

EMPLOYMENT AGREEMENT -- CITY MANAGER

THIS EMPLOYMENT AGREEMENT (“Agreement”) is made this 8th day of December, 2020, by and between:

THE CITY OF DERBY, KANSAS, a municipal corporation (“City”); and

KATHLEEN B. SEXTON of Derby, Kansas (“City Manager”);

WHEREAS, the City Manager was initially employed by the City pursuant to an employment agreement dated January 20, 2006; and

WHEREAS, such employment agreement has been renewed and amended annually thereafter; and,

WHEREAS, the City and the City Manager now desire to make certain minor revisions to their current employment agreement; and,

WHEREAS, this Agreement constitutes the entire amended employment agreement between the City and the City Manager;

NOW, THEREFORE, for and in consideration of the covenants and mutual promises herein set forth, the parties agree as follows:

1. Employment Agreement. This Agreement shall constitute the entire employment agreement between the City and the City Manager.

2. Duties of city manager; hours of work.

a. The City shall employ the City Manager as its city manager, to perform the functions and duties as its chief administrative officer, including but not limited to the following:

1. To see that the laws and ordinances of the City are enforced;
2. Subject to the terms hereof, to devote all necessary time and attention to the affairs of the City and be responsible to the Governing Body for the efficient administration of its affairs;
3. To hire and discharge all non-elected City employees, except the municipal judge, authorized by the Governing Body to be hired, at such compensation as may be set or authorized by the Governing Body. All such employees shall perform their duties subject to the discretion of the City Manager or that of the superior to whom such manager may assign such officer or employee; provided, that the City Manager may delegate to any other official or employee the authority to hire or discharge any officers or employees so authorized;
4. To supervise all non-elected City employees and liaison with the municipal judge appointed by the Governing Body;

5. To attend all meetings of the Governing Body with the right to take part in the discussion, but having no vote;

6. To make recommendations to the Governing Body governing salary scales, cost of living increases, raises and fringe benefits of non-elected employees;

7. To be responsible for accounting procedures, billing methods, record keeping and computer programming for the City;

8. To prepare and submit to the Governing Body, the annual budget of the City and keep the Governing Body fully and timely advised as to the financial condition of the City;

9. To review periodically all insurance policies of the City and make recommendations to the Governing Body;

10. To exercise general supervision and control over all City purchases and expenditures in accordance with the City budget and within the guidelines specified by the Governing Body, including signing preliminary documents with the City Financial Advisor that are necessary to initiate bond issues of the City;

11. In conjunction with the planning commission and advisory boards, recommend to the Governing Body workable plans for City improvements and future developments;

12. To maintain current knowledge of state and federal financial grants and available assistance from other agencies, and to prepare, submit and monitor financial grants and applications;

13. To serve as spokesperson for the City in contacts with residents, news media and businesses to maintain a good relationship between City government, county commissioners, state and federal officials, local citizens and businesses;

14. To coordinate the work of all boards and volunteers appointed by the Governing Body; and

15. To do and perform such other duties as may from time to time be prescribed by ordinance, resolution or direction of the Governing Body with all of the authority and powers provided for the office of city manager under the laws of the State of Kansas and the charter ordinances and ordinances of the City.

b. Because the parties anticipate that the City Manager will perform many of her official duties outside the normal working hours, the City Manager shall be permitted to take time off, at her discretion, during normal working hours.

3. Term.

a. The term of this Agreement shall be deemed to have commenced as of December 27, 2020, and shall expire December 31, 2021, unless sooner terminated as provided herein.

b. Subject to the provisions of section 4 hereof, nothing in this Agreement shall be construed to prevent, limit or otherwise interfere with the right of the Governing Body of the City to decline renewal of the City Manager's employment at the expiration of its term or to terminate the services of the City Manager at any time with or without cause, or the right of the City Manager to resign her position as city manager at any time.

c. The City Manager shall be in the exclusive employment of the City and shall neither accept other employment nor become employed by any other employer.

4. Termination and severance pay.

a. In the event the City terminates this Agreement with or without cause before December 31, 2021, the City shall pay to the City Manager a lump sum cash payment equal to the total of eight (8) months aggregate salary as severance pay, plus accrued vacation and all other benefits provided for in this Agreement; provided, that should the City Manager be terminated after being convicted of a felony, a crime involving personal gain or a crime of moral turpitude, the City shall have no obligation to pay any such severance pay. Except for conviction of any such offense, the City shall not terminate the City Manager's services hereunder within four (4) months next following the date on which any member of the Governing Body of the City is appointed or elected to such office.

b. Except as otherwise agreed by the parties, the City Manager shall give the City sixty (60) days' notice of her voluntary resignation from employment hereunder. In the event of such voluntary resignation, the severance pay provisions of subsection "a" of this section shall not apply and this Agreement shall terminate on the effective date of such resignation.

c. If at any time during this Agreement:

1. A majority of the Governing Body votes to terminate the City Manager's employment at a duly authorized public meeting for any reason other than conviction of a felony, a crime involving personal gain or a crime of moral turpitude, at a time when the City Manager is ready, willing and able to perform the duties of city manager;

2. The City, citizens, or state legislature acts to amend any provision of state law, charter ordinance or City ordinance pertaining to the role, powers, duties, authority or responsibilities of the office of city manager, and such amendment substantially changes the role, powers, duties, authority and responsibility of such position;

3. The City reduces the base salary, compensation or other financial benefits applicable to the City Manager;

4. The City Manager resigns following an offer to accept her resignation, whether formal or informal, by a member of the Governing Body who is authorized to do

so by a majority of the Governing Body, at a time when the City Manager is ready, willing and able to perform the duties of city manager;

5. The City suspends the City Manager with or without pay, at a time when the City Manager is ready, willing and able to perform the duties of city manager, unless such suspension occurs after conclusion of (a) a criminal investigation of the City Manager, (b) an investigation of allegations of fiscal or financial impropriety, or (c) an investigation concerning allegations that the City Manager engaged in discrimination or harassment in violation of federal or state law; or

6. The City breaches any provisions of this Agreement and does not remedy breach within ten (10) business days of written notice thereof from the City Manager;

then, the City Manager may at her election deem her employment hereunder to have been terminated by the City within the meaning of subsection "a" of this section and, upon receipt of notice of such election, the City shall forthwith make the payments and provide the benefits required under subsection "a" of this section.

5. Salary. From and after December 27, 2020, the City shall pay the City Manager a salary of One Hundred Sixty-seven Thousand Two Hundred Fifty-seven Dollars (\$167,257), payable in biweekly installments.

6. Other monetary benefits.

a. **Vehicle allowance.** The City shall provide the City Manager with a vehicle allowance of Six Hundred Dollars (\$600) per month for official use of her private vehicle within Sedgwick County. The City Manager shall, in addition, be reimbursed for use of such vehicle for official travel to and from destinations outside Sedgwick County at the same rate that is paid to other City employees for similar travel. All operating, maintenance and other expenses incurred by the City Manager in connection with her official duties shall be borne by the City Manager.

b. **Deferred compensation.** The City shall, in addition to other compensation provided for in this Agreement, authorize the City Manager to participate in the City's deferred compensation program and shall match any contribution made by the City Manager to the deferred compensation program affiliated with the City, up to a maximum of Eleven Thousand Nine Hundred Fifty Dollars (\$11,950) per year. Alternatively, if the City Manager determines the City's program no longer best meets her retirement objectives, the City shall contribute the \$11,950 to an IRS-qualified retirement program or account of the City Manager's choosing.

c. **Mobile phone allowance.** The City shall provide the City Manager with a mobile telephone allowance of Eighty Dollars (\$80) per month to offset the cost of use of her personal mobile telephone for official business.

7. Leaves and other benefits.

a. **Vacation leave.** The City Manager shall accrue vacation leave at the rate of 7.69 hours for each pay period from and after December 27, 2020, and shall use and carry over vacation leave in the same manner as other City employees.

b. The City Manager shall accrue sick leave in the same manner as City's other employees.

c. Except as otherwise provided in this section, the City Manager shall accrue and have credited to her personal account, at the same rate or rates and with the same restrictions applicable to such employees, all leaves afforded to employees of the City.

d. Group insurance and all other benefits provided to other employees of the City shall be made available to the City Manager on like terms and conditions; provided, that nothing herein shall limit the authority of the City to establish a tier-level benefit program pursuant to which certain employees or groups of employees are offered varying benefits.

e. In addition to any deferred compensation payment made pursuant to subsection 6.b. of this Agreement, the City Manager may elect to allocate any part of her total compensation to a retirement, deferred compensation or similar program mutually acceptable to the parties.

8. Professional development benefits.

a. The City shall budget for and pay the professional dues and subscriptions incurred by the City Manager for her membership or participation in the International City/County Management Association (ICMA), the Kansas Association of City/County Management (KACM), the Derby Chamber of Commerce and one (1) local civic club of the City Manager's choice.

b. The City shall budget for and pay the travel and subsistence expenses incurred by the City Manager in the course of her attendance at or participation in the annual meetings of the ICMA and League of Kansas Municipalities, for attendance at or participation in semiannual meetings of the KACM and the National League of Cities, and for attendance at or participation in meetings of area public managers. Upon mutual agreement of the City Manager and City Council President or Mayor, substitutions with different conferences or training events may occur.

9. Other terms and conditions of employment.

a. In addition to benefits specifically enumerated in this Agreement, all provisions of the City Code and other policies and procedures of the City relating to vacation and sick leave, retirement and pension system contributions, holidays and other benefits and working conditions, as they now exist or may hereafter be amended, shall apply to the City Manager in the same way as to other employees of the City.

b. The City, in consultation with the City Manager, may fix any such other terms and conditions of employment relating to the performance of the City Manager's duties as it deems appropriate from time to time; provided, that such terms and conditions are not inconsistent or in conflict with the express provisions of this Agreement, the City's charter and other ordinances, or any other law or regulation. No such additional terms or conditions shall be effective unless first reduced to writing and furnished to the City Manager.

10. Allocation of risk.

a. The parties acknowledge the applicability of the Kansas Tort Claims Act, K.S.A. 75-6101 *et seq.* (the "KTCA"), to the City Manager. The City Manager shall be afforded all of the rights and protections afforded public employees generally pursuant to the KTCA, including but not limited to those rights and protections relating to alleged violations of state or federal civil rights laws. The City Manager may be afforded such additional rights and protections with respect to civil rights actions to which she is made a party.

b. The City Manager shall keep all personal vehicles used for official business in good cosmetic and operating condition, and shall maintain continuously in force with respect to all such vehicles a policy of liability insurance having a limit of at least Five Hundred Thousand Dollars (\$500,000) per occurrence for bodily injury and Fifty Thousand Dollars (\$50,000) per occurrence for property damage.

11. Performance evaluation. The Governing Body of the City shall review and evaluate the performance of the City Manager annually in November, and may evaluate such performance more frequently. All such reviews and evaluations shall be in accordance with specific criteria developed by the City and City Manager. Criteria may from time to time be added thereto or deleted therefrom by the Governing Body in consultation with the City Manager. The Mayor or City Council President of the City shall furnish to the City Manager a written summary of the findings of the Governing Body, and shall afford the City Manager an adequate opportunity to discuss such findings and evaluations with the Governing Body.

12. Bond. The City shall bear the full cost of any fidelity or other bonds required of the City Manager.

13. Residency within City.

City Manager shall continuously maintain her primary residence within the City during the term of this Agreement or any extension or renewal thereof.

14. General Provisions.

a. The text hereof shall constitute the entire agreement between the parties and shall supersede all previous employment agreements between the parties.

b. Other than those provisions relating to the City Manager's obligation to serve as the City's manager, this Agreement shall be binding upon and inure to the benefit of the City Manager's heirs, assigns, personal representatives, successors in interest, executors, estate, or trust.

c. Except as expressly provided herein, neither party shall assign rights or delegate duties arising from this Agreement without first obtaining the express written consent of the other.

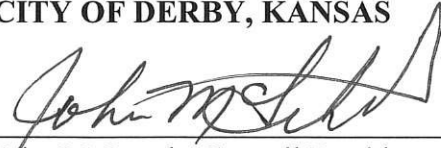
d. Should any provision of this Agreement or any portion thereof be held unconstitutional, invalid or unenforceable, the remainder of this Agreement shall be deemed severable, shall not be affected by such invalidity and shall remain in full force and effect.

15. Effective Date.

This Agreement shall be effective from and after December 27, 2020.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed the day and year first above written.

CITY OF DERBY, KANSAS



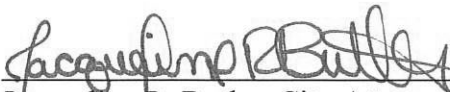
John McIntosh, Council President

CITY MANAGER



Kathleen B. Sexton

Approved as to form:



Jacqueline R. Butler, City Attorney