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EMPLOYMENT AGREEMENT

This Employment Agreement, is hereby made and entered into this ____ day of _____, 2017, by and between the City of Topeka, Kansas, a duly organized municipal corporation, and Brent D. Trout.

RECITALS

Whereas, the City of Topeka, Kansas (hereinafter the “City”), a municipal corporation, operates, in accordance with state and local law, as a City Manager form of government.

Whereas, the City of Topeka prides itself on being a professional, service-minded and progressive organization, and seeks a City Manager with like ideas.

Whereas, under the Topeka Municipal Code, the City Manager is appointed by the Governing Body and serves at its will and pleasure.

Whereas, the City currently has a vacancy in the position of City Manager.

Whereas, Brent D. Trout possesses the qualifications to perform the duties of the City Manager, as demonstrated by his training and experience, and he is currently ready, willing, and able to perform those duties.

Whereas, consequently, the Governing Body wishes to engage Brent D. Trout to serve as its City Manager and, to that end, has appointed him to serve as its City Manager.

Whereas, it is the intent of the City and Brent D. Trout to enter into this Employment Agreement (hereinafter “Agreement”), establishing the terms and conditions of his employment with the City as City Manager.

TERMS AND CONDITIONS

Now, therefore, in light of the mutual promises and obligations contained herein, and in exchange for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties, the parties agree as follows:

Section 1

Duties, Functions and Responsibilities; Authority

A. **Faithful Performance.** The City hereby agrees to employ Brent D. Trout (hereinafter the “Manager”) as its City Manager to perform those duties, functions, and responsibilities specified and defined by the Topeka Municipal Code and Charter Ordinances (including all those presently in effect, or as may be amended or supplemented during the term of this Agreement); and to perform all other legally permissible and proper duties, functions, and responsibilities as the Governing Body may assign from time to time. The Manager is the chief executive officer of the City and shall faithfully perform the duties as prescribed in his job description, as set forth in the City’s charter and/or ordinances, and as may be lawfully assigned by the Governing Body. The Manager shall also comply with all lawful Governing Body directives, state, and federal law, in addition to City policies, rules, and ordinances, as they now exist or may hereafter be amended. The Manager agrees to perform such duties, functions, and responsibilities with reasonable care, diligence, skill, and expertise.

B. **Hours.** The Manager acknowledges that the proper performance of his duties will require him to be reasonably available during normal business hours (Monday through Friday between 8:00 a.m. and 5:00 p.m.); but that such duties will often require the performance of necessary duties and responsibilities outside of normal business hours. The Manager agrees to devote such additional time as is necessary for the full and proper performance of the same.

C. **Outside Employment or Engagements.** During his term of employment, the Manager agrees to be in the exclusive employment of the City and shall neither accept outside employment nor become employed by any other employer. With the Governing Body’s written approval, the Manager may accept limited teaching, speaking, or writing opportunities, so long as such activities do not interfere or conflict with his duties, functions, and responsibilities as City Manager.

Section 2

Term

The term of this Agreement shall be for an initial period of three (3) years, beginning October 30, 2017 and continuing through October 29, 2020. This Agreement shall automatically be renewed on its anniversary date for a one-year term unless either party files notice of its desire not to renew at least six (6) months prior to October 30, 2020, and any subsequent October 30th anniversary dates. Nothing in this Agreement shall be construed to prevent, limit, or otherwise interfere with the right of the Governing Body to terminate the services of the Manager at any time, for any reason or for no reason, with or without cause, subject only to the terms and conditions of this Agreement; the Manager shall serve at the will and pleasure of the Governing Body with no guaranteed tenure of employment. Nothing in this Agreement shall be construed to prevent, limit, or otherwise interfere with the right of the Manager, upon providing sixty (60) days advance written notice, to resign or retire at any time from the city manager position with the City, subject only to the terms and conditions of this Agreement.

Section 3 Compensation

A. **Base Pay.** The City agrees to pay the Manager, as part of the compensation for his services hereunder, an annual base salary of One Hundred Ninety-Five Thousand Dollars and No Cents (\$195,000.00) payable to the Manager over the course of the calendar year, in equal installments, at the same time that it pays other City employees.

B. **Performance Increases.** Periodic reviews of the Manager's base salary shall be conducted by the City in conjunction with the annual performance review addressed in Section 8 below. If the Manager receives a rating of "Meets Expectations" or higher on his annual performance evaluation, he shall be entitled to receive a salary increase consistent with that received by employees who are part of the Management and Executive Pay Plan.

Section 4 Benefits

A. **Health Insurance.** The City agrees to provide the Manager the same comprehensive major medical, prescription drug, and dental coverage that it offers to other City employees. Additionally, the Manager may elect to enroll in other voluntary benefits the City offers other City employees, including: accident insurance, cancer insurance, critical care insurance, and short-term disability insurance. The Manager may choose which plan(s) in which to participate, including spouse and/or dependent coverage, and he will pay the same associated premiums as paid by other City employees.

B. **Retirement; Life/Disability Insurance - KPERS.** The City participates in the Kansas Public Employee Retirement System (KPERS) and the Manager shall be considered a KPERS-covered employee. KPERS is inclusive of retirement benefits, life insurance benefits and long-term disability benefits. Additional optional benefits available through KPERS include: optional group life insurance and deferred compensation, which the Manager may choose to participate.

KPERS Disclaimer: The Manager shall be responsible for his retirement benefits under KPERS. The City makes no representations regarding the Manager's KPERS retirement benefits or KPERS' treatment of any of the compensation or payouts of leave set forth in this Employment Agreement. The Manager has not relied, and agrees that he will not rely, upon any statement or representation of the City regarding his final average salary, KPERS benefits, or interpretations of the same. The Manager agrees to hold the City harmless from any adverse changes to his KPERS retirement benefits by the Kansas legislature or administration of the KPERS program. Likewise, the City has not made any representations with respect to any taxes owed by the Manager under this Agreement, and the Manager agrees that he has not and will not rely upon any statement or representation made thereon by the City. Furthermore, the parties agree that this Employment Agreement shall be construed, to the extent possible, so as not to require the City to make a KPERS "spike" payment under K.S.A. 74-49,126, as amended. However, if such payment becomes necessary, the City agrees that it would be responsible for making such payment.

C. **Deferred Compensation.** In addition to other compensation provided to the Manager in this Agreement, the City agrees to contribute on behalf of the Manager an annual amount of Five Thousand Dollars (\$5,000.00) into a deferred compensation program mutually agreed upon between the City and the Manager. Said amount shall be payable over the course of the calendar year in an equal proportionate amount each pay period and taxed in accordance with applicable law.

D. **City-Owned Take-Home Vehicle.** It is understood and agreed that the Manager's duties require that he have access to an automobile. Accordingly, the City agrees to provide the Manager with a City-owned take-home vehicle during the term of his employment for his use in conducting City-related business. The Manager's use of the City-owned take-home vehicle shall be subject to City of Topeka Policy P104 and the Manager shall submit the required monthly vehicle logs to the Director of Administrative and Financial Services.

Although it is anticipated that there may be times when it is appropriate for the Manager to use his personal vehicle for City-related business, this should be the exception rather than the rule. In anticipation of such occasions, the Manager shall maintain, at all times and in full force and effect, a policy of liability insurance having limits of no less than \$100,000.00 per occurrence for bodily injury, \$500,000.00 per accident for bodily injury and \$100,000.00 per occurrence for property damage. The City shall be listed as an additional insured on this policy and the Manager shall provide appropriate proof of compliance hereunder to the Risk Manager with such proof of compliance to be furnished upon the renewal date of such policy or upon the date that a new policy is issued. All operating, maintenance, insurance, or other costs incurred by the Manager in conjunction with the use of his private automobile during the term of his employment, whether said use is personal or business-related, shall be borne entirely by the Manager and the Manager agrees to keep any personal vehicle used for official business in good cosmetic and operating condition.

E. **One-Time Relocation Expenses.**

(1) **Temporary Housing.** ^{one-time} If temporary housing is required, the City shall pay the Manager an interim housing supplement not to exceed Three Thousand Dollars (\$3,000.00) upon providing sufficient documentation of temporary rental expenses.

(2) **Moving.** The City shall pay for the expenses of moving the Manager and his family and personal property from Mason City, Iowa to the City. Said moving expenses shall include standard costs associated with a move, including insurance charges, but shall exclude storage costs. The Manager shall secure estimates from three (3) companies and submit these estimates to the City's Finance and Administrative Services Director who, in consultation with the Manager, shall select the moving company. The City shall submit a direct one-time payment to the moving company, up to an amount not-to-exceed Fifteen Thousand Dollars (\$15,000.00) (unless additional authorization is provided by the Governing Body), upon being presented with a corresponding invoice by the Manager.

F. **Other Benefits.** The Manager will also be entitled to all benefits accorded other City employees, including, but not limited to, those associated with health and wellness, workers' compensation insurance, unemployment insurance, personal or family leave, and FICA.

Section 5

Leave

A. **Vacation.** On the Manager's first day of employment with the City, he will be credited with one-hundred twenty (120) hours of vacation leave (fifteen (15) days) and shall immediately begin accruing leave in the same manner as other non-represented City employees. No more than eighty (80) hours of vacation leave (ten (10) days) may be carried over from one year to the next. Vacation leave will be taken by the Manager at such time or times as will cause the least amount of interference with the performance of his duties. The Manager shall receive payment for any vacation accrued as of the date of his resignation or termination.

B. **Other Leave.** The Manager will be entitled to the same leave benefits as those offered and available to other non-represented City employees.

Section 6

Professional Development

A. **Dues and Subscriptions.** The City agrees to budget/pay for a reasonable number of professional dues and subscriptions to encourage the Manager's participation in national, regional, state, or local associations or organizations, including, but not limited to, the International City/County Management Association and the Kansas City Manager's Association, to the extent the Manager deems his participation to be in the best interests of the City. However, with respect to local clubs, such as Rotary, Optimists, or Kiwanis, the City will pay for only one such membership of the Manager's choice.

B. **Attendance at Conferences.** The City agrees to budget/pay for reasonable travel, registration, and subsistence expenses associated with conferences and seminars directly related to enriching the Manager's professional development, as well as providing the Manager with an opportunity to pursue and discharge official and ceremonial functions on behalf of the City at annual conferences or conventions, including, but not limited to, those of the International City/County Management Association, the National League of Cities, the League of Kansas Municipalities, and such other national, regional, state, and local organizations or committees of which the Manager is, or will be, a member.

C. **Continuing Education.** The City agrees to budget/pay for reasonable travel, registration and subsistence expenses incurred by the Manager in association with his attendance at short courses or seminars deemed reasonably necessary for the good of the City and in support of the Manager's continued professional development.

Section 7

Other Terms and Conditions of Employment

A. **Applicability of Code Provisions, Rules, and Regulations.** Unless otherwise specifically described in this Agreement, all provisions of the Topeka Municipal Code and other policies, rules and regulations of the City relating to working conditions, vacation and sick leave, retirement and pension system contributions, holidays and other benefits, as they now exist or may later be amended, shall apply to the Manager in the same way as they apply to other management employees of the City.

B. **Ability to Enact; Process for Enacting.** The City, in consultation with the Manager, may also fix any other such terms and conditions of the Manager's employment, relating to the performance of the Manager, as it deems appropriate from time to time. However, any such term and condition shall not be inconsistent or in conflict with the terms and conditions of this Agreement, the City Code, or State law. Moreover, no such additional term or condition shall be effective unless first mutually agreed upon by the parties, reduced to writing, and subsequently executed by the parties.

C. **Residency.** The Manager agrees to secure temporary housing within the City limits by or before his start-date of date not yet determined; provided, however, that the Manager shall secure and establish a primary residence, for him and his family, within the City limits prior to 6 months from start-date. The Manager agrees to maintain such primary residence within the City limits through the remainder of this Agreement.

Section 8

Evaluation, Goals and Objectives

A. **Evaluation; Timing, Form and Response.** The Governing Body shall conduct an initial, informal review and evaluation of the Manager's performance six (6) months from his start-date. Within sixty (60) days of the Manager's one-year anniversary of employment, and annually thereafter, the Governing Body shall conduct a formal, written review and evaluation of the Manager's performance in accordance with applicable City Code provisions and personnel procedures. As part of each such review/evaluation, the Governing Body shall provide the Manager with a summary of its input and comments related to the particular period of time covered by the review/evaluation and shall provide an adequate and timely opportunity for the Manager to respond either in writing or through discussion with the Governing Body. Upon completion of each review/evaluation, the corresponding document will be kept on file in the Mayor's Office in a secure location. In implementing the provisions of this Section 8, the parties agree to abide by all applicable federal, state, and local law.

B. **Goals and Objectives.** Within thirty (30) days of completing each review/evaluation, the Governing Body shall establish annual goals and objectives for the Manager. To assist the Governing Body with this responsibility, the Manager may provide proposed goals and objectives.

Section 9

Termination, Separation; Severance

A. **Severance Pay.** In the event the Manager, after declaring he is ready, willing, and able to perform the duties of the City Manager, is separated from his employment with the City prior to his one-year anniversary date of employment, and is able, under this Section 9, Paragraph B below, to declare that his separation is a termination of employment, then the City shall pay to the Manager, as severance pay, a lump sum cash payment equal to the sum of nine (9) months of the Manager's annual base salary as set forth in Section 3, Paragraph A, above, together with a payment for all accrued vacation and other benefits available to other City employees at the time of separation, less any taxes or other withholdings required by law.

In the event the Manager, after declaring he is ready, willing, and able to perform the duties of the City Manager, is separated from his employment with the City at any time after his one-year anniversary of employment, and is able, under this Section 9, Paragraph B below, to declare that his separation is a termination of employment, then the City shall pay to the Manager, as severance pay, a lump sum cash payment equal to the sum of six (6) months of the Manager's annual base salary as set forth in Section 3, Paragraph A, above, together with a payment for all accrued vacation and other benefits available to other City employees at the time of separation, less any taxes or other withholdings required by law.

B. **When Severance Pay Allowed.** For purposes of this Section 9, the Manager shall be able to declare the following events to be terminations of employment pursuant to which severance pay will apply:

(1) If, at a duly-authorized public meeting, a majority of the Governing Body votes to terminate the Manager's employment with the City for any reason other than:

(a) the Manager's death or inability to fulfill the essential functions associated with the duties of being the Manager, with or without reasonable accommodation; or

(b) the Manager's failure to comply with applicable laws, rules, regulations and policies; or

(c) the Manager's having been charged with any felony, any misdemeanor involving malfeasance, or any crime of moral turpitude; or

(d) the Manager's intentional misrepresentation of material facts to the Governing Body or other City officials in the conduct of the City's business, including the knowing falsification of records or documents; provided, however, that there is sufficient evidence, as determined by the Governing Body, of said misrepresentation or falsification following a full investigation of the facts and circumstances involved; or

(e) the Manager's insubordination through his failure to comply with any lawful directive submitted by a majority of the Governing Body; or

(f) the Manager's incompetency or inefficiency in the performance of his duties, as documented by a lower than "Meets Expectations" performance rating completed in conjunction with Section 8 above; provided, however, that the Manager is given a reasonable opportunity to remedy any such incompetency or inefficiency; or

(g) the Manager's failure to uphold the tenets of the International City-County Management Association ("ICMA") Code of Ethics, which require the Manager to represent the City in a professional manner throughout his tenure.

(2) If the State or the City takes any action that would eliminate the position of City Manager, or substantially alter or change the authority of the City Manager position.

(3) If the City reduces the compensation, annual base salary, or other financial benefits accruing to the Manager hereunder; unless the percentage reduction is equal to or less than the percentage reduction of all management employees of the City or the Manager has been placed in a suspension without pay status in conjunction with discipline.

(4) If the City offers to accept the Manager's resignation in lieu of termination of his employment and, in acceptance of that offer, the Manager resigns.

(5) If the City breaches any provision of this Agreement and fails, within thirty (30) days after receiving written notice thereof from the Manager, to remedy any such breach.

C. **Voluntary Resignation or Retirement.** In the event the Manager voluntarily resigns or retires from his position, or leaves the City's employment for reasons other than the specific reasons listed in Section 9, Paragraph B above, excluding the reasons specified in Subparagraph (1), subsections (a)-(g), then the separation of employment shall not be deemed a termination of employment and the Manager shall not be entitled to severance pay described in Paragraph A of this Section 9. The Manager agrees – unless the Manager and the Governing Body mutually agree otherwise – to give written notice to the City no less than sixty (60) days in advance of any voluntary resignation or retirement of his position.

Section 10

Indemnification and Risk Allocation

A. **Indemnification.** The City shall defend, save harmless, and indemnify the Manager 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 within the scope of

the Manager's employment or duties, unless the act or omission involved willful or wanton misconduct, actual fraud or actual malice, or criminal activity. In the defense of such claims, the Manager may request, and the City may not unreasonably refuse to provide independent legal representation at the City's expense; and the City may not unreasonably withhold approval. Legal representation provided by the City for the Manager shall extend until a final determination of legal action, including any appeals brought by either party. The City shall indemnify the Manager against any and all losses, damages, judgments, interest, settlements, fines, court costs, and other reasonable costs and expenses of legal proceedings, including attorneys' fees, and any other liabilities incurred by, imposed upon, or suffered by such Manager in connection with, or resulting from, any claim, action, suit, or proceeding, actual or threatened, arising out of, or in connection with, the performance of his duties, unless the act or omission involved willful or wanton misconduct, actual fraud or actual malice, or criminal activity. Any settlement of any claim must be made with prior approval of the City, which approval shall not be unreasonably withheld, in order for indemnification as provided in this Section 10 to be available. The Manager recognizes that the City shall have the right to compromise, adjust, and settle claims against the Manager for which the Manager is entitled to indemnification. Further, the City agrees to pay all reasonable litigation expenses of the Manager throughout the pendency of any litigation to which the Manager is a party, witness, or advisor to the City. Such expense payments shall continue beyond the Manager's service to the City as long as litigation is pending. The parties also acknowledge that they are subject to the Kansas Tort Claims Act, codified as amended at K.S.A. 75-6101 et seq., and that the Manager is entitled to all rights and protections afforded public employees thereunder.

Section 11

Ethical Commitments

The Manager will at all time uphold the tenets of the ICMA Code of Ethics, a copy of which is attached hereto as *Exhibit A* and incorporated herein. The City shall support the Manager in keeping these commitments by refraining from any order, direction, or request that would require the Manager to violate the ICMA Code of Ethics. The Manager shall also adhere to the City's Rules, Regulations, Policies and Ordinances and is expected to represent the City in a professional manner throughout his tenure as city manager.

Section 12

Notices

All notices, demands, or other communications that may or may not be or are required to be given by any party under this Agreement, shall be in writing and shall be hand-delivered, mailed by first class mail, mailed by registered or certified mail, or transmitted by overnight express mail to the following addresses:

If to the Manager --

Brent D. Trout
10 Granite Court SE
Mason City, IA 50401

If to the City --

City of Topeka
215 SE 7th Street, Room 353
Topeka, KS 66603
Attn: City Attorney

Section 13
Entire Agreement

This Agreement represents the entire and integrated agreement between the City and the Manager and supersedes all prior negotiations, representations, or agreements between the parties, whether written or oral, and may be amended only by a written instrument signed by both the City and the Manager. Written and signed amendments shall automatically become a part of this Agreement and shall supersede any inconsistent provision herein; provided, however, that any apparent inconsistency shall be resolved, if possible, by construing the provisions as mutually complementary and supplementary. No oral orders, objections, claims, or notices by any party to the other shall affect or modify any of the terms or obligations set forth in this Agreement.

Section 14
Assignment or Transfer

This Agreement may not be assigned or transferred.

Section 15
Binding Effect

This Agreement shall be binding on the City and the Manager as well as their heirs, assigns, executors, personal representatives, and successors in interest.

Section 16
Governing Law

This Agreement, the rights and obligations of the parties, and any claim or dispute arising hereunder shall be construed in accordance with the laws of the State of Kansas.

Section 17
Captions and Recitals

The captions of this Agreement are for convenience only and are not meant by the parties to define, limit, or enlarge the scope of this Agreement or its terms. Conversely, the recitals set forth at the beginning of this Agreement are adopted and incorporated herein by reference.

Section 18
Severability

In the event that any provision of this Agreement shall be held invalid and unenforceable, the remaining portions of this Agreement shall remain valid and binding upon the parties.

IN WITNESS WHEREOF, the parties have executed this contract effective on the day and year first above written.

CITY OF TOPEKA, KANSAS

By: Larry Wolgast
Title: Mayor

ATTEST:

Brenda Younger, City Clerk

MANAGER

Brent D. Trout

