has been confirmed for appointment to the position of Economic and Community Development Unit Director by the Common Council of the City of Madison on _____, 2007, 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 AND COMMUNITY DEVELOPMENT UNIT DIRECTOR HIRED

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

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

The principal function of the Director shall be the management of the activities of the Economic and Community Development Division within the Department of Planning and Development and Economic and Community Development.

A. The Economic and Community Development Unit Director shall:

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Manage and coordinate the activities of the Economic and Community Development Division of the Department of Planning and Economic and Community Development. Hire, train, supervise, coordinate and evaluate staff. Develop and monitor Division operating and capital budgets. Establish annual Division performance standards and goals. Serve as Project Manager at the direction of the Mayor and/or Department Director on high-level, complex or sensitive development projects. Manage and provide direction, leadership, information and recommendations to subordinate staff on diverse 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. Ensure adherence to federal and State laws and policies on the acquisition of private property and the relocation of the occupants. 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. Oversee preparation of policies, programs and plans for boards, committees 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. Foster private and public partnerships for community and economic development initiatives.

Solicit and integrate the interests of all segments of the community in the City's economic and community development policies and initiatives. Foster an environment of open communication and trust among stakeholders. Provide leadership and expertise in addressing the Department-related needs of the community in a manner that considers the perspective of residents with diverse backgrounds, varying ages, and disparate incomes, including low-income families. Develop, present and monitor operating and capital budgets. Perform related work as required.

- B. The Director agrees to perform such functions and duties at a professional level of competence and efficiency. The Director 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 Madison General Ordinance 3.35.
- C. 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. Further, the Mayor may authorize

other limited outside professional activities on City time provided that they are determined to be of benefit to the City and the Director is not compensated for such activities. Nothing herein limits the Director from performing outside services for compensation, provided such outside services have been approved by the Mayor, are not done on City time, and otherwise comply with City ordinances and rules.

- D. The standard City work week 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.
- E. 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.
- F. The Director shall be subject to the City's residency requirement.

III. COMPENSATION AND BENEFITS

- A. The Director's initial year's salary shall be based on an annualized rate of \$95,000, which shall be paid in approximately equal biweekly payments according to regular City payroll practices. The effective date of said salary shall be _____, 2007. Annual salary adjustments including 2007 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 (20) 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 be a CARS monitor in the City CARS program.

IV. TERM: RENEWAL OPPORTUNITY; NON-RENEWAL

- A. This Agreement shall take effect on _____, 2007, and shall expire _____, 2012, 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 two (2) 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 and Community Development Unit.

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 which 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 3.35(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 and Community Development Unit Director or to reorganize as it deems in the best interest of the City. In the event the City abolishes the position of Economic and Community Development Unit Director or reorganizes the (Department/Division) to the extent that the position of Economic and Community Development Unit 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 of 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

William R. Clingan

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APPROVED:

Dean Brassler, City Comptroller

APPROVED AS TO FORM:

Michael May, City Attorney