

EMPLOYMENT AGREEMENT

This agreement is entered into by and between the City of Broken Arrow, Oklahoma, a Municipal Corporation (hereinafter “City”) and Michael L. Spurgeon (hereinafter “Spurgeon”). The effective date of this Agreement is August 4, 2015. The City desires to employ the services of Spurgeon to function as City Manager. In his capacity as City Manager, Spurgeon shall also function as the Business Manager for certain public trusts, and may have other responsibilities relating to those duties. While Spurgeon may have multiple titles with various boards, trusts and agencies, all such duties are considered one job for the purposes of this Agreement. The establishment of employment conditions is of mutual benefit to the parties and serves as an inducement for both to enter into this Agreement, to thereafter remain in an employee/employer relationship, and to allow Spurgeon to exercise full productivity and professional judgment on the City's behalf.

It is the City's desire to secure and retain the services of Spurgeon and to provide an inducement for him to remain in such employment. To this end, it is the City's desire to make possible full work productivity by assuring Spurgeon’s morale and peace of mind with respect to future security. It is also prudent, however, to establish appropriate terms and conditions for the discontinuation of Spurgeon’s services at such time as termination of those services is desirable by either City or Spurgeon, while he is the City Manager.

A. DUTIES

1. The City hereby agrees to employ Spurgeon as the City Manager for the City of Broken Arrow, Oklahoma, to perform all relevant functions and duties specified under Title 11 of the Oklahoma Statutes, as set forth in any of the codes or ordinances of the City, and as set forth in all other state statutes, including existing law, as well as all future modifications thereof. Spurgeon shall perform such other legally permissible and proper duties as the Council may

assign with particular reference to various public trusts of which the City is a beneficiary, or to inter-governmental organizations in which the City may participate.

2. Spurgeon shall not be entitled to any additional compensation by reason of any service that he may perform under A.1 above.

B. TERM

1. It is understood that Spurgeon shall begin the performance of his duties on September 21, 2015 ("Start Date"). This agreement shall remain in effect for a period of three (3) years from that date. It is the intent of the Council and the Council will make all reasonable efforts to ensure that this Agreement shall remain in effect for the term specified unless modified by mutual consent of the parties or unless terminated as herein provided. It is acknowledged that Spurgeon's salary and benefits for fiscal years 2017, 2018 and 2019 are on a year-to-year basis subject to annual appropriation.

2. This Agreement is contingent upon Spurgeon taking and passing a drug screening test, conducted by a laboratory of the City's choosing, prior to the Start Date. To this end, the City shall identify a testing laboratory in Spurgeon's current State of residence.

C. SALARY AND RETIREMENT CONTRIBUTIONS

1. The City agrees to pay Spurgeon a base salary, payable in bi-weekly installments at the same time as other City employees are paid. The City shall pay Spurgeon a starting annual salary of \$166,000.00. Any reduction in Spurgeon's salary as the result of an across the board workforce salary reduction shall be commensurate with the percentage of adjustment afforded to other non-union employees.

2. The City shall contribute twelve percent (12%) of Spurgeon's base salary into a qualifying retirement plan of Spurgeon's choosing. Said contributions shall be payable in equal installments, on each regularly scheduled payroll date.

D. TERMINATION AND SEVERANCE

1. The City Council has the right to terminate the services of Spurgeon at any time so long as he is functioning as the City Manager. Although Spurgeon acknowledges he is an employee at will under established Oklahoma law, a severance agreement is appropriate and in the interest of both parties.

2. In the event the City Council terminates Spurgeon's employment while acting in his capacity as City Manager before September 21, 2016, for any reason not amounting to affirmative misconduct, malfeasance in office, conviction or plea of Guilty or *Nolo Contendere* for a crime involving moral turpitude, or the physical inability to perform the duties of office, the City shall give Spurgeon a severance benefit of nine (9) months' salary.

3. In the event the City Council terminates Spurgeon's employment while acting in his capacity as City Manager between September 21, 2016, and September 21, 2017, for any reason not amounting to affirmative misconduct, malfeasance in office, conviction or plea of Guilty or *Nolo Contendere* for a crime involving moral turpitude, or the physical inability to perform the duties of office, the City shall give Spurgeon a severance benefit of nine (9) months' salary.

4. In the event the City Council terminates Spurgeon's employment while acting in his capacity as City Manager between September 22, 2017, and September 21, 2018, for any reason not amounting to affirmative misconduct, malfeasance in office, conviction or plea of Guilty or *Nolo Contendere* for a crime involving moral turpitude, or the physical inability to perform the duties of office, the City shall give Spurgeon a severance benefit of seven (7) months' salary.

5. In the event of termination, the City shall also pay to Spurgeon, in a lump sum, the City's portion of the medical and dental insurance, for the duration of the severance period as set forth above, plus accrued vacation in accordance with city policies. Severance pay shall be paid in an amount owed, minus applicable federal and state deductions and payroll taxes within fourteen (14) days of approval by the City Council.

6. For the purposes of complying with the severance provisions of this Agreement, appropriations held as unencumbered fund balances in any fund of the City of Broken Arrow or the Broken Arrow Municipal Authority shall be deemed to be available and authorized for transfer to the appropriate salary and benefit expenditure accounts to insure fulfillment of this provision of the Agreement.

7. In the event Spurgeon voluntarily resigns his position with the City without inducement as set forth in this Section D, then Spurgeon shall not be entitled to severance pay and benefits. In the event of such voluntary resignation, Spurgeon shall give the City not less than thirty (30) days written notice in advance of his date for leaving the duties of office.

**E. PERFORMANCE REVIEWS
AND MERIT CONSIDERATION**

1. The Mayor and City Council will conduct an informal performance review six (6) months after Spurgeon's Start Date, with subsequent annual reviews thereafter. Prior to the City Council taking any adverse employment action, Spurgeon shall be entitled to not less than fourteen (14) days to provide a written response to any allegations of unsatisfactory performance or misconduct. Further, no later than June 14, 2018, the Council shall meet, consider and advise Spurgeon as to the Council's intent to enter into good faith negotiations for a new Agreement.

2. Merit consideration for salary increases will be provided at least once each year of employment, or more often if the City Council so indicates. Salary increases, if given, will be

based upon satisfactory or better performance during each year of employment. Review and evaluations shall be in accordance with specific criteria developed jointly by the City Council and Spurgeon. Said criteria may be added to or deleted from as the Council may from time to time determine with Spurgeon. Merit consideration may be in the form of increases in Spurgeon's base salary or bonuses. To the extent that such issues solely involve personnel matters between the Council and Spurgeon, this process may be performed in Executive Session.

F. PAID LEAVES

1. Spurgeon shall be credited with the equivalent of two (2) weeks of paid vacation leave and two (2) weeks of sick leave on the Start Date.
2. Spurgeon shall be entitled to sick leave, vacation, paid holidays, funeral leave and military leave, as set forth in Article IX, Section 2 of the Broken Arrow Code. The accrual, use, and maximum accumulations of such leaves shall be on the same basis as any regular, full-time, non-union employee with ten (10) years of service as set forth in the Broken Arrow Code.
3. Spurgeon shall always designate an acting Manager to serve in his absence.

G. OUTSIDE EMPLOYMENT

Spurgeon agrees to be in the exclusive employment of the City until this agreement is terminated and shall not work for any other employer earlier than the effective date of termination or resignation, except as specifically approved in writing by the City Council. This prohibition shall not preclude occasional teaching or occasional consulting with organizations such as the Oklahoma Municipal League or the International City/County Management Association, nor to writing during Spurgeon's time off, so long as such activities do not interfere with the duties of office.

H. INSURANCE

The City shall provide Spurgeon with the same group term life, health, vision, dental, and disability insurance coverage as is offered to other non-union employees of the City. The City shall offer identical dependent coverage subject to compliance with all group plan provisions established in the City's Group Health Plan Benefit document, with the City's contribution to be the same percentage toward dependent coverage as regular non-union employees.

I. PROFESSIONAL DUES, SUBSCRIPTIONS, AND TRAINING

1. The City shall pay the professional dues and subscriptions for Spurgeon as necessary for his full participation in the International City/County Management Association, an appropriate regional Manager's association, and the City Management Association of Oklahoma. The Council will, in good faith, consider participation in other organizations as may be desirable for Spurgeon's professional growth and advancement, and for the good of the City, including Chamber and civic club memberships.

2. The City shall pay Spurgeon to travel to meetings, short courses, institutes, and seminars as needed to continue his professional development, or which expenses are necessary to attend official functions on behalf of the City. Such occasions may include the annual conferences of the International City/County Management Association, the National League of Cities, the City Management Association of Oklahoma, and the Oklahoma Municipal League.

J. CAR AND TECHNOLOGY ALLOWANCE

1. Because of Spurgeon's need to attend to obligations of his employment both inside and outside of the City of Broken Arrow, it is desirable to make arrangements for Spurgeon's transportation. As such, the City shall pay Spurgeon a car allowance of \$750.00 per month. Spurgeon shall, at his sole expense, obtain automobile insurance coverage in a minimum

amount of \$500,000.00 for personal property and \$1,000,000.00 in general liability coverage. The City shall further reimburse Spurgeon at the IRS standard mileage rate for any business use of his vehicle for travel to locations beyond a 75-mile radius of the Broken Arrow city limits.

2. Because of Spurgeon's need to facilitate communication in the furtherance of City business, it is desirable to make arrangements for internet and phone service and related technology. As such, the City shall pay Spurgeon a monthly allowance of \$250.00 for wireless phone and internet service. Spurgeon shall be responsible for securing appropriate and necessary technology, phone and internet service.

**K. RESIDENCY, RELOCATION, HOUSING ALLOWANCE
AND RELATED EXPENSES**

1. Spurgeon shall establish and maintain personal permanent residency within the corporate boundaries of the City of Broken Arrow within six (6) months after his Start Date and at all times thereafter during his period of employment. The City agrees to pay relocation expenses, to include packing, transport, storage, insurance, unpacking of normal household goods and personal effects, and mileage for use of his personal vehicle during the relocation period. Said payment shall not exceed the sum of \$12,000.00, and shall either be paid directly by the City of Broken Arrow to the vendor or reimbursed to Spurgeon. All requests for reimbursement shall be supported by receipts in accordance with City policy.

2. The City shall reimburse Spurgeon the cost of one (1) relocation preparation visit to Broken Arrow. Reimbursement shall include travel to and from Broken Arrow, lodging expenses, and *per diem* expenses. All requests for reimbursement shall be supported by receipts and in accordance with City policy.

3. City shall pay Spurgeon a transitional housing allowance of \$2,000.00 per month on a monthly basis, for a period of six (6) months, following Spurgeon's Start Date, to help in

defraying the costs of establishing a temporary residence in Broken Arrow while Spurgeon maintains and markets his existing property in St. Charles, Missouri.

L. NOTICES

Any notices pursuant to this agreement shall be given by deposit in the United States Mail, postage prepaid, to the Broken Arrow City Council, 220 South First Street, Broken Arrow, Oklahoma 74012, and to Spurgeon at the Office of the City Manager, 220 South First Street, Broken Arrow, Oklahoma 74012. Alternatively, notices may be personally served upon Spurgeon and upon the City Clerk, who is hereby authorized to accept service on behalf of the City Council. Such Notice shall be deemed given as of the date of personal service or as of the date of deposit of the written notice in the United States Mail.

M. GENERAL PROVISIONS

1. This document constitutes the entire agreement between the parties and may not be modified except in writing, and executed by the parties to be bound thereby. If any provisions or section of this agreement shall be found invalid or unenforceable for any reason, such finding shall not impair the remainder of this agreement. All provisions are considered severable.

2. Spurgeon specifically represents that he has sought such independent consultation and representation with respect to this agreement as he may desire, prior to the execution of this agreement. Spurgeon fully understands all the terms and conditions herein. Spurgeon further understands that no individual member of the Broken Arrow City Council and no employee of the City have functioned as an agent or advisor of Spurgeon prior to the execution of this agreement.

3. This agreement has been executed in Tulsa County, Oklahoma, and virtually all of the performance of this Agreement shall be performed throughout the State of Oklahoma. Therefore, all suits and special proceedings hereunder shall be construed under and pursuant to

