

EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT is made this ____ day of _____, 2016, by and between the City of Lawrence, Kansas, a municipal corporation, and Thomas M. Markus.

RECITALS

- A.** The City of Lawrence, Kansas ("City"), a municipal corporation, operates, in accordance with state and local law, a City Manager form of Government.
- B.** Under the City Code, the City Manager is appointed by the City Commission and serves at its will and pleasure.
- C.** The City currently has a vacancy in the position of City Manager.
- D.** Thomas M. Markus 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.
- E.** Consequently, the City Commission wishes to engage Thomas M. Markus to serve as its City Manager and, to that end, has appointed him to serve as its City Manager.
- F.** It is the intent of the City and Thomas M. Markus to enter into this Employment Agreement, establishing the terms and condition 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.

- (a)** The City hereby agrees to employ Thomas M. Markus ("Manager") as its City Manager to perform those duties and functions specified and defined by the laws of the State of Kansas and the City Code (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 and functions as the City Commission may assign from time to time.

- (b) The Manager agrees to perform the City Manager's Duties with reasonable care, diligence, skill, and expertise.
- (c) 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 City Commission's 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.

- (a) The Manager shall serve at the will and pleasure of the City Commission and may be terminated at any time, with or without cause. Nothing herein shall be construed to imply or suggest a guaranteed tenure or term of employment.
- (b) Nothing in this Employment Agreement shall be construed to prevent, limit, or otherwise interfere with the right of the City to terminate the services of the Manager at any time, for any reason or for no reason, subject only to the terms and conditions of this Employment Agreement. Nor shall anything in this Employment Agreement be construed to prevent, limit, or otherwise interfere with the right of the Manager to resign at any time from the City Manager position with the City, subject only to the terms and conditions of this Employment Agreement. The City Manager recognizes that he serves at the will and pleasure of the City Commission and that nothing herein provides, explicitly or implicitly, a guaranteed tenure or term of service.

SECTION 3. Compensation.

- (a) **Annual Base Salary.** The City agrees to pay the Manager, as part of the compensation for his services hereunder, an Annual Base Salary of ONE HUNDRED NINETY THOUSAND DOLLARS AND NO CENTS (\$190,000.00), payable to the Manager over the course of the calendar year, in equal installments, at the same time that it pays other City employees. Any increase to the Manager's Annual Base Salary shall occur only by a majority vote of the City Commission and may, at the discretion of the City Commission, be made retroactive to the first pay period of the year in which said increase shall be approved.

(b) **Automobile Allowance.** The Manager's duties require that he have access to an automobile. Accordingly, the City agrees to grant to the Manager, as additional compensation hereunder, for the use of his or her private automobile, an annual automobile allowance of SIX THOUSAND DOLLARS AND NO CENTS (\$6,000.00) payable to the Manager over the course of the calendar year, in equal installments, at the same time that it pays other City employees.

(i) **Operating and Maintenance Costs.** All operating, maintenance, insurance, or other costs, incurred by the Manager during the use of his private automobile, whether it is for personal use or for official business, shall be borne by the Manager.

(c) **Deferred Compensation.** In addition to other compensation provided to the Manager in this Employment Agreement, the City agrees to contribute FIFTEEN THOUSAND DOLLARS AND NO CENTS (\$15,000.00) annually, payable, in equal installments for the first year of service, on behalf of the Manager, to a deferred compensation program of the Manager's choice. Starting the first pay period following the first anniversary date of the Manager's first day of employment with City, City shall contribute the maximum amount allowed by law, annually, payable in equal installments, on behalf of the Manager to a deferred compensation plan for the Manager. The increase in the City's contribution to deferred compensation described in this subsection (c) shall be the sole monetary increase to the Manager's Employment Agreement in his second year of employment with the City, excluding increases in any fringe benefits made to other non-represented City employees. The increase in the City's contribution to the deferred compensation plan in Year 2 of the Manager's tenure described herein would result in an increase of approximately 4.7% of the Manager's annual base salary (of \$190,000.00). Any additional amount in excess of the amounts referenced above, at the Manager's election and to the extent such can legally be deferred, shall be deducted from the Manager's Annual Base Salary.

SECTION 4. Health, Disability, and Life Insurance and Other Benefits.

(a) **Health Insurance.** The City agrees to provide to the Manager the same hospitalization, surgical, comprehensive major medical, dental, disability, and vision insurance that it offers to other City employees. The City shall pay the same premiums for health insurance that it pays for other City employees. If the City offers multiple plans, the Manager may choose which plan(s) in which to participate.

- (b) **Life Insurance.** The City agrees to pay annually the sum not to exceed TWO THOUSAND DOLLARS AND NO CENTS (\$2,000.00) toward the purchase of a policy of insurance on the Manager's life, with the beneficiaries thereof to be designated by the Manager. This payment shall be in addition to any other payments for premiums made by the City for insurance on the life of the Manager. The Manager shall select the insurer under this policy of insurance.
- (c) **Disability Insurance.** The Manager shall have the opportunity to procure short-term disability insurance coverage, at his expense, through any plans the City offers other City employees.
- (d) **Other Benefits.** In addition to any deferred compensation payment made pursuant to Section 3(d), *supra*, the Manager may elect to allocate any part of his Annual Base Salary to a retirement, deferred compensation, or other similar program of his choice. The Manager is also entitled to all benefits accorded other City employees, including but not limited to workers' compensation insurance, unemployment insurance, KPERS, personal or family leave, and FICA.
- (i) **KPERS Disclaimer.** The Manager shall be responsible for his retirement benefits under the Kansas Public Employee Retirement System (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 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.
- (e) **One-Time Moving Expenses.** In addition to other benefits, the City shall reimburse the Manager up to \$30,000 for the following costs associated with relocation: movement and packing of household goods

and personal automobiles, insurance costs for the movement of the household goods, storage of household goods, unpacking charges, expenses associated with house hunting trips, and temporary housing expenses.

SECTION 5. Vacation, Sick, and Other Leave.

- (a) Leave, In General.** Upon commencing employment, the City shall credit the Manager with 160 hours of vacation leave (20 days) and 160 hours of sick leave (20 days). In his first year of employment, Manager may accrue vacation leave at the rate of 152 hours per year, up to the maximum allowed for other non-represented City employees. In the first pay period following the first anniversary date of his first day of employment, the Manager may accrue vacation leave at the rate of 200 hours per pay year, up to the maximum allowed for other non-represented City employees. Manager shall accrue sick leave at the same rate and to the maximum hours allowed for other non-represented City employees.
- (b) Hours of Work.** It is recognized that Manager must devote a great deal of time outside the normal office hours on business for the City, and to that end Manager shall be allowed to establish an appropriate work schedule.
- (c) Leave Without Pay.** Manager, at his discretion, and in addition to other leave provided in this Agreement, may take leave without pay for periods up to, but not exceeding, two work days.
- (d) Additional Sick Leave for Serious Medical Condition.** In the case of a serious medical condition that causes the Manager to apply for long-term disability benefits under the KPERS program, the Manager shall have access to a bank of sick days that together with his accrued sick leave will provide the Manager with his regular paycheck until he has satisfied the elimination period for disability benefits, or until commencement of KPERS retirement benefits in lieu of long term disability benefits.

SECTION 6. Professional Development.

- (a)** The City agrees to budget for and to pay the professional dues and subscriptions incurred by the Manager, as the result of his participation in such national, regional, state, or local associations or organizations, that he deems necessary or desirable for his continued professional development and in the best interests of the City. With respect to local

associations or organizations such as Rotary, Optimists or Kiwanis, however, the City shall pay for only one such membership of the Manager's choice.

- (b) The City agrees to budget for and to pay travel, registration, and subsistence expenses for the Manager's travel for his continued professional development and in order for the Manager to pursue and to discharge official and ceremonial functions on behalf of the City at annual conferences or conventions, including but not limited to the annual conferences or conventions of the International City Management Association, the National League of Cities, the League of Kansas Municipalities, and other such national, regional, state, and local organizations or committees of which the Manager is or will be a member.
- (c) The City agrees to budget for and to pay for travel and subsistence expenses incurred by the Manager for those short courses, seminars, and other institutes that he deems necessary for his continued professional development and for the good of the City.

SECTION 7. Other Terms and Conditions of Employment.

- (a) In addition to other benefits specifically enumerated in this Employment Agreement, all provisions of the City Code and other rules and regulations 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 later be amended, shall apply to the Manager in the same way as they apply to other management employees of the City at the highest level of benefit that other management employees receive.
- (b) 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 Employment 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 executed by the parties.
- (c) The Manager agrees to obtain residency within the City limits within six months of the effective date of this Agreement and to continue residency within the City limits during the term of this Agreement.

SECTION 8. Performance Evaluation.

- (a) The City Commission shall endeavor to review and evaluate the performance of the Manager approximately once per year. During the course of each such review, the City Commission shall provide to the Manager a summary statement of its evaluation of the Manager's performance to date and shall provide adequate opportunity for the Manager to discuss that evaluation with the City Commission.
- (b) In implementing the provisions of this Section, the parties agree to abide by all applicable federal, state, and local law.

SECTION 9. Separation and Severance Pay.

- (a) In the event that 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, and is able, under Subsection (b) hereof, 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 (a) nine months of the Manager's Annual Base Salary; (b) nine months of the City Contribution to Deferred Compensation, and (c) nine months of the COBRA payments for the Manager's elected healthcare coverage under the City employee healthcare plan 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) For the purposes of this Section, the Manager shall be able to declare the following events to be terminations of employment:
 - (i) If, at a public meeting, a majority of the City Commission votes, for any reason -- other than the Manager's conviction for a felony, or conviction of a misdemeanor involving malfeasance or dishonesty, to terminate the Manager's employment with the City or not to renew this Employment Agreement under Section 2(b), *supra*.
 - (ii) If the State or the City takes any action that would eliminate the position of City Manager, or substantially alter or change the duties or authority of the City Manager position.
 - (iii) 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.

- (iv) If the City offers to accept the Manager's resignation in lieu of termination of his or her employment and, in acceptance of that offer, the Manager resigns.
 - (v) If the City, suspends the Manager with or without pay for a period of three (3) or more business days during any calendar year.
 - (vi) If the City breaches any provision of this Employment Agreement and fails, within ten (10) days after receiving written notice thereof from the Manager, to remedy any such breach.
- (c) In the event that the Manager voluntarily retires or resigns his position, or leaves the City's employment for reasons other than reasons listed in subsection 9(b), then the separation of employment shall not be deemed a termination of employment and Manager shall not be entitled to the Severance Pay described in subsection (a), *supra*.
- (d) The Manager agrees -- unless the parties mutually agree otherwise -- to give written notice to the City no less than sixty days in advance of any voluntary retirement or voluntary resignation of his or her position.

SECTION 10. Indemnification and Allocation of Risk.

- (a) Beyond that required under Federal, State or Local law, City shall defend, save harmless, and indemnify 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 Manager's employment or duties, unless the act or omission involved willful or wanton misconduct. In the defense of such claims, the Manager may request and the City shall not unreasonably refuse to provide independent legal representation at the City's expense and City may not unreasonably withhold approval. Legal representation, provided by City for Manager, shall extend until a final determination of legal action including any appeals brought by either party. The City shall indemnify 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. 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, to be available.

Manager recognizes that City shall have the right to compromise, adjust, and settle claims against Manager for which Manager is entitled to indemnification. Further, City agrees to pay all reasonable litigation expenses of 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 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 of 1979, 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.

- (b) The Manager agrees to maintain all personal automobiles used for official City business in good cosmetic and operating condition and shall maintain with respect to all such personal automobiles, at all time and in full force and effect, a policy of liability insurance having limits of no less than \$500,000.00 per occurrence for bodily injury and \$50,000.00 per occurrence for property damage. The Manager shall provide to the City's Risk Manager and the City Attorney appropriate proof of compliance hereunder, 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.

SECTION 11. Bond. The City agrees to bear the full cost of any fidelity or other bonds that may be required by law of the Manager.

SECTION 12. Entire Agreement.

- (a) This Employment 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. This Employment Agreement 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 Employment 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.
- (b) 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 Employment Agreement; and none of its provisions shall be deemed waived or modified by reason of any act whatsoever, other than by a definitely agreed waiver, modification, or amendment made in writing and signed by both parties. No evidence of notice, waiver modification, or

amendment, other than evidence of such in writing, shall be introduced as evidence at any proceeding, either legal or administrative.

SECTION 13. Assignment. The parties agree that this Employment Agreement is non-assignable.

SECTION 14. Binding Effect. This Agreement shall be binding on the City and the Manager as well their heirs, assigns, executors, personal representatives, and successors in interest.

SECTION 15. Notices. All notices, demands, or other communications, that may be or are required to be given by any party under this Employment 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:

(a) If to Manager:

Thomas M. Markus
(Address to be supplied at a later date.)

(b) If to the City:

City of Lawrence, Kansas
6 East 6th Street
P. O. Box 708
Lawrence, Kansas 66044
Attn: City Attorney

SECTION 16. Captions. The Captions of this Employment Agreement are for convenience only and are not meant by the parties to define, limit, or enlarge the scope of this Employment or its terms.

SECTION 17. Recitals. The recitals set forth at the beginning of this Employment Agreement are adopted and incorporated herein by reference as if set forth in full and shall be effective as if repeated *verbatim*.

SECTION 18. Governing Law. This Employment 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 19. Severability. In the event that any provision of this Employment Agreement shall be held invalid and unenforceable, the remaining portions of this contract shall remain valid and binding upon the parties.

[SIGNATURES APPEAR ON THE FOLLOWING PAGES]

IN WITNESS WHEREOF, the undersigned have caused this Employment Agreement to be executed as of the date noted above.

CITY:
CITY OF LAWRENCE, KANSAS, a
municipal corporation

MIKE AMYX
Mayor

ATTEST:

BRANDON McGUIRE
Acting City Clerk

MANAGER

THOMAS M. MARKUS