

**CITY MANAGER
EMPLOYMENT AGREEMENT**

THIS AGREEMENT, made on the 10th day of September, 2012, by and between the City of Troy, Michigan, a municipal corporation, hereinafter referred to as the "City" and Brian Michael Kischnick, hereinafter referred to as the "City Manager."

In consideration of the mutual covenants in this agreement, the City and City Manager agree on the following terms and conditions of employment beginning November 19, 2012.

**SECTION 1
PERIOD OF EMPLOYMENT**

This Agreement shall be effective as of November 19, 2012 and shall continue for an indefinite period, and may be terminated subject to the provisions of Section 12 of this Agreement.

**SECTION 2
CITY MANAGER'S DUTIES**

The City Council agrees to employ City Manager to perform the duties of the City Manager as set out in the applicable statutes of the State of Michigan, the Charter of the City of Troy, all ordinances and resolutions lawfully enacted, and other such duties as the Council of the City of Troy may lawfully assign to the City Manager.

The City Manager shall at all times faithfully, industriously and to the best of his ability, experience and talents, perform all of the duties that may be required of and from him pursuant to the express and implicit terms of this Agreement, to the reasonable satisfaction of the Council.

**SECTION 3
OTHER EMPLOYMENT**

The City Manager shall devote full-time attention, knowledge and skills in the interest of the City of Troy, and the City shall be entitled to full-time benefits arising from or incident to the full time work, services and advice of the City Manager. The City Manager may from time to time teach, lecture or make presentations that will not conflict or interfere with his work for the City.

**SECTION 4
HOURS OF WORK**

The parties realize that the position of City Manager requires the City Manager holding such position to work weekends, evenings, and other irregular hours at

locations other than the City's administrative offices and during hours that said offices are not open. It is understood and agreed that the City Manager shall work whatever hours that may be necessary in order for him to fulfill the requirements of the position of City Manager, as described herein and otherwise, but in any event, no less than forty (40) hours per week.

SECTION 5 CITY MANAGER SALARY

The City agrees to employ City Manager at an annual salary of \$149,000 effective November 19, 2012, payable in increments at the same time as other exempt City employees are paid. As of the effective date of this Agreement, City employees are temporarily required to take furlough days, resulting in a 5% hour and wage reduction. City Manager agrees to participate in the current furlough plan. The City also agrees to review this salary every year of this Agreement. The review shall take into consideration the performance of City Manager, comparable salary information from other relevant municipalities and other pay and benefit data, both internally and externally. The base salary of City Manager shall be evaluated annually prior to the anniversary date of this Agreement.

SECTION 6 BENEFITS

- A. The City of Troy shall contribute \$4,000 on or before February 15th of each year to the ICMA Retirement Corporation Deferred Compensation Plan on behalf of the City Manager.
- B. The City agrees City Manager is entitled to twenty (20) days paid vacation per year as of the commencement of his employment.
- C. The City shall contribute a sum equal of 10% of City Managers salary and City Manager shall contribute a minimum of 4% of his salary to the ICMA RC plan. Said contribution shall be handled as payroll deduction at intervals mutually agreeable.
- D. The City shall reimburse City Manager for the cost of a complete physical examination for the City Manager, including a cardiopulmonary stress test, once every two (2) years.
- E. The City shall pay a stipend of \$150 per month for technological expenses incurred by the City Manager, payable monthly. In exchange for this stipend, City Manager will supply his own phone and phone service and any other service City Manager deems necessary to accommodate City officials having access to the City Manager outside of City Hall.

SECTION 7 AUTOMOBILE ALLOWANCE

The City Manager shall receive an automobile allowance of \$425 per month during the time he is actively working during the term of this Agreement as City Manager for the City. This amount shall be increased from time to time to the extent such allowance is increased for other exempt employees within the City. This allowance shall be the total compensation to the City Manager for the use of his personal automobile in the course of the City's business and shall be paid in lieu of mileage or any other method of reimbursement. The City Manager shall use his vehicle for all City business that he performs. The City Manager shall provide proof of insurance to the City and name the City as an additional insured on his automobile insurance policy.

SECTION 8 OTHER BUSINESS EXPENSE

The City shall reimburse the City Manager for all reasonable employment related expenses, subject to the administrative policies concerning such expenses, as currently exist in the Exempt Employee's Handbook, Revised 2/00, as may be amended and otherwise. Such expenses may include, but are not limited to, the following: air travel, taxi and automobile rental, lodging, meals, memberships and subscriptions to the publications of the International City Managers Association, the Michigan Local Government Managers Association, Government Finance Officers Association, and such other national, regional, state and local governmental groups thereof which City Manager is a member. Registration fees shall be paid for training programs offered by such organizations, and travel and incidental costs relating to attending such programs or conferences and meetings of such organizations. It is specifically understood that such activities are to be undertaken by the City Manager and shall be considered part of the City Managers duties. In accordance with the Purchasing Policy, other incidental expenses incurred by the City Manager during the course of his duties will also be reimbursed including business meals, supplies, and other costs associated with the position of City Manager.

SECTION 9 PERFORMANCE REVIEW

The Council shall annually conduct a performance review of the job performance of City Manager. City Manager may request that this performance review be conducted in executive session as provided by the state statute. The review shall be constructive in nature, the format and basis of which shall be discussed and agreed upon by City Manager and the City Council in advance in order to give City Manager the opportunity to improve his abilities and service to the City of Troy.

**SECTION 10
MOVING, RELOCATION AND TRANSITION EXPENSE**

The City agrees to provide transition expenses for City Manager, by paying for or reimbursing City Manager for up to 32 one night stays in a local Troy hotel (at a reasonable rate), commencing as of the date of employment. The City shall also reimburse the City Manager for all reasonable expenses of moving City Manager, his family and personal property from Tittabawassee Township, Michigan to Troy, Michigan in an amount not to exceed \$6,500. This relocation shall occur as soon as possible, but not later than on the anniversary date of this Agreement.

**SECTION 11.
PUBLIC OFFICIAL LIABILITY INSURANCE
AND REPRESENTATION BY LEGAL COUNSEL**

The City shall provide the City Manager with public official liability insurance in accordance with that provided other officers in the City. In addition, the City shall provide the City Manager legal representation as otherwise provided for other city officials and as provided by ordinance, except for malicious, wanton criminal conduct arising from the City Manager's action or conduct and/or unless the City Council determines that the City Manager was clearly acting outside of the scope of his duties when engaged in the actions or conduct which form the basis of such charges or claims.

**SECTION 12.
TERMINATION**

The City or the City Manager may terminate this Agreement at any time with or without just cause.

The Employee may terminate his own employment by giving the City Council, through the City Clerk, at least sixty (60) days notice in writing unless both parties mutually agree that shorter notice is acceptable.

The City shall also have the right to terminate the City Manager's employment without just cause. In the event that the City terminates the City Manager's employment without just cause, and the City Manager is willing, able, and ready to perform the duties as City Manager, the City shall pay the City Manager the equivalent of six months' salary, not including fringe benefits, as full satisfaction of the City's obligation under this Agreement. The City shall not, however, be required to pay said sum to the City Manager until such time that he executes a full and complete release in a form acceptable to the City.

The City shall also have the right to terminate the City Manager's employment with just cause, and all rights of the City Manager as to compensation and benefits under this Agreement shall cease as of the date of such termination. Just cause shall include, but is not limited to, any of the following:

- (a) Fraud, dishonesty, or other intentional misconduct either:
- 1.) in the performance of City Manager's duties and responsibilities pursuant to this Agreement, or
 - 2.) which has a material adverse impact on the City, its officials, administrators or the City Manager.
- (b) The use by City Manager of alcohol, drugs, or any other intoxicant or controlled substance in such a manner as to impair his ability to perform his duties and responsibilities pursuant to this Agreement in a competent and diligent manner or in a manner which harms the reputation of the City.
- (c) The City Manager's arrest and binding over for trial or a plea of guilty or nolo contendere to a crime providing for a term of imprisonment (other than traffic violations and crimes not requiring the knowing involvement of the City Manager in the commission thereof).
- (d) 1.) A pattern of neglect or persistent failure to perform the duties herein contained with respect to duties previously communicated to the City Manager in writing by the City Council but only after the City Manager has been provided notice by the City Council of its dissatisfaction with the performance of said duties and City Manager has been provided a reasonable opportunity to correct his performance;
- 2.) Otherwise willful misconduct in connection with the performance of his duties hereunder.

**SECTION 13.
ELIGIBILITY FOR BENEFITS AFFORDED OTHER CITY OFFICIALS**

Except as otherwise provided in this Agreement, the City Manager shall receive the same benefits as provided to the City's exempt employees including: compensatory time, vacation leave, sick leave, Municipal Retirement Fund Contributions, Group Medical Insurance Benefits, life and other insurance, holidays and disability as is described in the City of Troy Exempt Employee's Handbook, revised 6/09, and which may be modified from time to time during the course of this Agreement.

**SECTION 14.
ARBITRATION**

It is mutually agreed between the City Manager and the City that arbitration shall be the sole and exclusive remedy to redress any grievance which includes, but is not limited to any dispute, claim or controversy involving the interpretation of this Agreement, the terms, conditions or termination of this Agreement; and any and all disputes, claims or controversies arising as a result of the Employment of the City Manager by the City, including claims under federal, state or local civil rights statutes such as Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment

Act, the Americans with Disabilities Act, the Family and Medical Leave Act, the Elliott-Larsen Civil Rights Act and the Persons with Disabilities Civil Rights Act. It is the intention of the parties that the arbitration decision will be final and binding and that any and all grievances shall be disposed of as follows:

1. Any and all grievances must be submitted in writing by the aggrieved party within thirty (30) days from the date of termination of this Agreement;

2. Within thirty (30) days following the submission of the written grievance, the party to whom the grievance is submitted shall respond in writing. If no written response is submitted within thirty (30) days, the grievance shall be deemed denied;

3. If the grievance is denied, either party may, within thirty (30) days of such denial, refer the grievance to arbitration in Troy, Michigan. The arbitrator shall be chosen in accordance with the Voluntary Labor Arbitration Rules of the American Arbitration Association then in effect, and the expense of the arbitration shall be shared equally by the City and the City Manager.

4. Any grievance shall be deemed waived unless presented within the time limits specified above. The arbitrator shall not have jurisdiction or authority to change, add to or subtract from any of the provisions of this Agreement. The arbitrator's sole authority shall be to interpret or apply the provisions of this Agreement. The parties hereby acknowledge that since arbitration is the exclusive remedy with respect to any grievance hereunder, neither party has the right to resort to any federal, state or local court or administrative agency concerning breaches of this Agreement and that the decision of the arbitrator shall be a complete defense to any suit, action or proceeding instituted in any federal, state or local court or before any administrative agency with respect to any dispute which is arbitrable as herein set forth. The arbitration provisions hereof shall, with respect to any grievance, survive the termination or expiration of this Agreement.

SECTION 15. COMPLETE AGREEMENT

This written Agreement embodies the whole agreement between the parties and there are no inducements, promises, terms, conditions or other obligations in this Agreement. Any amendments to this Agreement shall be in writing and executed by both the City and the City Manager.

SECTION 16. GOVERNING LAW

This Agreement shall be construed and enforced in accordance with the laws of the State of Michigan.

**SECTION 17.
SURVIVING PROVISIONS**

All provisions, which by their terms or by reasonable implication may be performed after termination of this Agreement, shall survive termination of this Agreement.

**SECTION 18.
REPRESENTATIONS AND WARRANTIES**

City Manager represents and warrants to the City that he is free to enter into this Agreement and that he has no prior or other obligations or commitments of any kind to anyone that would in any way hinder or interfere with his acceptance of, or the full, uninhibited and faithful performance of his employment under or the exercise of his best efforts as an employee of the City.

**SECTION 19.
WAIVERS**

The failure of either party hereto at any time or from time to time to require performance of any of the other party's obligations under this Agreement shall in no manner affect the right to enforce any provision of this Agreement at a subsequent time, and the waiver of any rights arising out of any breach shall not be construed as a waiver of any rights arising out of any subsequent breach.

**SECTION 20.
SURVIVAL**

If any of the provisions, terms or clauses of this Agreement are declared illegal, unenforceable or ineffective in a legal forum or by the operation of law, those provisions, terms and clauses shall be deemed severable and all other provisions, terms and clauses shall remain valid and binding.

**SECTION 21.
WARRANTIES**

The individuals signing this Agreement represent and warrant that they, and each of them, are duly authorized and empowered to act on behalf of and to sign for the parties for whom they have signed respectively.

CITY OF TROY

Witness

By: _____
Janice L. Daniels, Mayor

Witness

By: _____
M. Aileen Bittner, City Clerk

CITY MANAGER

Witness

By: _____
Brian Michael Kischnick

Witness