

NINTH AMENDMENT TO EMPLOYMENT AGREEMENT

THIS NINTH AMENDMENT TO EMPLOYMENT AGREEMENT (“NINTH”) made effective this 19th day of September, 2023 by and between Michael L. Spurgeon, City Manager for the City of Broken Arrow (hereinafter “Spurgeon”) and the City of Broken Arrow, Oklahoma, an Oklahoma Municipal corporation (hereinafter “City”). Terms used and not otherwise defined in this Ninth Amendment shall be as defined in the August 4, 2015, Employment Agreement, as amended.

WITNESSETH:

WHEREAS, on August 4, 2015, Spurgeon and the City of Broken Arrow entered into an Employment Agreement (hereinafter referred to as the “2015 Employment Agreement”) whereby the City offered certain benefits and set forth the terms and conditions of Spurgeon’s employment as City Manager for the City of Broken Arrow; and

WHEREAS, on June 7, 2016, the 2015 Employment Agreement was amended to modify various provisions contained therein; and

WHEREAS, on October 4, 2016, the 2015 Employment Agreement, as amended was amended a second time to modify various provisions contained therein; and

WHEREAS, on September 19, 2017, the 2015 Employment Agreement, as amended was amended a third time to modify various provisions contained therein; and

WHEREAS, on October 3, 2018, the 2015 Employment Agreement, as amended was amended a fourth time to modify various provisions contained therein; and

WHEREAS, on September 3, 2019, the 2015 Employment Agreement, as amended was amended a fifth time to modify various provisions contained therein;

WHEREAS, on September 1, 2020, the 2015 Employment Agreement, as amended was amended a sixth time to modify various provisions contained therein;

WHEREAS, on August 31, 2021, the 2015 Employment Agreement, as amended was amended a seventh time to modify various provisions contained therein;

WHEREAS, on September 20, 2022, the 2015 Employment Agreement as amended was amended a eight time to modify various provisions contained therein;

WHEREAS, the City Council of the City of Broken Arrow and Spurgeon desire to continue the employment relationship, but modify some of the terms set forth in the 2015 Employment Agreement, as amended; and

WHEREAS, modifications to said 2015 Employment Agreement, as amended, are reasonable and proper.

NOW, THEREFORE, in consideration of the covenants and mutual obligations set out herein and in the 2015 Employment Agreement, as amended, and other good and valuable consideration, the sufficiency of which the parties hereto hereby acknowledge, do covenant and agree to the following Amendments:

ARTICLE A
AMENDMENTS TO THE 2015 EMPLOYMENT AGREEMENT, AS AMENDED

A.1 **Amendment to Section B. Term**, is hereby amended to read as follows:

1. The term of this agreement shall remain in effect through September 20, 2026, unless modified by mutual consent of the parties or unless terminated herein. All salary and benefits are subject to annual appropriations.

A.2 **Amendment to Section C. Salary and Retirement Contributions**, is hereby amended to read as follows:

1. The City shall contribute seventeen percent (17.5%) of Spurgeon's base salary into his ICMA Mission Square 457 Plan. Said contributions shall be payable in equal installments, on each regularly scheduled payroll date.
2. The City shall pay to Spurgeon a cost of living adjustment of four percent (4%) effective with the approval of the amendment. Should an additional cost of living increase be approved by the City Council for the 2024 fiscal year, any additional amount over the stated 4% shall be paid to Spurgeon in the form of a stipend paid no later than the last day of January 2024.
3. Spurgeon shall receive a one-time performance-based stipend in the amount of \$12,000.00 to be paid by October 1, 2023.

A.3 **Amendment to Section O. Defined Contribution and Special Incentive Plan**, is hereby amended to read as follows:

1. The City agrees to establish a defined contribution special incentive plan for the benefit of Spurgeon. Effective September 21, 2018, and on or before the same day of each year thereafter, for a period of seven years (7) years until September 21, 2025, upon annual renewal of Spurgeon's Agreement through the budgetary process, the City shall cause to be accrued as a liability in favor of Spurgeon, the sum of \$18,000.00 as a defined contribution special incentive plan for Spurgeon. The City may consider an adjustment in the allocation in subsequent years, based on the job performance of Spurgeon. Said fund proceeds shall be placed in a plan with the Oklahoma Municipal Retirement Fund (OMRF) subject to the terms and conditions of the plan document as approved by the City Council. If the City removes Spurgeon pursuant to his Employment Agreement, Spurgeon shall be entitled to receive the balance in the special incentive plan which shall have accrued up to the date of Spurgeon's separation of service from the City, unless Spurgeon is removed for affirmative misconduct, including, but not limited to, an act of dishonesty, theft, or misappropriation of City property, 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, in which case Spurgeon shall forfeit unto City any and all right, title or interest Spurgeon may have in and to said defined contribution special incentive plan. The parties agree that nothing in this paragraph shall impose any future year fiscal obligation on the City and shall be funded on an annual basis.

**ARTICLE B
CONTINUING TERMS OF AGREEMENT**

B.1 Except as amended hereby, all terms of the 2015 Employment Agreement, as amended, shall remain in full force and effect without modification or change. The 2015 Employment Agreement, as amended by this Ninth Amendment, is in all respects ratified and confirmed, and the 2015 Employment Agreement, as amended shall be read, taken and construed as one and the same instrument.

IN WITNESS WHEREOF, each of the parties hereto has caused this Ninth Amendment to the 2015 Employment Agreement, as amended, to be executed and to take effect as of the date above written.

Dated this 19th day of September, 2023

State of Oklahoma)
) SS:
County of Tulsa)

Michael L. Spurgeon

Subscribed and acknowledged by Michael L. Spurgeon before me on this 19th day of September, 2023, as his free and voluntary act and deed.

NOTARY PUBLIC
My Commission No:
My Commission Expires:

ATTEST:

THE CITY OF BROKEN ARROW,
A municipal corporation

By: _____
City Clerk

By: _____
Mayor

Reviewed as to form and legality:

City Attorney