

CITY MANAGER EMPLOYMENT AGREEMENT

This EMPLOYMENT AGREEMENT is made and entered into this 24th day of April, 2018, by and between the CITY OF BROOKINGS, State of South Dakota, a municipal corporation, hereinafter referred to as “City”, and Paul Briseno, hereinafter referred to as “City Manager”.

WITNESSETH:

WHEREAS, the City desires to employ the services of Paul Briseno as City Manager; and

WHEREAS, it is the desire of the governing board, hereafter referred to as the “Council”, to provide certain benefits, to establish certain conditions of employment, and to set working conditions of said City Manager; and

WHEREAS, City Manager desires to accept employment as City Manager of the City of Brookings;

NOW THEREFORE, in consideration of the mutual covenants herein contained, the parties agree as follows:

Section 1. Duties.

The City hereby agrees to employ Paul Briseno as City Manager of the City of Brookings, to perform the work and duties provided in the City Charter of the City of Brookings, and to perform such other legally permissible and proper functions and duties as the Council may from time to time assign.

Section 2. Employment Status as “Exempt”.

Exempt Status: It is agreed and understood that City Manager is an exempt employee and is not eligible for overtime under the Fair Labor Standards Act.

Section 3. Salary.

City agrees to pay City Manager for his services rendered pursuant hereto an annual base salary of \$135,000.00, payable in installments through the payroll system on a monthly basis at the same time as the other management employees of the City are paid. The City Manager will be eligible for a one (1) year anniversary pay increase, subject to satisfactory performance. Eligible salary adjustments will be considered annually, thereafter, in a percentage range equal to or greater than those given to other management employees and are subject to Council approval and a satisfactory performance evaluation.

Section 4. Residency.

The City Charter requires that the City Manager reside within the City and the City Manager may reside outside the City while under Contract only with the approval of the Council.

Section 5. Performance Evaluation.

- A. The Council shall conduct a review of the performance of the City Manager at least annually. Said performance review and evaluation shall be in accordance with specific criteria developed by the City Council following consultation with the City Manager. Said criteria may be revised as the Council may from time to time determine, following consultation with City Manager. Further, the Mayor shall provide the City Manager with a summary written statement of the Council's findings following the City Manager's performance review and evaluation by the Council, and shall provide an adequate opportunity for the City Manager to discuss his performance evaluation and findings with the Council.
- B. Annually, the Council and City Manager shall define goals and performance objectives that they determine necessary for the proper operation of the City of Brookings and in the attainment of the Council's policy objectives and shall further establish a relative priority among those various goals and objectives. They shall generally be attainable within the time limitations as specified and with the annual operating and capital budgets and appropriations provided.
- C. In effecting the provisions of this Section, the Council and City Manager also mutually agree to abide by the provisions of applicable law.

Section 6. Hours of Work.

It is recognized that City Manager must devote significant time outside normal office hours to the business of the City, and, to that end, City Manager will be allowed to take compensatory time off as deemed appropriate during normal office hours.

Section 7. Outside Activities.

City Manager shall not engage in teaching, consulting or other non-City-connected business without the prior approval of the Council.

Section 8. Moving and Relocation Expenses.

- A. City Manager shall obtain two (2) quotes for costs associated with packing and moving household goods. City Manager shall be reimbursed, or City may pay directly for the expenses of packing and moving City Manager, City Manager's family, and City Manager's personal property from Kearney, NE to the City of Brookings, with said payment or reimbursement not to exceed the sum of \$11,250 which shall include unpacking, any storage costs necessary, insurance charges and any other actual documented moving expenses allowed by IRS regulations.
- B. The City will provide City Manager with \$1,500 per month for a period not to exceed six (6) months to cover expenses and related costs for temporary housing until the time City Manager is able to relocate permanently.

- C. Should City Manager leave the City Manager position in Brookings voluntarily, City Manager will be required to reimburse the relocation costs paid to City Manager by the City according to the following schedule:
1. Leave position within first year – 100% reimbursement
 2. Leave position within second year – 50% reimbursement
 3. Leave position within third year – 25% reimbursement
 4. Leave position within fourth year and thereafter – 0% reimbursement.

Section 9. Holidays, Vacation, and Sick Leave.

- A. The City Manager will be granted the same number of holidays as other management (exempt) employees of the City.
- B. Upon employment, the City Manager will receive a two (2) week bank of vacation leave and will be given credit for ten (10) years of service, and, in accordance with City policy, the City Manager will accrue vacation time at the rate of 13.33 hours per month to accrue until the maximum 280 hours allowed per current City policy is reached. This particular policy will not apply to longevity pay.
- C. Upon employment, the City Manager will receive a one hundred sixty (160) hour (4 week) bank of sick leave. The City Manager will accrue sick leave in accordance with the City rate of 12 hours per month to be used against the sick leave bank and continue to accumulate to the maximum of 1500 hours allowed based on employment date after January 1, 2013, per current City policy.
- D. The City of Brookings shall fix any such other terms and conditions of employment, as it may determine from time to time, relating to the performance of City Manager, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this Agreement, City ordinances or any other law. All provisions of the Brookings City Code, City ordinances, resolutions, regulations and rules of the City of Brookings relating to holidays and other benefits and working conditions as they now exist or hereafter may be amended, also shall apply to City Manager as they would to other exempt employees of the City of Brookings, in addition to said benefits enumerated specifically for the benefit of the City Manager except herein as provided.

Section 10. No Reduction of Benefits.

City shall not at any time during the term of this Agreement reduce the salary, compensation or other financial benefits of City Manager, except to the degree of such a reduction which is applicable across the board for all other management employees of the City.

Section 11. Insurance.

- A. The City will provide City Manager with health, life, dental, and vision insurance coverages at the same rate as other management exempt employees. As per City policy, the City will pay 75% of premiums for health insurance for the City Manager and his dependents, 75% of the single premium toward all plans for dental and vision coverage,

and 100% of basic term and AD&D life insurance premiums providing Fifty Thousand Dollars (\$50,000) coverage. In addition, the City will offer City Manager participation in the Section 125 Flex plan. Additional insurance coverage may be available at the City Manager's sole expense.

- B. City shall furnish and provide City Manager with insurance protection including comprehensive general liability and errors and omissions coverage applicable to all acts or omissions of City Manager arising out of his employment.

Section 12. Pension.

The City Manager will participate in the South Dakota Retirement System (SDRS). The City Manager participates monthly in SDRS with a 6% deduction and the City of Brookings participates with a 6% match. In addition, the City shall also contribute five (5%) percent of City Manager's compensation to a deferred compensation plan selected by the City Manager.

Section 13. Automobile.

The City will provide the City Manager a car allowance of Five Hundred Dollars (\$500) per month for his use to conduct City business within the City and the County of Brookings. The City will reimburse the City Manager for mileage for City related trips made outside the County of Brookings. All travel outside the County limits using City Manager's personal vehicle will be reimbursed at the current City rate per mile. Calculation of mileage will be based on the distance from Brookings.

Section 14. Dues, Conferences, and Subscriptions.

- A. City agrees to budget and pay for dues and subscriptions of City Manager necessary for his membership and full participation in national, regional, state, and local associations/organizations desirable for his continued professional growth and advancement, and for the good of the City.
- B. Within budget considerations and Council approval, the City hereby agrees to budget and pay for travel and subsistence expenses for City Manager for professional and official travel, meetings, and occasions adequate to continue the professional development of City Manager and adequately pursue necessary official functions for the City, including but not limited to the ICMA Annual Conference, the state league of municipalities, and such other national, regional, state and local governmental groups and committees for the good of the City.
- C. City also agrees to budget for and to pay for travel and subsistence expenses of City Manager for short courses, institutes and training seminars that are necessary for his professional development and for the good of the City.

Section 15. Civic Club Membership and Business Expenses.

- A. City recognizes the desirability of representation in and before local civic and service organizations, for which City shall pay all membership expenses. City Manager shall report to the City on each such membership and the City will reimburse City Manager or pay directly such membership fees.

- B. The City shall reimburse City Manager for all employment-related expenses, including, but not limited to meals, cost of registration, travel and mileage and any other subsistence costs relating to the conduct of City Business.
- C. A City cell phone will be provided to the City Manager and primarily used for business purposes. A reasonable amount of personal use is acceptable as the cell phone is expected to be carried on a routine basis.

Section 16. Indemnification.

City shall defend, hold harmless and indemnify City 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 in the performance of City Manager's duties as City Manager. City will compromise and settle any such claim and pay the amount of any settlement or judgment rendered thereon.

Section 17. Bond.

City shall bear the full cost of any fidelity or other bonds required of the City Manager under any law or ordinance.

Section 18. Suspension and Termination.

The City Manager may be suspended by a resolution approved by the affirmative vote of four (4) or more Members of the City Council which shall set forth the reasons for suspension and proposed termination ("removal"). A copy of such resolution shall be served immediately upon the City Manager. The City Manager shall have fifteen (15) days in which to reply thereto in writing. The City Manager may request and shall be afforded a public hearing, and the City Council shall set a time for a public hearing upon the question of the City Manager's termination. After the public hearing, if one is requested, the City Council, by the affirmative vote of four (4) of its total membership, may adopt a final resolution of termination. The City Manager shall continue to receive full salary until the effective date of a final resolution of termination of employment.

Section 19. Termination and Severance Pay.

- A. The City Manager will serve at the will of the Council and may be terminated immediately in the sole discretion of the City, with or without cause, at any time.
- B. Should the Council terminate the City Manager's employment without cause during any year of employment, the City Manager will receive six (6) months of notice or severance compensation. City Manager shall also be compensated for all remaining accrued vacation benefit time to the date of termination. Severance compensation shall be payable on a monthly basis on the same schedule as other management level payroll. Severance compensation shall include all benefits provided in this Agreement. The obligation to pay severance compensation, however, will terminate when the City Manager has obtained a position of comparable responsibility and compensation.

- C. In the event the City Manager is terminated for cause or for a conviction of a criminal offense, then, in that event, the City shall have no obligation to pay the severance compensation indicated in the above paragraph. Examples of cause may include, but are not limited to:
- (1) City Manager willfully and continuously fails or refuses to comply with the terms of this Agreement or the policies, standards and regulations of the City as are from time to time established;
 - (2) City Manager shall be found guilty of fraud, dishonesty, misappropriation of funds, embezzlement, or other act of misconduct in the rendering of services on behalf of the City.
- D. Nothing in this agreement shall be construed to prevent, limit, or otherwise interfere with the right of the Council to terminate the services of the City Manager at any time or with the right of the City Manager to resign from his position as City Manager of the City at any time.

Section 20. Voluntary Resignation.

In the event City Manager elects to voluntarily resign or retire, he shall give the City thirty (30) days advance written notice of the intent to terminate employment.

Section 21. Other Terms and Conditions of Employment.

The City, following consultation with the City Manager, may establish any such other terms and conditions of employment relating to the performance of the City Manager as it deems appropriate from time to time; provided, that such terms and conditions are not inconsistent with or in conflict with the express provisions of this agreement, the City Charter or any law or regulation. No such additional terms or conditions shall be effective unless first reduced to writing and furnished to the City Manager as mutually agreed by the City Manager and the City, as an addendum to this Agreement.

Section 22. Vehicle Insurance.

The City Manager shall maintain continuously in force with respect to all such vehicles a policy of liability insurance having minimum limits identified in the City Vehicle Driving Policy. The City Manager shall maintain an acceptable driving record as outlined within the City Vehicle Driving Policy, and upon request, shall provide the City's risk management office with appropriate proof of compliance with the insurance requirements of this Section.

Section 23. Powers and Duties of City Manager.

The duties and responsibilities of the City Manager shall be in accordance with South Dakota State law, the Brookings City Charter, the City Governance and Ends Policies, all ordinances and resolutions of the City of Brookings, and such policies as shall be adopted from time to time by

the City Council. The duties and responsibilities of the City Manager shall include but not necessarily be limited to the following list:

The City Manager shall be the chief administrative officer of the City, responsible to the Council for the administration of all city matters placed in the city manager's charge by or under this Agreement and the City Charter. The City Manager shall:

- A. Appoint and, when necessary in his discretion, suspend or remove all city employees and appointive administrative officers provided for by or under the City Charter. The City Manager may authorize any administrative employee or officer subject to the City Manager's direction and supervision to exercise these powers with respect to subordinates in that employee or officer's department, office or agency;
- B. Direct and supervise the administration of all departments, offices and agencies of the City, except as otherwise provided by the Charter or by other applicable law;
- C. Attend all City Council meetings. The City Manager shall, except when the governing body may be considering suspension or removal of the City Manager, have the right to take part in discussion at City Council meetings;
- D. See that all laws, provisions of the City Charter and acts of the City Council, subject to enforcement by the City Manager or by employees or officers subject to the City Manager's direction and supervision, are faithfully executed;
- E. Prepare and submit the annual budget and capital program to the City Council;
- F. Submit updates annually on the date specified by the City Council a five-year capital program in such form as the City Manager deems desirable or the City Council may require;
- G. Submit updates annually on the date specified by the City Council a five-year financial plan in such form as the City Manager deems desirable or the City Council may require;
- H. Submit to the City Council and make available to the public a complete report on the finances and administrative activities of the City as of the end of each fiscal year;
- I. Make such other reports as the City Council may require concerning the operations of City departments, offices and agencies subject to the City Manager's direction and supervision;
- J. Keep the City Council advised as to the financial condition and future needs of the City; Sign all warrants for the payment of money, and the same shall be countersigned by the Clerk, but no warrant shall be issued until the claim therefor has been approved by the City Council, except as may be otherwise provided by ordinance or resolution;
- K. Be the personnel director of the City;
- L. Make recommendations to the City Council concerning the affairs of the City;
- M. Provide support staff to assist the Mayor and other Council members; and
- N. Perform such duties as are specified in the City Charter or as may be required by the City Council.

Section 24. General Provisions.

- a) This Agreement shall constitute the entire agreement between the parties.

b) This Agreement shall be binding upon and inure to the benefit of the heirs and executors of the City Manager.

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 as severable, shall not be affected and shall remain in full force and effect.

e) This agreement is governed by South Dakota law.

IN WITNESS WHEREOF, this Agreement has been entered into by the parties hereto.

CITY OF BROOKINGS

By _____
Keith Corbett, Mayor

ATTEST:

Shari Thornes, City Clerk

By _____
Paul Briseno, City Manager