

RESOLUTION NO. _____

Synopsis: The following resolution approves and authorizes the execution of an employment agreement modification between the City of Washington, Illinois and James Culotta, City Administrator. Among other things, the agreement extends the period of employment through April 30, 2019.

**RESOLUTION APPROVING AND AUTHORIZING THE EXECUTION
OF AN EMPLOYMENT AGREEMENT MODIFICATION BETWEEN
THE CITY OF WASHINGTON AND JAMES CULOTTA
THROUGH THE PERIOD ENDING APRIL 30, 2019**

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF
WASHINGTON, TAZEWELL COUNTY, ILLINOIS, that:**

The Mayor and City Clerk of the City of Washington be, and hereby are, authorized, empowered, and directed to enter into and execute an Employment Agreement Modification with James Culotta on behalf of the City of Washington in substantially the form of the document attached hereto, marked Exhibit A, and by reference expressly made a part hereof, and to execute and deliver any and all documents necessary for the effectiveness thereof.

PASSED AND APPROVED this 12th day of June, 2017.

AYES: _____

NAYS: _____

Mayor

ATTEST:

City Clerk

CITY ADMINISTRATOR EMPLOYMENT AGREEMENT

This City Administrator Employment Agreement ("Agreement") is made this 12th day of June 2017, by and between the City of Washington, Tazewell County, Illinois ("City") and James Culotta ("Culotta").

NOW, THEREFORE, in consideration of the promises hereinafter exchanged, and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties agree as follows regarding Culotta's employment with the City:

1) Period of Employment. Culotta's employment shall commence on December 28, 2015 and continue until April 30, 2019, unless it is terminated earlier pursuant to the provisions of Paragraphs 20, 21, or 22 of this Agreement.

2) City Administrator Duties. Culotta shall perform the duties of City Administrator as set forth in the applicable statutes of the State of Illinois and City ordinances, and such other duties as may be lawfully assigned to Culotta by the Mayor or City Council.

3) Hours of Work. The parties realize that the position of City Administrator requires the person holding such position to work many weekends, evenings and other irregular hours. It is understood and agreed that Culotta shall work whatever hours may be necessary in order for him to fulfill the requirements of the position of City Administrator, but in any event not less than forty (40) hours per week, unless approved by the Mayor or City Council.

4) Salary. Beginning May 1, 2017, Culotta shall be compensated at an annual salary rate of One Hundred and Eleven Thousand Eight Hundred and Fifteen Dollars (\$111,815), payable in bi-weekly installments. Culotta's salary may be increased by a majority vote of the City Council anytime during the term of this Agreement.

5) Performance Evaluation. The City Council and Mayor shall review and evaluate the performance of Culotta at least once prior to April 30, 2017, and annually thereafter, in accordance with specific criteria developed by the City Council and Mayor in consultation with Culotta. The performance criteria may be added to or deleted from as the Mayor or City Council may determine from time to time. Further, the City Council and Mayor shall provide Culotta with a summary written statement of the evaluation findings of the City Council and Mayor and shall provide Culotta with an opportunity to discuss the evaluation with the City Council and Mayor.

6) Vacation. Effective January 1, 2016, Culotta shall be entitled to forty (40) hours of paid vacation leave, and thereafter, Culotta shall earn and accrue ten (10) hours of paid vacation time per month (120 hours/15 days annually) during the term of this Agreement. Vacation time shall be scheduled for use subject to the approval of the Mayor. Any vacation days not used by December 31 of each year shall be forfeited, except that Culotta is entitled to carry over a maximum of 40 hours of unused vacation to the subsequent calendar year.

7) Personal leave. Culotta shall be entitled to twelve (12) hours (1.5 days) of paid personal leave during the term of this Agreement. Any personal leave not used at the time of the termination of this Agreement and Culotta's employment, shall be forfeited. Personal leave shall be scheduled for use subject to the approval of the Mayor.

8) Sick leave. Culotta shall be granted 96 hours of sick leave upon the beginning of employment, and beginning after one year of employment, will accrue eight (8) hours of sick leave per month (96 hours/12 days annually). Sick leave shall only be taken and used in accordance with the sick leave provisions governing other non-union employees of the City, and any unused sick leave at the time of the termination of this Agreement and Culotta's employment shall be forfeited. Culotta shall also be eligible for the same Good Health Incentive Benefits as are afforded to other full-time, non-union employees of the City.

9) Holidays. Culotta shall receive the same paid holidays as are afforded to other non-union employees during the term of this Agreement.

10) Retirement Plan Contributions. The City participates in the Illinois Municipal Retirement Fund ("IMRF") for and on behalf of its employees, and makes periodic contributions thereto for the benefit of its employees. The City shall make contributions for and on behalf of Culotta to the IMRF, in accordance with and as required by the IMRF, and by City ordinance/resolution.

Additionally, Culotta may make contributions to applicable deferred compensation plan(s) offered by the City. The City will not contribute to any deferred compensation plan(s).

11) Automobile. The City shall provide an automobile to Culotta for City business and local personal use (including commuting to and from work). Culotta may use the automobile for personal use only within a twenty-five (25) mile radius of the City. Any personal use outside of the twenty-five (25) mile radius shall require the Mayor's preapproval and Culotta shall be responsible for related fuel costs. The City shall be solely responsible for all insurance, fuel, repairs and maintenance cost of the automobile when used in compliance with this Paragraph.

12) Cell Phone. The City shall provide a "smart" cell phone to Culotta for City business and limited personal use. Culotta authorizes the City to deduct twenty-five dollars (\$25.00) per month from his paycheck for use of the cell phone. The City shall otherwise be solely responsible for the cost of the cell phone when used in compliance with this Paragraph.

13) Professional, Civic and Other Business Expenses. The City shall reimburse Culotta for annual membership dues for the International City Management Association, the Illinois City Management Association, the Illinois Public Employer Labor Relations Association, and the Society for Human Resource Management. In addition, membership fees for one local civic organization, approved by the City, such as Rotary or Lions will be reimbursed by the City. Also, upon prior approval, the City may reimburse Culotta for other business expenses. Upon prior approval of the City Council, the City shall reimburse Culotta for other expenses, including but

not limited to air travel, taxi, auto rental, lodging, meals and registration fees for attending training programs or conferences offered by the approved organizations.

14) Residency & Relocation Assistance. Culotta shall relocate to and establish residency within the corporate limits of the City by September 28, 2016. The City shall provide a payment to Culotta during the month of January 2016 in the amount of Eight Thousand Five Hundred Dollars (\$8,500.00) as reimbursement for costs incurred in relocating to the City. Should Culotta elect to terminate his employment with the City within two (2) years of relocation to the City, Culotta shall reimburse the City for the \$8,500 relocation assistance provided by the City pursuant to this Paragraph. Culotta agrees to keep the Mayor and City Council informed of his efforts to sell his residence in Wisconsin in the event he needs to request additional time beyond September 28, 2016 to establish residency in the City of Washington.

15) Group Medical Insurance Benefits. Culotta is eligible for dependent health, hospitalization and dental coverage in accordance with and under the same terms and conditions as those provided to other non-union employees of the City.

16) Life Insurance. During the term of his employment, the City shall pay the full cost of providing Culotta with an individual term life insurance policy in the face amount of One Hundred Thousand Dollars (\$100,000), provided Culotta is insurable on a non-rated basis.

17) Medical Examination. To the extent allowed by law, whenever the City has a reasonable belief that Culotta may have a condition that impairs his ability to perform any of the essential functions of the City Administrator position, and/or that he may pose a direct threat, the City may require at its cost a medical examination of Culotta that is job-related and consistent with business necessity. The City shall be authorized by Culotta to receive a copy of all medical reports related to the examination. This Paragraph shall not be deemed to limit or restrict any disability-related inquiry or medical examination that may be job-related and consistent with business necessity under applicable law.

18) Eligibility for Benefits Afforded Other City Employees. Unless otherwise specified in this Agreement, Culotta shall be entitled to the same employment benefits, under the same terms and conditions, as are provided to other non-union City employees, except that Culotta shall not be entitled to compensatory time.

19) Outside Activities. Culotta shall not engage in any non-City connected business or employment without the prior approval of the Mayor or City Council. The parties agree that limited teaching will be permitted, provided that such outside teaching does not unduly interfere with Culotta's duties as City Administrator.

20) Termination Due to Inability to Perform Essential Job Functions. Notwithstanding anything in this Agreement to the contrary and to the extent allowed by applicable law, the City has the option to terminate this Agreement and Culotta's employment in the event that Culotta is not able to perform the essential functions of his job due to a serious health condition or

physical or mental impairment, and will be unable to perform such essential functions even with a reasonable accommodation and/or following a reasonable leave of absence.

21) Termination by the City. The City may terminate this Agreement and Culotta's employment at any time by a majority vote of the City Council in favor of termination. It is understood and agreed that Culotta shall at all times be an employee at will and may be dismissed with or without cause.

22) Termination by Culotta. Culotta may terminate this Agreement and his employment with the City upon sixty (60) days' prior written notice to the Mayor. Following receipt of such notice, the City, in its sole discretion, may choose not to continue Culotta's employment through the end of the notice period, in which case, Culotta will still be paid through the last day of the sixty (60) day notice period.

23) Severance Pay. In the event that the City terminates this Agreement and Culotta's employment prior to April 30, 2018 pursuant to Paragraph 21, without cause (for purposes of this Agreement, "cause" includes any conduct, act or failure to act by Culotta which is detrimental to the best interests of the City, including but not limited to insubordination, illegal or unprofessional conduct, neglect of duty, inefficiency or incompetency), the City agrees to provide Culotta with: (a) a monetary severance equal to six (6) months of Culotta's salary at the time of termination, payable in monthly installments for six (6) months following his termination; and (b) to continue the benefits provided to Culotta pursuant to Paragraphs 15 and 16 of this Agreement for six (6) months following his termination.

In the event that the City terminates this Agreement and Culotta's employment between May 1, 2018 and April 30, 2019 pursuant to Paragraph 21, without cause (for purposes of this Agreement, "cause" includes any conduct, act or failure to act by Culotta which is detrimental to the best interests of the City, including but not limited to insubordination, illegal or unprofessional conduct, neglect of duty, inefficiency or incompetency), the City agrees to provide Culotta with: (a) a monetary severance equal to three (3) months of Culotta's salary at the time of termination, payable in monthly installments for three (3) months following his termination; and (b) to continue the benefits provided to Culotta pursuant to Paragraphs 15 and 16 of this Agreement for three (3) months following his termination.

Culotta's entitlement to a monetary severance and continued benefits is conditioned on Culotta executing (and not subsequently exercising any right to revoke) an agreement effectively releasing the City and its officials, employees and agents from all claims connected with this Agreement, Culotta's employment with the City and termination of Culotta's employment.

Notwithstanding the foregoing, if Culotta obtains new employment, or an offer of new employment, during the severance payment period : (a) his entitlement to severance payments may be eliminated by the City, if the new employment has a salary rate equal to or higher than his severance payment amount; (b) his entitlement to severance payments may be reduced by the City to an amount equaling the difference between the monthly severance amount

and the monthly salary rate of his new employment, if the new employment has a salary rate less than his severance payment amount; and (c) his entitlement to continued benefits may be eliminated by the City if Culotta receives or is eligible for comparable insurance benefits through his new employment. Within five (5) days of receiving an offer of employment, Culotta is required to inform the Mayor in writing of the offer, including the employer, the salary rate, and anticipated start date.

24) Obligations After Termination of Employment. In addition to those obligations set forth elsewhere in this Agreement and otherwise imposed by law, Culotta agrees that upon termination of his employment, he will pay the City, on demand, all monies owed to the City by Culotta {the City is authorized to make deductions from any compensation to which Culotta is entitled to cover this payment obligation}, and will return all equipment, property and information belonging to the City, including but not limited to the automobile and cell phone provided by the City to Culotta pursuant to this Agreement.

25) Renewal/Modification. The City and Culotta may meet to discuss the renewal or modification of this Agreement at any time during its term. All modifications of this Agreement shall be ineffective unless reduced to writing and signed by the Mayor and Culotta and approved by the City Council.

26) Effects. This Agreement shall be binding upon the City and Culotta and their respective successors, assigns or heirs, as the case may be.

27) Governing Law and Venue. This Agreement will be construed, interpreted, enforced and governed, in all respects, in accordance with the laws of the State of Illinois and the City, and any litigation pertaining to this Agreement or Culotta's employment must be filed in the Circuit Court of Tazewell County, Illinois.

28) Indemnification. To the extent provided for by applicable law, the City shall hold harmless and indemnify Culotta against any tort, professional liability or other claim or demand or any other legal action, whether groundless or otherwise, arising out of an alleged act or omission to act arising out of or from the performance of Culotta's duties as City Administrator. The City shall defend {including the right to select legal counsel}, compromise or settle any such claim, demand or suit and pay the amount of any settlement or judgment rendered against Culotta, which is not based upon the illegal, bad faith, malicious or willful and wanton conduct of Culotta, including the payment of attorney fees incurred in the cost of the defense, compromise or settlement of such claim, demand or judgment. This indemnification by the City shall not cover punitive damages, unless otherwise required by law. In order to be eligible for indemnification, Culotta must inform the City of any claim or demand made against him within ten {10} days of his receipt of the claim or demand. Notwithstanding any provision in the Agreement to the contrary, Culotta shall cooperate fully with the City during the course of any investigation, administration or litigation of any and all claims, complaints, demands or lawsuits.

29) Bond. Before entering into the duties of City Administrator, Culotta shall execute a bond in compliance with the provisions of the City of Washington Ordinances and the provisions of Illinois statutes.

30) Severability. The invalidity or unenforceability of any particular provision of this Agreement will not affect the Agreement's other provisions, which are then to be applied as if the invalid or unenforceable provision were omitted.

31) Acknowledgment. The parties acknowledge and agree that they have consulted or had the opportunity to consult with attorneys of their choosing during the negotiation, preparation, authorization, execution and delivery of this Agreement, and have read this Agreement, know and understand its contents, and execute this Agreement freely and voluntarily. Each party agrees that any interpretation of this Agreement shall not be construed against a party by virtue of such party having drafted the provisions of this Agreement.

32) Entire Agreement. This Agreement constitutes the entire agreement between the parties and any prior or contemporaneous agreement, understanding or representation of any kind not contained in this Agreement shall not be binding upon the City or Culotta, nor shall any future agreements be binding unless in writing and executed by the Mayor and Culotta. Unless expressly stated otherwise in this Agreement, all benefits provided to Culotta under this Agreement shall cease upon the termination of his employment as City Administrator.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date and year first above written.

CITY OF WASHINGTON TAZEWEEL COUNTY, ILLINOIS

JAMES CULOTTA

By _____
Mayor

ATTEST: _____
City Clerk