

FIFTH AMENDMENT TO EMPLOYMENT AGREEMENT

THIS FIFTH AMENDMENT TO EMPLOYMENT AGREEMENT (“Fifth”) made effective this 3rd day of September, 2019, 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 Fifth 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, October 3, 2018, the 2015 Employment Agreement, as amended was amended a fourth time to modify various provisions contained therein; and

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:** Section B, Term, is hereby amended to read as follows:

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 nine (9) 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 specifically acknowledged that Spurgeon's salary and benefits for fiscal years 2020, 2021, 2022, 2023, 2024 are on a year-to-year basis subject to annual appropriation.

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

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 an annual salary of \$196,143.96. Any reduction in Spurgeon's salary as the result of an across-the-board workplace salary reduction shall be commensurate with the percentage of adjustment afforded to other non-union employees.
2. On September 20, 2019, Spurgeon shall receive to a one-time performance-based stipend in the amount of \$12,000.00.

A.3 **Amendment to Section E.(1) Performance Reviews and Merit Consideration:** Section E.(1) Performance Reviews and Merit Consideration, is hereby amended to read as follows:

The City Council will conduct a formal evaluation of Spurgeon's performance on or before September 21st of each year during the term of this Agreement. Spurgeon shall be entitled to not less than fourteen (14) days to provide written responses to any allegations of unsatisfactory performance. Further, no later than June 22, 2024, the Council shall meet and confer and advise Spurgeon as to the Council's intent to enter into good faith negotiations for a new Employment Agreement.

A.4 **Addition of a new Section O. Defined Contribution Special Incentive Plan:** A new section O, Defined Contribution Special Incentive Plan, shall be inserted to read as follows:

O. DEFINED CONTRIBUTION SPECIAL INCENTIVE PLAN

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 six (6) years 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. In the event Spurgeon completes the entire remaining six (6) years of service as set forth in Section B, Spurgeon shall be entitled to receive the entire balance of the defined contribution special incentive plan, including all accrued interest. If Spurgeon voluntarily leaves the employment of the City prior to completing the required six (6) year length of service term as set forth in this

Agreement, then Spurgeon shall forfeit unto the City any and all right, title or interest Spurgeon may have in and to said plan. 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 Fifth 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 Fifth Amendment to the 2015 Employment Agreement, as amended, to be executed and to take effect as of the date above written.

Dated this 3rd day of September, 2019.

State of Oklahoma)
) SS:
County of Tulsa)

Michael L. Spurgeon

Subscribed and acknowledged by Michael L. Spurgeon before me on this _____ day of _____, 2019, 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