

**RESOLUTION NO. 022717-2**

**A RESOLUTION APPROVING A PROFESSIONAL SERVICES AGREEMENT WITH JAY NEWTON, JR. TO SERVE AS INTERIM CITY MANAGER**

**WHEREAS**, the governing body desires to have an interim city manager to oversee the daily operations of the City during the recruitment and selection of a city manager;

**WHEREAS**, the governing body has identified Mr. Jay P. Newton, Jr. ("Consultant") as a professional qualified to undertake the responsibilities of interim city manager during such process;

**WHEREAS**, the Consultant will be unable to perform the duties and responsibilities of interim city manager until prior obligations with the City of Chapman, Kansas have been fulfilled; and

**WHEREAS**, the governing body desires to provide a temporary appointment for the city manager to serve until such time as Consultant may assume the duties as provided herein.

**NOW, THEREFORE BE IT RESOLVED**, by the City Commission of the City of Abilene, as follows:

**SECTION ONE. Professional Services Agreement.** That a Professional Services Agreement with Consultant is hereby adopted as attached hereto as **Exhibit A**.

**SECTION TWO. Temporary Appointment.** That City Clerk Penny Soukup is hereby appointed to serve as interim city manager from 5:00 pm on March 3, 2017 and until such time as Consultant is able to fulfill the duties and responsibilities as provided in the Agreement. While serving in this capacity, the City Clerk shall have the authority to exercise all duties and responsibilities of the city manager as defined by Chapter 1, Article 2 of the City Code and other applicable state statutes. The City Clerk shall be compensated an additional \$650 per week during the effective period of the temporary appointment.

**SECTION TWO. Implementation.** The Mayor is hereby authorized to execute the aforementioned Agreement, and the City Manager shall be authorized to enforce the provisions as provided therein and in applicable resolutions, ordinances, and laws.

**SECTION THREE. Effective Date.** That the effects of this Resolution shall be in full force after its approval by the City Commission.

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PASSED AND APPROVED by the Governing Body of the City of Abilene, Kansas this 27<sup>th</sup> day of February, 2017.



CITY OF ABILENE, KANSAS

By: *Dee Marshall*  
Dee Marshall, Mayor

ATTEST:

*Penny Soukup, CMC*  
Penny Soukup, CMC  
City Clerk

**EXHIBIT A**

**Professional Services Agreement**

**February 27, 2017**

## PROFESSIONAL SERVICES AGREEMENT

This PROFESSIONAL SERVICES AGREEMENT for Interim City Manager (“Agreement”) is made and entered into this \_\_\_ day of February, 2017, by and between the City of Abilene, Kansas (the “City”) and Jay P. Newton, Jr. (“Interim City Manager”).

### RECITALS

**WHEREAS**, the City has begun an active recruitment process to hire a permanent city manager; and

**WHEREAS**, until a permanent city manager is hired, the City desires to retain an interim city manager; and

**WHEREAS**, Interim City Manager desires to serve as the interim city manager in accordance with the terms of this Agreement; and

**WHEREAS**, the City desires to retain the services of Interim City Manager upon the terms set forth herein.

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

1. **Employment; Duties.** The City hereby appoints Interim City Manager, in an interim capacity, to perform all functions and duties associated with the position of city manager as specified under the laws of the state of Kansas and the City’s charter ordinances, ordinances, and resolutions, and any other legally permissible and proper functions and duties as the governing body may from time to time assign. Interim City Manager shall work exclusive for the City, and shall not accept work or employment as a city manager for another municipality while serving as the City’s Interim City Manager.

2. **Term.** The term of this Agreement shall be for the period commencing on April 1, 2017, and will expire at the time the City hires a permanent city manager, provided, however, that there may be a brief period of overlap after the City hires a permanent city manager, the duration of which shall be determined by the governing body, so that Interim City Manager can assist in the transition of the permanent appointment. In addition, either party may terminate this Agreement without cause upon thirty (30) days written notice.

3. **Compensation.** In consideration of the services to be rendered by Interim City Manager, the City agrees to pay Interim City Manager the sum of Two Thousand Five Hundred Dollars (\$2,500.00) per week, payable in installments at such intervals as regular City employees are paid.

4. **Hours of Work.** Interim City Manager shall maintain regular office hours in the City office. However, it is recognized that Interim City Manager must devote a great deal of

time outside the normal office hours on business for the City and to that end Interim City Manager shall be allowed to establish an appropriate work schedule, including reasonable time off.

**5. Independent Contractor Status.** It is expressly agreed and understood by and between the parties that Interim City Manager is an independent contractor, and as such Interim City Manager is not a City employee, and is not entitled to payment or compensation from the City or to any fringe benefits to which other City employees are entitled. As an independent contractor, Interim City Manager further acknowledges that he is solely responsible for payment of any and all income taxes, FICA, withholding, unemployment insurance, or other taxes due and owing any governmental entity whatsoever as a result of this Agreement. As an independent contractor, Interim City Manager will not make any claim, demand of application to or for any right or privilege applicable to any officer or employee of the City, including but not limited to worker's compensation coverage, unemployment insurance benefits, social security coverage, or retirement membership or credit.

**6. General Provisions.**

A. This Agreement sets forth and establishes the entire understanding between the parties. No other promises, statements, warranties, agreements or understandings, oral or written, made before or at the signing thereof, shall be binding unless in writing and signed by all parties and attached hereto.

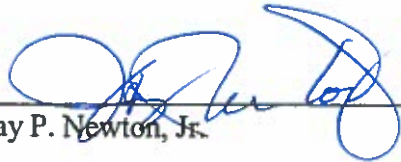
B. This Agreement shall extend to and bind the heirs, executors, administrators, trustees, successors and authorized assigns of the parties hereto.

C. The unenforceability, invalidity, or illegality of any provision of this Agreement shall not render the other provisions unenforceable, invalid, or illegal.

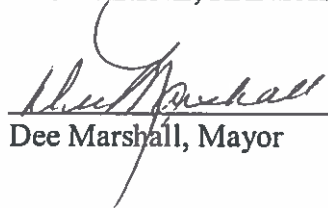
{Signature page follows}

IN WITNESS WHEREOF, City has caused this Agreement to be executed on its behalf by its Mayor, and duly attested by its City Clerk, and Interim City Manager has executed this Agreement, as of the date first above written.

**INTERIM CITY MANAGER**

  
\_\_\_\_\_  
Jay P. Newton, Jr.


**CITY OF ABILENE, KANSAS**

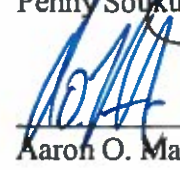
By:   
\_\_\_\_\_  
Dee Marshall, Mayor



[SEAL]

ATTEST:

By:   
\_\_\_\_\_  
Penny Soukup, CMC, City Clerk

Form:   
\_\_\_\_\_  
Aaron O. Martin, City Attorney