

**EMPLOYMENT AGREEMENT
BETWEEN THE CITY OF EUFAULA,
OKLAHOMA
and
Jacob R. Foos,
CITY MANAGER
DRAFT**

**EMPLOYMENT AGREEMENT
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Employment Agreement

This Agreement, made and entered into this 29th day of May 2018, by and between the City of Eufaula, Oklahoma, a municipal corporation, (hereinafter called "Employer") and Jacob R. Foos, (hereinafter called "Employee") an individual who has the education, training and experience in local government management and who agrees to abide by the ICMA code of Ethics, both of whom agree as follows.

Section 1: Term

This agreement shall remain in full force in effect from May 29, 2018 until May 29, 2021, (hereinafter referred to as primary term of service), subject to annual review on or before the anniversary date of each year thereafter, and shall automatically renew until terminated by the Employer or Employee as provided in Section 9, 10, 11 or 20 of this agreement.

Section 2: Duties and Authority

Employer agrees to employ Jacob R. Foos as City Manager to perform the functions and duties specified under the Oklahoma Statutory Council Manager form of government and the City of Eufaula, Oklahoma by Ordinances, Policy, etc. of the City of Eufaula and to perform other legally permissible and proper duties and functions.

Section 3: Compensation

A. Base Salary: Employer agrees to pay Employee an annual base salary of Sixty-five Thousand & No/100 Dollars (\$65,000.00) payable in installments at the same time other management employees of the Employer are paid.

B. At the completion of the first year of employment, on or before May 29, 2019, upon satisfactory review, employee's salary is to increase to \$ 70,000.00 per year.

Consideration shall be given on an annual basis to increase compensation based upon performance on or before June 1st of each year. Thereafter, increased compensation can be in the form of a salary increase and/or bonus and/or adjustment to benefits.

Section 4: Health, Disability and Life Insurance Benefits

A. The Employer agrees to provide and to pay one hundred percent (100%) of the premiums for health, hospitalization, surgical, vision, dental, and comprehensive medical insurance for the Employee. City will pay for future spouse should the need arise, under the same policy(ies) provided to all other general employees of the City of Eufaula.

B. The Employer agrees to provide Life Insurance equal to that which is provided to all other general employees of the City of Eufaula.

Section 5: Vacation, Sick, and Military Leave

A. The employee shall accrue sick and vacation leave on an annual basis at the highest rate provided to any other non-uniformed employee.

B. The Employee is entitled to accrue all unused leave under the same terms and conditions of other non-union general employees, and in the event the Employee's employment is terminated, either voluntarily or involuntarily, the Employee shall be compensated for all accrued vacation and sick leave as of the date of termination under the same terms and conditions as other non-union general employees.

Section 6: Automobile/Monthly Vehicle Allowance

The Employer shall reimburse the Employee at the IRS standard mileage rate for mileage for business purposes outside a twenty-five (25) mile radius of the municipal limits of the City of Eufaula.

Section 7: Retirement

The Employer agrees to match up to 7.5% of gross wages of Employee's contribution in to the Oklahoma Municipal Retirement Fund – City Manager Option (OMRF-CM) plan solely for Employees benefit. The City of Eufaula shall adopt and approve the necessary plan documents to establish the OMRF-CM retirement plan.

Section 8: General Business Expenses

A. Employer agrees to budget for and to pay for professional dues and subscriptions of the Employee necessary for continuation and full participation in state, and local associations, and organizations necessary and desirable for the Employee's continued professional participation, growth, and advancement, and for the good of the Employer.

B. Employer agrees to budget for and to pay for travel and subsistence expenses of Employee for professional and official travel, meetings, and occasions to adequately continue the professional development of Employee and to pursue necessary official functions for Employer, including but not limited to the State league of municipalities, and such other State, and local governmental groups and committees in which Employee serves as a member. Employee may apply for other special event fees.

C. Employer also agrees to budget for and to pay for travel and subsistence expenses of Employee for short courses, institutes, and seminars that are necessary for the Employee's professional development and for the good of the Employer.

D. Employer recognizes that certain expenses of a non-personal but job related nature are incurred by the Employee, and agrees to reimburse or to pay said general expenses. Disbursement shall be processed for payment upon receipt of duly executed expense.

E: Technology - The Employer shall provide Employee with a laptop computer, software, fax/modem required for the Employee to perform the job and to maintain communication. Employer shall provide Employee a monthly technology stipend in the amount of Seventy-five & No/100 Dollars (\$75) per month.

Section 9: Termination

For the purpose of this agreement, termination shall occur when:

A. The majority of the governing body votes to terminate the Employee at a duly authorized public meeting.

B. If the employer, citizens or legislature acts to initiate or amend any provisions of a/the City Charter pertaining to the role, powers, duties, authority, responsibilities of the Employee's position that substantially changes the form of government, the Employee shall have the right to declare that such amendments constitute termination.

C. If the Employer reduces the base salary, compensation or any other financial benefit of the Employee, unless it is applied in no greater percentage than the average reduction of all department heads, such action shall constitute a breach of this agreement and will be regarded as a termination.

D. If the Employee resigns following an offer to accept resignation, whether formal or informal, by the Employer as representative of the majority of the governing body that the Employee resigns, then the Employee may declare a termination as of the date of the suggestion.

E. Breach of contract declared by either party with a 30 day cure period for either Employee or Employer. Written notice shall be provided in accordance with Section 19.

Section 10: Severance

Severance shall be paid to the Employee when employment is terminated as defined in Section 9.

If the Employee is terminated, the Employer shall provide a minimum severance payment equal to three (3) months salary at the current rate of pay. This severance shall be paid in a lump sum unless otherwise agreed to by the Employer and the Employee.

The Employee shall also be compensated for all accrued sick leave and vacation leave.

For the severance period following termination the employer shall pay the cost to continue the following benefits:

- A. Health insurance for the employee and spouse as provided in Section 4.**
- B. Life Insurance**

If the employee is terminated because of a conviction for a felony then the Employer is not obligated to pay severance under this section. If the Employee voluntarily resigns to accept other employment, or for any other reason personal to the Employee without being requested to do so either formally or informally by the Employer, the Employer is not obligated to pay severance under this section or to continue the payment of health insurance premiums.

Section 11: Resignation

In the event that the Employee voluntarily resigns his position with the employer, the Employee shall provide a minimum of 30 days notice unless the parties agree otherwise.

Section 12: Performance Evaluation

Employer shall annually review the performance of the Employee in or before April of each year subject to a process, form, criteria, and format for the evaluation which shall be mutually agreed upon by the Employer and Employee. The process at a minimum shall include the opportunity for both parties to: (1) prepare a written evaluation, (2) meet and discuss the evaluation, and (3) present a written summary of the evaluation results. The final written evaluation should be completed and delivered to the Employee within 30 days of the evaluation meeting.

Section 13: Hours of Work

It is recognized that the Employee must devote a great deal of time outside the normal office hours on business for the Employer, and to that end Employee shall be allowed to establish an appropriate work schedule.

Section 14: Outside Activities

The employment provided for by this Agreement shall be the Employee's primary employment. Employee should obtain approval form Council prior to other employment commitments.

Section 15: Residence

Employee agrees to establish a residence and thereafter maintain a residence within the statutory boundaries as provided by the State of Oklahoma under the Council Manager form of government during the term of his employment.

Section 16: Indemnification

Beyond that required under Federal, State, or Local Law, Employer shall defend, save harmless and indemnify Employee 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 Employee's duties as City Manager or resulting from the exercise of judgment or discretion in connection with the performance of program duties or responsibilities, unless the act or omission involved willful or wanton conduct. The employee may request and the Employer shall not unreasonably refuse to provide independent legal representation of its choice and at Employer's expense and Employer may not unreasonably withhold approval. Legal representation, provided by Employer for Employee and chosen by the Employer, shall extend until a final determination of the legal action including any appeals brought by either party. The parties hereto specifically agree that any legal representation provided to, or for the benefit of, the Employee by the Insurance Carrier, or the successor liability insurance carrier of the Employer, shall be deemed by the parties to be satisfactory and shall fulfill any and all obligation of the Employer hereunder. The Employer shall indemnify Employee against any and all losses, damages, judgments, interest, settlements, fines, court costs and other reasonable costs and expenses of legal proceedings including attorney's fees, and any other liabilities incurred by, imposed upon, or suffered by such Employee 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 or her duties. Any settlement of any claim must be made with prior approval of the Employer and the liability insurance carrier of the Employer, in order for indemnification, as provided in this Section, to be available.

Section 17: Bonding

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

Section 18: Other Terms and Conditions of Employment

The Employer, only upon agreement with Employee, shall fix any such other terms and conditions of employment, as it may determine from time to time, relating to the performance of the Employee, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this Agreement, the Oklahoma Statutory Council Manager form of government or any other law.

A. Except as otherwise provided in this Agreement, the Employee shall be entitled to the highest level of benefits that are enjoyed by other general employees and employees of the City Council as provided in the Oklahoma Statutory Council Manager form of government, Code, Personnel Rules and Regulations or by practice.

Section 19: Notices

Notice pursuant to this Agreement shall be given by depositing in the custody of the United States Postal Service, postage prepaid, addressed as follows:

(A) EMPLOYER:

City of Eufaula

ATTN: City Clerk

Eufaula, Oklahoma;

(B) EMPLOYEE:

Jacob R. Foos

Eufaula, Oklahoma _____

Alternatively, notice required pursuant to this Agreement may be personally served in the same manner as is applicable to civil judicial practice. Notice shall be deemed given as of the date of personal service or as the date of deposit of such written notice in the course of transmission in the United States Postal Service.

Section 20: Notices of Renewal/Non-Renewal

Subject to the provisions of Sections 9 and 10 set forth above, in the event either party hereto wishes to exercise its or his right not to renew or extend the agreement beyond any of the anniversary dates described in Section 1 above, the non-renewing party shall give sixty (60) days written notice to the other party at the address indicated herein of its or his intention not to renew the agreement. In the absence thereof, said agreement shall be considered by the parties as automatically renewed for the subsequent year.

Section 21: General Provisions

A. Integration. This Agreement sets forth and establishes the entire understanding between the Employer and the Employee relating to the employment of the Employee by the Employer. Any prior discussions or representations by or between the parties are merged into and rendered null and void by this Agreement. The parties by mutual written examination may amend any provision of this agreement during the life of the agreement. Such amendments shall be incorporated and made a part of this agreement.

B. Binding Effect. This Agreement shall be binding on the Employer and the Employee as well as their heirs, assigns, executors, personal representatives and successors in interest.

C. Effective date. This Agreement shall become effective on May 29, 2018.

D. Severability. The invalidity or partial invalidity of any portion of this agreement will not affect the validity of any other provision. In the event that any provision of this Agreement is held to be invalid, the remaining provisions shall be deemed to be in full force and effect as if they have been executed by both parties subsequent to the expungement or judicial modification of the invalid provision.

Executed the day and date above written.

CITY OF EUFAULA, OKLAHOMA

By: James Duty
James Duty, Mayor

Jacob R. Foos
Jacob R. Foos, City Manager

ATTEST: Valarie Cox
Valarie Cox, City Clerk

Amendment 1

This Amendment is made to the Employment Agreement Between the City of Eufaula, Oklahoma (Employer) and Jacob R. Foos, City Manager, (Employee) first effective May 29, 2018. The Amendment 1 shall be effective June 9, 2019.

Modification 1:

Section 1: Term, currently reads as follows:

This agreement shall remain in full force in effect from May 29, 2018 until May 29, 2021, (hereinafter referred to as primary term of service), subject to annual review on or before the anniversary date of each year thereafter, and shall automatically renew until terminated by the Employer or Employee as provided in Section 9, 10, 11 or 20 of this agreement.

It is hereby amended to read as follows:

This agreement shall remain in full force in effect from May 29, 2018 until May 29, **2023**, (hereinafter referred to as primary term of service), subject to annual review on or before the anniversary date of each year thereafter, and shall automatically renew until terminated by the Employer or Employee as provided in Section 9, 10, 11 or 20 of this agreement.

Modification 2:

Section 3: Compensation, currently reads as follows:

- A. Base Salary Employer agrees to pay Employee and annual base salary of Sixty-five Thousand & No/100 Dollars (\$65,000.00) payable in installments at the same time other management employees of the Employer are paid.
- B. At the completion of the first year of employment, on or before May 29, 2019, upon satisfactory review, employee's salary is to increase to \$70,000.00 per year.

Consideration shall be given on an annual basis to increase compensation based upon performance on or before June 1st of each year. Thereafter, increased compensation can be in the form of a salary increase and/or bonus and/or adjustment to benefits.

It is hereby amended to read as follows:

- A. Base Salary: Employer agrees to pay Employee an annual base salary of Ninety Thousand & No/100 Dollars (\$90,000) payable in installments at the same time other management employees of the Employer are paid.
- B. At the completion of each year of employment and upon satisfactory review by the Employer, the Employee's annual base salary will increase to the following levels on the effective dates:
 - a. July 1, 2020 – \$91,350 (increase of 1.5%)
 - b. July 1, 2021 – \$92,720 (increase of 1.5%)
 - c. July 1, 2022 – \$94,111 (increase of 1.5%)

Modification 3:

Section 8: General Business Expenses, Item E: Technology, currently reads as follows:

E: Technology – The Employer shall provide Employee with a laptop computer, software, fax/modem required for the employee to perform the job and to maintain communication. Employer shall provide Employee a monthly technology stipend in the amount of Seventy-five & No/100 Dollars (75) per month.

It is hereby removed in its entirety.

Modification 4:

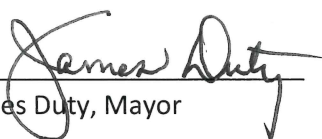
Section 10: Severance, paragraph two, currently reads as follows:


If the Employee is terminated, the Employer shall provide a minimum severance payment equal to three (3) months salary at the current rate of pay. This severance shall be paid in a lump sum unless otherwise agreed to by the Employer and the Employee.


It is hereby amended to read as follows:

If the Employee is terminated, the Employer shall provide a minimum severance payment equal to three (3) months salary at the current rate of pay. The minimum severance payment shall increase by one (1) month for each full year of the Employee's service to the Employer, but shall never exceed a maximum of six (6) months salary at the current rate of pay. This severance shall be paid, at the Employer's determination, in either a lump sum or in payroll installments at the same time other management employees of the Employer are paid.

Approved by the Eufaula City Council on June 3, 2019.


James Duty, Mayor


Jacob R. Foos, City Manager

ATTEST:

Valarie Cox, City Clerk

