

**KOCHVILLE TOWNSHIP DOWNTOWN DEVELOPMENT AUTHORITY
DOWNTOWN DEVELOPMENT AUTHORITY DIRECTOR
EMPLOYMENT AGREEMENT**

THIS AGREEMENT, made and entered into this ___ day of _____, 2018 (“Effective Date”), by and between the Kochville Township Downtown Development Authority, a public body corporate, whose address is 5151 Hampton Place, Saginaw, Michigan, hereinafter referred to as “DDA” and Tyson D. McKinley, whose address is 4797 Lorraine Avenue, Saginaw, Michigan 48604, hereinafter referred to as “Employee” both of whom understand as follows:

WITNESSETH:

WHEREAS, the DDA desires to appoint Employee as the DDA Director, and employ his services as set forth in 1975 PA 197, commonly known as the Michigan Downtown Development Authority Act; and

WHEREAS, the DDA Board, hereinafter referred to as the “Board,” as the DDA’s governing body, desires to provide certain benefits, to establish certain conditions of employment and to set working conditions of the Employee; and

WHEREAS, the Board desires to secure and retain the services of the Employee; and

WHEREAS, Employee desires to accept appointment and employment as the DDA Director.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the DDA and Employee agree as follows:

Section 1. Appointment as DDA Director – General Conditions.

- a. The Board agrees to appoint and employ Employee as the DDA Director of and for the DDA until **March 31, 2021**. This appointment is subject to Employee completing a ninety (90) day probationary period that shall begin on the Effective Date of this Agreement.

Employee serves at the pleasure of the DDA Board as an at-will employee subject only to the provisions set forth in Section 3, paragraphs a & b, of this Agreement. He is expected to perform the responsibilities, functions, and duties as specified in 1975 PA 197 and in the resolutions adopted by the Board for this position. Also, Employee will perform other legally permissible and proper

responsibilities, functions and duties as the DDA Chairperson or Board assigns from time to time.

- b. Nothing in this Agreement shall prevent, limit, or otherwise interfere with the right of the DDA Board to terminate the services of Employee at any time, subject only to the provisions set forth in Section 3, paragraph a & b, of this Agreement.
- c. Employee agrees to remain in the exclusive employ of the DDA, unless any other employment is approved by the DDA Board. The term "employed" will not be construed to include occasional teaching, writing, speaking or consulting services performed by employee during his non-work hours, even if outside compensation is provided for such services. These activities are expressly allowed, provided that in no case is any activity allowed which would present a conflict of interest with the DDA or otherwise interfere with Employee's duties and obligations under this Agreement.
- d. The DDA Board shall not require Employee to reside within the DDA District as a condition of appointment or continued employment with the DDA.

Section 2. Salary/Annual Performance Review/Immediate Supervisor.

- a. The DDA shall pay Employee an annual salary of Forty-Five Thousand Dollars and Zero Cents (\$45,000.00) for his services as DDA Director, payable in bi-weekly installments. Employee is exempt from overtime, as set forth in the Fair Labor Standards and, therefore, shall not be additionally compensated for overtime.
- b. The DDA may adjust the base salary of the Employee annually before April 1 of each year while this Agreement is in effect, based on the results of Employee's annual performance review. The Board shall provide the Employee at the end of the Employee's performance review with a summary written statement of the performance review. The annual review shall take place before the April DDA Board meeting each year and will be conducted by the DDA Board. During the annual review, Employee shall be provided an adequate opportunity for to discuss the performance review with the DDA Board.
- c. The DDA Chairperson shall be the immediate supervisor of Employee. The DDA Chairperson shall have the authority to suspend Employee with or without pay for any reason pending a final determination by the DDA Board.

Section 3. Termination and Severance Payments.

- a. In the event Employee is terminated by the DDA Board before the expiration of the aforesaid term of employment and during such time that Employee is willing and able to perform the duties of DDA Director, then in that event the DDA agrees to pay Employee over the appropriate period herein an amount equal to three (3) months' salary; provided, however, that in the event Employee is terminated because of: (i) fraud; (ii) dishonesty; (iii) substance abuse; or (iv) his conviction of any illegal act ("Cause"), as determined by the Board, then, in any such event, DDA shall have no obligation to pay the aggregate severance sum designated in this Section 3.
- b. The DDA Board at any time during the employment term shall have the right to terminate Employee's employment immediately for Cause. If the termination is not for Cause, the DDA Chairperson at the direction of the DDA Board shall give Employee thirty (30) days' written notice prior to the effective date of Employee's termination, unless Employee is terminated during his probationary period, at which time the Employee's employment may be terminated immediately without written notice.

Section 4. Resignation.

In the event Employee voluntarily resigns his position with the DDA before the expiration of the aforesaid term, Employee shall make every attempt to give the DDA Board thirty (30) days advance written notice pursuant to the notice provision contained herein.

Section 5. Retirement Benefits.

The DDA shall provide retirement benefits to the Employee in the amount of five percent (5%) of his yearly gross salary.

Section 6. Insurance Coverage.

- a. The DDA shall not provide any life insurance plan or coverage for Employee.
- b. The DDA shall not provide any short- or long-term disability policy for Employee.
- c. The DDA shall not provide any health insurance plan or coverage for Employee.

- d. The DDA shall not provide any dental or optical insurance related benefits for Employee.

Section 7. Automobile/Cellular Telephone.

- a. The DDA will reimburse Employee for the use of his personal vehicle, including mileage, for business use at a rate of Seventy-Five Dollars and Zero Cents (\$75.00) per month. Both the DDA and Employee agree that \$75.00 per month is a fair and equitable amount that Employee should be reimbursed for use of his personal vehicle, including mileage, for DDA-related business.
- b. Unless the DDA provides Employee with a cellular telephone, the DDA will pay Employee an amount determined by the DDA Board for the use of his personal cellular telephone. Such amount shall be \$50.00 per month to assist Employee in off-setting the use of his personal cellular telephone for DDA business. Both the DDA and Employee agree that not less than \$50.00 per month is a fair and equitable amount that Employee should be reimbursed for use of his personal cellular telephone for DDA-related business. Employee understands that because the DDA is paying a portion of his personal cellular telephone bill, the cellular telephone bill may be subject to release pursuant to a Michigan Freedom of Information Act request, discovery connected to a lawsuit, or a court order.

Section 8. Vacation Leave and Paid Time Off.

The DDA will not provide Employee with any Vacation Leave. The DDA will, however, provide the Employee with Paid Time Off (“PTO”) pursuant to the following:

- a. On April 1, 2019, Employee shall be credited with eighty (80) hours of PTO at the beginning of each fiscal year of the DDA until this Agreement terminates pursuant to its terms as set forth in Section 13 of this Agreement, is terminated by the DDA pursuant to Section 3 of this Agreement or is terminated by the Employee pursuant to Section 4 of this Agreement.
- b. PTO may be used for vacation, sick leave, medical appointments, family illness or any other leave of absence.
- c. Relevant Terms:
 - i. Employee shall forfeit his annual PTO each year if it is not used by the end of the DDA’s Fiscal Year. Employee shall not be permitted to carry over any accrued but unused PTO.

- ii. The cash value of any PTO which remains unused at the time of Employee's termination from employment shall be paid to Employee only if: (i) Employee terminates his or her employment with the DDA; (ii) Employee provides sixty (60) days prior notice of his or her termination to the DDA Board; and (iii) Employee works each of his shifts during the sixty (60) day notice period without unexcused absences. Under all other circumstances, any PTO remaining upon termination of employment with the DDA shall be forfeited and no cash value will be paid to Employee.
- iii. The PTO shall not be construed as affecting any right to take leave Employee may have under the Family Medical and Leave Act, the Americans with Disabilities Act or other federal or state laws.
- iv. Employee shall be responsible for notifying the DDA Board when he uses PTO. Employee shall transmit this information to the DDA Chairperson and DDA Board in a report that is to be furnished to the DDA Board at the regular DDA Meeting immediately following the leave.
- v. The DDA Board has sole and absolute discretion to determine whether or not he Employee is entitled to PTO and any other issues relating to Section 8 of this Agreement. The DDA Board reserves the right to amend or revoke the terms of Section 8 of this Agreement at any time without notice to Employee.

Section 9. Other Benefits.

The DDA shall pay the bond required pursuant to Section 5 of 1975 PA 197. Other than those benefits expressly set forth in this Agreement, Employee is not entitled to any other benefits except as required by law.

Section 10. Professional Development

The DDA agrees to budget for and pay the professional dues and subscriptions of Employee and the costs of any travel required to participate in mutually agreeable national, regional, state, and local professional associations and organizations related to Employee's duties hereunder. However, any payment under this Section shall be subject to the DDA's financial position and if the DDA Board determines that it is not financially able to pay these costs, the DDA shall have no liability for such costs.

Section 11. Indemnification.

The DDA will 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 his duties as Employee. Indemnification shall extend beyond termination of employment, and the otherwise expiration of this Agreement, to provide full and complete protection of Employee by the DDA, as described herein, for any acts undertaken or committed in his capacity as Employee, regardless of whether the notice or filing of a lawsuit for such tort, claim, demand, or other legal action occurs during or following his employment with the DDA. Employee is always to be bondable and insurable. Employee agrees to observe and comply with the rules and regulation of the DDA, as adopted by the DDA Board either orally or in writing respecting the performance of Employee's duties, and to carry out and to perform orders, directions and policies announced to Employee by the Board from time to time. Employee understands that the DDA shall have the final authority and the power to direct, control or supervise the manner and time of Employee's duties through the DDA Board and as is consistent with the laws of the State of Michigan.

Section 12. Conflict of Interest Prohibition.

Because of the duties and responsibilities of Employee pursuant to this Agreement, Employee, as a condition of his continued appointment and employment, shall not individually, or as a partner, joint venture, officer, owner, employee, independent contractor or shareholder invest or participate in any business venture conducting business in the DDA District, except for stock ownership in any company whose capital stock is publicly held and regularly traded, without the prior approval of the Board. Nor will Employee invest in any real estate or real property improvements within the DDA District.

Section 13. Duration of Agreement.

- a. Subject to the terms and conditions contained within this Agreement, the duration of this Agreement begins on the Execution Date and ends on **March 31, 2021**.
- b. Subject to the terms and conditions contained within this Agreement, this Agreement will terminate on March 31, 2021, unless an addendum establishing a new duration of this Agreement has been negotiated and entered into in writing by the DDA Board and Employee.
- c. Employee shall at all times be an at-will employee of the DDA.

Section 14. General Provisions.

- a. The text herein constitutes the entire Agreement between the DDA and Employee as to the subject matter hereof. It may not be changed or modified except in writing, signed by the parties hereto.
- b. This Agreement shall be binding upon and inure to the benefit of the heirs at law and executors of Employee.
- c. If any provision, or any portion of any provision, contained in this Agreement is held unconstitutional, invalid or unenforceable, the remainder of this Agreement, or portion thereof, shall not be affected and shall remain in full force and effect.
- d. This Agreement sets forth the entire agreement and understanding between the parties as to the subject matter hereof, and supersedes all prior and/or contemporaneous discussions, representations, amendments, or understandings of every kind and nature between them. No verbal statements made by any employee, representative, or agent of the DDA shall constitute an agreement of the DDA unless such verbal statement is set forth in this Agreement.
- e. No waiver of any of the obligations contained herein shall be effective for any purpose unless the same shall be in writing signed by the Chairperson of the DDA, upon the DDA Board's approval.
- f. This Agreement may not be assigned by either party.
- g. This Agreement has been executed, delivered and accepted at and shall be deemed to have been made at the Township of Kochville, Saginaw County, Michigan, and shall be interpreted in accordance with the laws of the State of Michigan.
- h. This Agreement has been prepared and negotiations have occurred in connection with said preparation pursuant to the joint efforts of the parties hereto. This Agreement, therefore, shall not be construed against any party to this Agreement.
- i. Notices pursuant to this Agreement shall be sent via U.S. Mail, delivery confirmation or via overnight courier to the following addresses:

If to DDA:
Chairperson
Kochville Township DDA
5151 Hampton Place
Saginaw, Michigan 48604

If to Employee:
Tyson D. McKinley
4797 Lorraine Avenue
Saginaw, Michigan 48604

Section 15. Hours of Work.

The minimum work week of the Employee shall be forty (40) hours plus any additional work time reasonably required to discharge the duties and responsibilities of the office of the DDA Director, including, but not limited to, any official meetings that are generally attended by the DDA Director unless previously excused by the DDA Chairperson or Board. The Board understands that Employee will be attending occasional night and weekend meetings and conferences. The DDA Board agrees that Employee may absent himself from the office from time to time as long as he is working the minimum forty (40) hours plus any additional work time reasonably required to discharge the duties and responsibilities of the office of the DDA Director.

IN WITNESS WHEREOF, the DDA Board has caused this Agreement to be signed and executed on its behalf by the DDA Chairperson and duly attested by the DDA Secretary, and the Employee has signed and executed this Agreement, both in duplicate, this ___ day of _____, 2018.

THE DOWNTOWN DEVELOPMENT AUTHORITY BOARD

By: _____
Lyle Davis, Jr., Chairman of the Authority Board

ATTEST:

By: _____
Thomas A. Basil, Jr., Secretary of the Authority Board

EMPLOYEE

By: _____
Tyson D. McKinley, Employee

ATTEST:

APPROVED AS TO FORM AND LEGALITY

By: _____
Kevin Kilby, Legal Counsel for the DDA Board