

## EMPLOYMENT AGREEMENT

This Agreement is made this \_\_\_\_ day of \_\_\_\_\_, 2014, at the City of Poplar Bluff, State of Missouri, between the City of Poplar Bluff, a municipal corporation (hereinafter "the City") and Heath Kaplan (hereinafter "Kaplan") (collectively, "the parties"), who understand and agree as follows:

WITNESSETH:

WHEREAS, the City desires to employ the services of Kaplan as City Manager of the City of Poplar Bluff, Missouri; and

WHEREAS, Kaplan desires to accept employment as City Manager of the City of Poplar Bluff;

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and Kaplan agree as follows:

### SECTION 1. Duties

City hereby agrees to employ Kaplan as City Manager to perform the functions and duties specified in R.S.Mo. 78.610 (incorporated fully herein by reference) and Article 2, Section 115.060 of the City's Code of Ordinances (incorporated fully herein by reference), as well as all other legally permissible and proper duties and functions under Missouri law, the City Charter and City Ordinances, and any other duties and functions as the City Council (hereinafter "Council") shall from time to time assign. As City Manager, Kaplan is subject to the direction and supervision of the Council.

### SECTION 2. Nature of Employment

A. As set forth in R.S.Mo. 78.610, at all times Kaplan shall serve at the pleasure of the City Council, and the Council may terminate Kaplan's employment at any time and for any reason or no reason. Kaplan has no entitlement to any pre-termination warning or discipline, or other pre- or post-termination procedures of any kind. Nothing in this Agreement creates any right or guarantee of continued employment nor shall anything herein be construed as such.

B. Kaplan understands and agrees that throughout his employment as the City Manager, he shall remain in the exclusive employ of the City, and shall devote his entire time, abilities, attention, skill, and efforts to the faithful performance of his duties and responsibilities as City Manager and shall work for no other entity or person. Kaplan also understands and agrees that he shall not engage in any outside activities that might conflict with his position as City Manager or otherwise give the appearance of impropriety or undue influence with regard to his position.

### SECTION 3. Salary

City agrees to pay Kaplan for services rendered pursuant hereto at an annual salary of One Hundred and Sixty Thousand Dollars (\$160,000), less all applicable state and federal taxes and other deductions as required by law, or as authorized by Kaplan (e.g., for his voluntary participation in plans and/or benefits) payable in installments at the same time as other employees of the City are paid. This position is exempt and not subject to state or federal overtime or minimum wage laws.



#### SECTION 4. Termination of Employment

A. As set forth in Section 2.A., above, Kaplan shall serve at the pleasure of the City Council, and the Council may terminate Kaplan's employment at any time and for any reason. Kaplan may also elect to terminate his employment with the City, subject to the conditions in Section 4.E., below.

B. If the City terminates Kaplan's employment for "good cause," as set forth herein, or for any act in violation of this Agreement, Kaplan shall have no entitlement to severance pay and no right to any other compensation, remuneration or payment except for payment of his regular salary through the date of termination. "Good cause" is defined to include, but is not limited to: any violation of state or federal law or any City ordinance, policy, or rule; commission of any act or omission that results in, or may be reasonably expected to result in, a plea of guilty or no contest or imposition of unadjudicated probation for any felony or crime; any act involving moral turpitude; intentional misconduct; fraud, embezzlement, theft, misappropriation, breach of fiduciary duty, financial dishonesty, or other financial irregularities; any act of dishonesty, fraud, intentional misrepresentation, illegality, or harassment; poor performance or failure to perform duties of office or carry out or comply with any lawful and reasonable directive of the Council (including those duties incorporated in Section 2 of this Agreement); commission of a crime; malfeasance in office; job abandonment; performance of any illegal, unethical, or grossly negligent act; insubordination; any action materially and adversely affecting the City or exposing the City to a risk of criminal or civil legal charges, damages, liabilities, and/or penalties; any act that constitutes discrimination or harassment under state or federal law; any act in violation or contravention of his authority as City Manager; any conduct in violation of this Agreement; and any other conduct that is (as decided by a majority of the Council) unbecoming of a City Manager of Poplar Bluff and other acts deemed to constitute good cause by the City Council.

C. Kaplan acknowledges that his performance of the duties and obligations contemplated in this Agreement are vital to the continued functioning of the City, and that his inability to perform such duties and obligations for an extended period of time may create an undue hardship on the City. Therefore, the parties agree that Kaplan's employment may be terminated if Kaplan is unable, with or without reasonable accommodation, to perform the essential functions of a City Manager as contemplated by this Agreement because of illness, physical or mental disability or other incapacity, for a period or periods aggregating three (3) months in any calendar year, or for any shorter period of time if, under applicable law, Kaplan's non-performance would create an undue hardship on the operation of the City's business. The City may terminate Kaplan's employment under this section by giving thirty (30) days' written notice to Kaplan. In such an event, the City shall have no obligation to pay Kaplan any severance pay or any other compensation, remuneration or payment, except for payment of his regular salary through the date of termination.

D. If the City terminates Kaplan's employment for any reason other than those reasons listed in Section 4.B. or Section 4.C., above, Kaplan shall receive severance pay in the amount of three months' salary, payable in monthly or bi-monthly installments at the City's sole election, totaling Forty Thousand Dollars (\$40,000), less all applicable state and federal taxes and all other deductions as required by law, or as authorized by Kaplan (e.g., for his voluntary participation in plans and/or benefits).

E. Kaplan may terminate his employment with the City by providing at least thirty (30) days' notice of such termination; however, Kaplan understands and agrees that the City may elect, at its sole option, to terminate his employment earlier than his resignation date and that the City shall owe no further payment to Kaplan beyond his regular salary through the date of termination of employment.



**SECTION 5.     Compliance with Law, Ordinances, Rules, and Regulations**

A.     In performing Kaplan's responsibilities pursuant to Section 1 and as otherwise assigned, Kaplan shall comply with all applicable laws, City ordinances, rules, regulations, and other applicable standards. Any violation of this Section 5 shall constitute "good cause" for termination of Kaplan's employment within the meaning of Section 4.B. of this Agreement.

**SECTION 6.     Hours of Work and Time Off**

A.     Kaplan shall work not less than 40 hours per week except when a City holiday occurs or while one leave as set forth in Section 6.C., below.

B.     In the event Kaplan is required to work more than 40 hours in a week, he shall not be compensated for the additional time and shall have no right or entitlement to any pay in excess of his regular salary for such hours worked.

C.     Kaplan shall receive two weeks of leave annually.

**SECTION 7.     Retirement Plan**

Kaplan shall be a participant in Missouri's Local Government Employees' Retirement System (LAGERS) and shall be subject to the terms and conditions of same.

**SECTION 8.     Benefits**

A.     **Medical:** City agrees to provide medical insurance under the City's plan for Kaplan at the City's expense. In addition, the City agrees to pay two-thirds (2/3) of the medical insurance expenses for Kaplan's family under the City's Plan, with Kaplan personally responsible for the remaining one-third (1/3). Kaplan understands and agrees that he has a continuing duty to timely remit payment for his portion of the medical insurance to avoid any lapse in same. Alternatively, Kaplan can opt to purchase outside medical insurance coverage, and the City will provide a Fourteen Thousand Dollar (\$14,000) annual benefit to Kaplan, payable in monthly installments, for his purchase of same. Kaplan understands and agrees that if his employment is terminated in accordance with the provisions of Section 4 of this agreement, he shall have no further entitlement to the City's contribution to this benefit.

B.     **Life insurance:** City agrees to provide a policy of life insurance covering Kaplan in the total amount of Eighty Thousand Dollars (\$80,000) annually. Kaplan understands and agrees that if his employment is terminated in accordance with the provisions of Section 4 of this agreement, he shall have no further entitlement to this benefit effective the date of termination.

C.     **457 Plan:** City agrees to provide Eight Thousand Dollars (\$8,000) toward a 457 plan for Kaplan's benefit at the City's expense. Kaplan understands and agrees that if his employment is terminated in accordance with the provisions of Section 4 of this agreement, he shall have no further entitlement to this benefit effective the date of termination.

D.     **Vision and Dental:** Kaplan may participate, subject to eligibility requirements and all other terms and conditions, and at his own expense, in the City's benefit plans and programs as may be in effect from time to time. The City reserves the right to amend, modify, or terminate any or all of its benefit plans or programs at any time, and all benefit plans and programs are controlled by the terms of the plan documents and any applicable laws or regulations.



E. **Disability:** Kaplan may participate, subject to eligibility requirements and all other terms and conditions, and at his own expense, in the City's benefit plans and programs as may be in effect from time to time. The City reserves the right to amend, modify, or terminate any or all of its benefit plans or programs at any time, and all benefit plans and programs are controlled by the terms of the plan documents and any applicable laws or regulations.

F. **Section 125:** Kaplan may participate, subject to eligibility requirements and all other terms and conditions, and at his own expense, in the City's plan as may be in effect from time to time. The City reserves the right to amend, modify, or terminate its plan at any time.

## **SECTION 9. Allowances**

A. **Moving Expenses:** City agrees to provide up to Fifteen Thousand Dollars (\$15,000) to Kaplan in moving expenses, contingent upon Kaplan submitting original receipts supporting all of the expenses sought to the City. Alternatively, Kaplan may elect to have the moving expenses billed to the City, subject to the City's prior approval and authorization, up to Fifteen Thousand Dollars (\$15,000).

B. **Cell Phone:** City agrees to provide Kaplan with reasonable cell phone expenses for services. The billing shall either be directed to the City or Kaplan shall submit original receipts for same. Kaplan understands and agrees that he will be responsible for the cost and maintenance of the cell phone, as well as any replacement phone, and any ancillary products or devices.

C. **Automobile Allowance:** City agrees to provide Kaplan with an annual allowance of Five Thousand Dollars (\$5,000) for an automobile for personal use as well as his use as the City Manager. This amount may be paid in installments or in a lump sum; however, if Kaplan's employment ends before the term of this agreement, Kaplan understands and agrees that the City shall be entitled to a pro-rated return of the allowance, due on or before his final day of employment.

D. **Other Expenses:** There are no other allowances for any other expenses except those specifically defined in this Section. As the City Manager, Kaplan understands and agrees that he has a responsibility to the public to conserve the City's finances. To the extent Kaplan incurs business-related expenses in the course of his duties as City Manager, he shall be responsible for substantiating those expenses with original receipts and attaching a detailed record of these expenses that he is submitting for reimbursement by the City to support his request for reimbursement. Kaplan agrees that he will adhere to all policies, rules, and guidelines issued by the City with regard to expense reimbursement, and he understands and agrees that mismanagement or misuse of City funds, including any attempt to seek reimbursement for any expenses not legitimately incurred on behalf of the City, shall constitute "good cause" for termination of employment and that the City will seek all available legal remedies, including restitution and, if applicable, criminal charges, against him for same. If Kaplan is issued a credit card for his use in connection with his City Manager duties, he shall be solely responsible for any unauthorized expenses incurred for personal reasons or convenience. Further, Kaplan shall comply with all limitations and reporting requirements established by the City and/or under law with respect to such expenses.

## **SECTION 10. Other Terms and Conditions of Employment**

A. The City Council shall fix any such other terms and conditions of employment, as it may determine from time to time, relating to the performance of Kaplan, provided such terms and conditions are not inconsistent with or in conflict with the provisions of Missouri law, the City Charter, City ordinances, or any other law.



B. All provisions of the City Charter and City ordinances, and rules and policies of the City relating to vacation and sick leave, retirement and pension system contributions, holidays, and other fringe benefits and working conditions as they now exist or hereafter may be amended, also shall apply to Kaplan as they would to other employees of the City.

C. Kaplan understands and agrees that he is responsible for all applicable taxes required under federal and/or state law on any and all of the consideration set forth herein.

#### **SECTION 11. General Provisions**

A. The text herein constitutes the entire Agreement between parties, and it fully supersedes any prior understandings or agreements between the parties.

B. This Agreement may not be modified, altered, or changed except upon express written consent of the parties in writing and signed by all parties, and with specific reference made to this Agreement.

C. This Agreement shall be binding upon and inure to the benefit of the heirs at law and executors of Kaplan.

D. This Agreement shall be governed by and construed in accordance with the laws of the State of Missouri without regard to its conflicts of laws provisions.

E. Kaplan acknowledges that he has not relied on any representations, promises, or agreements of any kind made to him in connection with his decision to accept this Agreement, except for those set forth herein. The parties are relying on their own judgment and that of their chosen attorneys, if any. The parties also specifically affirm that this Agreement clearly expresses their intent to waive any fraudulent inducement claims, and that they disclaim any reliance on any representations about any of the specific matters in dispute.

F. This Agreement shall expire one year from the date of execution, on \_\_\_\_\_, 2015; however, nothing about this one-year period shall be construed to limit, restrict, or otherwise qualify the City's authority to unilaterally terminate Kaplan's employment for any reason or for no reason, with or without advance notice, nor shall it restrict or limit Kaplan's ability to terminate his employment, subject to the conditions set forth in Section 4.E. of this Agreement.

G. If any provisions, or any portion thereof, contained in this Agreement are held to be unconstitutional, invalid, or unenforceable, the remainder of this Agreement, or portion thereof, shall be deemed severable, shall not be affected, and shall remain in full force and effect.

H. In the event of a breach of this Agreement either party may institute an action to enforce any term or seek damages for any breach. All suits, proceedings, and other actions relating to, arising out of or in connection with this Agreement shall be submitted to the in personam jurisdiction of the courts of the State of Missouri.

I. This Agreement may be signed in counterparts, each of which shall be deemed an original, but all of which, taken together, shall constitute the same instrument. A signature made on a faxed or electronically mailed copy of the Agreement or a signature transmitted by electronic mail or facsimile will have the same force and effect as the original signature.

For the City of Poplar Bluff:

By: \_\_\_\_\_  
Mayor Angela Pearson

\_\_\_\_\_  
DATE

\_\_\_\_\_  
Heath Kaplan

\_\_\_\_\_  
DATE