

EMPLOYMENT AGREEMENT

THIS AGREEMENT, made and entered into this ____ day of ____, 2014, by and between the City of Gillette, State of Wyoming, a municipal corporation, hereinafter referred to as "CITY", as party of the first part, and James Carter Napier, hereinafter referred to as "EMPLOYEE". The CITY and EMPLOYEE may be referred to collectively as the PARTIES.

WITNESSETH:

WHEREAS. CITY desires to continue to employ the services of EMPLOYEE as City Administrator of the City of Gillette, as provided in § 2-2 of the Gillette City Code under this amended Employment Agreement, beginning on June 1, 2014 hereinafter the Effective Agreement Date, or Employment Start Date, and,

WHEREAS, it is the desire of the Governing Body of the City of Gillette, hereinafter referred to as "Council" to provide certain benefits, establish certain conditions of employment and to set working conditions of said EMPLOYEE, and

WHEREAS, it is the desire of the Council to secure and retain the services of EMPLOYEE and to provide inducement for him to remain in such employ, until either party decides to terminate this agreement; and

WHEREAS. EMPLOYEE desires to accept employment as City Administrator of the City of Gillette, Wyoming.

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

Section 1. Duties

CITY hereby agrees to employ EMPLOYEE as City Administrator to perform the functions and duties specified in the Gillette City Code of the City of Gillette, Wyoming and to perform other legally permissible and proper duties and functions as the Council shall from time to time assign, until either party decides to terminate this agreement.

EMPLOYEE will:

- A. Devote the time, skill, labor and attention to employment during the term of this employment as may be necessary to accomplish the work.

- B. Not engage in any employment that will interfere with his employment with the CITY.
- C. Faithfully adhere to the Government Ethics, in Wyoming Statutes 9-13-101, et sec.
- D. Disclose prior to entering into this agreement, or at such time as the EMPLOYEE becomes aware of such circumstance, any known contracts or financial arrangements that the EMPLOYEE would reasonably expect would be affected by actions by the CITY.
- E. Not disclose, during employment or at any time thereafter, to any person, firm, or corporation any non-public information concerning the business or affairs of the CITY which he may have acquired in the course of, or as an incident to, his employment.
- F. To leave in place or to return immediately upon termination of employment with the CITY, all property of the CITY, including but not limited to keys, equipment, phones, pagers, automobiles, computer hardware and software, original drawings, plans, specifications, manuals, procedures, and any and all other documents of any kind which were provided to or generated by his in the course of, or in connection with, his employment by the CITY.

Section 2. Term

- A. The term of a City Administrator shall be for three years. The Effective date is June 1, 2014. After this Employment Agreement is approved according to § 2-2 of the Gillette City Code, the term shall run until the first regular meeting of the Governing Body in June 2017 on June 6, 2017.
- B. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the Council to terminate the services of the EMPLOYEE at any time, for any reason or no reason.
- C. Nothing in the Agreement shall prevent, limit, or otherwise interfere with the right of the EMPLOYEE to resign at any time from his position with the City.

Section 3. Suspension

CITY may suspend the EMPLOYEE with full pay and benefits at any time during the term of this Agreement, provided the EMPLOYEE shall be given written notice setting forth the reasons for said suspension in advance.

Section 4. Termination

- A. In the event EMPLOYEE is terminated by the Council during such time that EMPLOYEE is willing and able to perform his duties under this Agreement, then in that event, CITY agrees to pay EMPLOYEE an amount equal to nine (9) months aggregate salary. Nothing in this Section 4 shall be interpreted to limit the Council's authority to terminate EMPLOYEE's employment at any time, for any reason or no reason, with or without notice. The purpose of Section 4 is to describe the circumstances under which severance benefits may be payable to EMPLOYEE.
- B. In the event EMPLOYEE is terminated because of his conviction of any crime involving theft, deceit, embezzlement, or breach of fiduciary duty, as determined by an affirmative vote of the Council, then in that event, CITY shall have no obligation to pay the aggregate severance sum designated in Paragraph A of this section.
- C. Aggregate salary for the term of this Agreement shall mean salary and benefits either in the form of continued insurance benefits, retirement or deferred compensation contributions, and car allowance or an amount equal to the cost paid by the CITY for EMPLOYEE's, retirement or deferred compensation contributions, and car allowance and either the monthly cost of the insurance benefits or the cost of COBRA, as the EMPLOYEE may choose.
- D. Severance pay shall be paid in the same manner as regular salary payments are made and not in one lump sum, unless otherwise directed by the EMPLOYEE. After the last day of work, retirement contributions cannot be made to the State of Wyoming.
- E. In the event CITY, at any time during the term of this Agreement, reduces the salary or other financial benefits of EMPLOYEE in a greater percentage than an applicable across the board reduction for all employees of CITY, or in the event CITY refuses, following written notice, to comply with any other provision benefiting EMPLOYEE herein, or the EMPLOYEE resigns following a formal suggestion by the Council that he resign, then in that event, EMPLOYEE may, at his option, within fourteen (14) days of the suggestion of resignation or after delivery of the written demand, elect to be terminated at the date of such reduction, suggestion or resignation or such refusal to comply within the meaning and context of herein severance pay provisions.
- F. If EMPLOYEE shall die during any period in which payments are being made in accordance with Paragraph A of this section, the balance of payments shall accrue to EMPLOYEE's heirs. If EMPLOYEE should die during his regular employment, the payments under Paragraph A of this section will not be made and the insurance proceeds shall be in lieu thereof.

G. In the event EMPLOYEE voluntarily resigns his position with CITY, the EMPLOYEE shall give CITY sixty (60) days written notice in advance, unless the PARTIES otherwise agree. If EMPLOYEE voluntarily resigns his position, the severance provisions of this Agreement shall not apply.

H. EMPLOYEE will receive the same severance benefit if he is not appointed for the next succeeding term after the initial term as if he was terminated before the end of the initial term.

Section 5. Disability

A. If EMPLOYEE is permanently disabled or otherwise unable to perform his duties due to illness, injury, mental incapacity or health for a period of four (4) consecutive weeks beyond any accrued sick leave, or for twenty (20) working days over a thirty (30) day working period, CITY shall have the option to terminate this Agreement without regard to the severance pay requirements of Section 4, Paragraph A.

B. In the event that EMPLOYEE is terminated under this section, EMPLOYEE shall be compensated for any accrued sick leave, holidays, compensatory time and other accrued benefits.

C. CITY shall provide disability insurance to the EMPLOYEE as mutually agreed upon by the EMPLOYEE and the Council.

Section 6. Compensation

A. CITY agrees to pay EMPLOYEE for his services rendered pursuant hereto, an annual base salary of \$175,000, payable in installments at the same time as other EMPLOYEES of the CITY are paid.

B. CITY agrees to increase the base salary and/or other benefits of EMPLOYEE in such amounts and to such extent as the Council may determine on the basis of the following:

1. EMPLOYEE shall receive all wage adjustments which are granted to other EMPLOYEES of the CITY in such percentage amounts and at such times as approved by the Council.
2. An annual salary review of the EMPLOYEE, conducted at the same time as the annual performance review specified in Section 7 of this Agreement.

Section 7. Performance Evaluation

- A. The Council shall have a third party facilitated performance review to evaluate the performance of the EMPLOYEE after six months of employment and again after one year of employment; thereafter facilitated performance reviews will be conducted annually. Said review and evaluation shall be in accordance with specific criteria developed jointly by CITY and EMPLOYEE.
- B. The Council and the EMPLOYEE shall define such goals and performance objectives, in writing, which they determine necessary for the proper operation of the City and the attainment of the Council's policy objectives. They shall be generally attainable within the time limitations as specified and the annual operating and capital budgets and appropriations provided.

Section 8. Hours of Work

It is recognized that EMPLOYEE must devote a great deal of time outside normal office hours to the business of the CITY, and, to that end, EMPLOYEE will be allowed to take reasonable time off as he shall deem appropriate during said normal office hours as long as the time does not interfere with the operations of the CITY.

Section 9. Moving Expenses for Initial Term only.

- A. EMPLOYEE shall be reimbursed, or CITY may pay directly, for the expenses of packing and moving himself, his family and his personal property to the City of Gillette, Wyoming, which shall include unpacking, any storage costs necessary and insurance charges. Such charges shall not exceed \$10,000. In the event that EMPLOYEE voluntarily terminates his employment with the CITY before three (3) years, then the actual moving expenses paid by the CITY will be pro-rated evenly over three years and the EMPLOYEE shall repay the CITY the amount corresponding to the date of his separation.
- B. EMPLOYEE shall also be reimbursed, or CITY may also pay directly up to \$1,000/month for temporary housing for up to six (6) months. As an alternative the City may supply temporary housing to EMPLOYEE.

Section 10. Automobile

- A. In lieu of providing a vehicle, CITY shall provide a monthly car allowance of \$600 to EMPLOYEE. EMPLOYEE shall be responsible for any and all Federal taxes applicable to the automobile allowance. The amount of the allowance may be changed at the same time as any salary adjustment pursuant to section 6. B.
- B. CITY agrees to reimburse EMPLOYEE, on the basis of the IRS' allowable mileage rate, for business trips in excess of 100 miles.
- C. In addition to the payment of this allowance, the EMPLOYEE shall be eligible to

participate in the City's Wireless Communication Devices (WCD) Assignment and Use policy, number 1.3, and shall receive a monthly stipend for a calling plan and data services at the maximum rate established in that policy as it may change at any time and from time to time, currently \$80 per month,

Section 11. Vacation and Sick Leave

Employee shall accrue, and have credited to his personal account, vacation days at a rate of twenty (20) days per annum, and sick days at a rate of one (1) per month. Vacation leave shall not be taken in blocks larger than ten (10) consecutive working days. EMPLOYEE shall be credited with five (5) days of vacation and sick leave for the initial term only.

Section 12. Insurance

- A. CITY agrees to put into force and to make required premium payments for EMPLOYEE for insurance policies consistent with, and on the same basis as, those provided to all City EMPLOYEES. Insurance benefits do not begin until the first day of the month that begins 30 days following the Employment Start Date.
- B. During any required waiting period when there may be no coverage available through the City of Gillette, CITY agrees to pay the EMPLOYEE's cost of insurance coverage under COBRA for continuation of his current coverage.
- C. CITY agrees to put into force and to make required premium payments for EMPLOYEE for a Term Life Insurance policy in the amount of \$250,000 during his employment with CITY. EMPLOYEE shall be the owner of the Term Life Insurance policy and shall designate the beneficiary or beneficiaries.

Section 13. Retirement

- A. In addition to the base salary paid by the CITY to the EMPLOYEE, CITY further agrees to pay into the Wyoming Retirement System, the employee's amount of the premium along with the employer's contribution.
- B. CITY agrees to execute all necessary agreements provided by the International City/County Management Association - Retirement Corporation (ICMA-RC) for EMPLOYEE's participation in said (ICMA-RC) deferred compensation plan. City shall contribute 5% of the EMPLOYEE's salary. CITY agrees to transfer ownership of any payments made to ICMA-RC to succeeding CITYs or as EMPLOYEE shall designate upon EMPLOYEE's resignation or discharge.
- C. All retirement plan contributions shall be effective as of the date of employment specified in this Agreement.

Section 14. Dues and Subscriptions

CITY agrees to budget and to pay for the professional dues and subscriptions of EMPLOYEE necessary for his continuation and full participation in national, regional, state and local associations and organizations necessary and desirable for his continued professional participation, growth and advancement and for the good of the CITY.

Section 15. Professional Development

- A. CITY hereby agrees to budget for and to pay the travel and subsistence expenses of EMPLOYEE for professional and official travel, meetings and occasions adequate to continue the professional development of EMPLOYEE and to adequately pursue necessary official and other functions for CITY, including, but not limited to, the annual conference of the International City/County Management Association, the Wyoming Association of Municipalities and such other national, regional, state and local government groups and committees as reviewed and approved by the Council.
- B. CITY also agrees to budget and pay for the travel and subsistence expenses of EMPLOYEE for short courses, institutes and seminars that are necessary for his professional development and the good of the CITY.
- C. CITY reserves the right to set the budget for the items set out in this section.

Section 16. Civic Club Membership

CITY recognizes the desirability of representation in and before local civic and other organizations, and EMPLOYEE is authorized to become a member of the Chamber of Commerce and such civic clubs or organizations, for which CITY shall pay all expenses. EMPLOYEE shall report to the CITY on each membership that he has taken out at the CITY's expense and CITY shall have the authority to determine the organizations for which EMPLOYEE shall be reimbursed.

Section 17. Indemnification

CITY shall defend, save harmless, and indemnify EMPLOYEE pursuant to the Wyoming Governmental Claims Act WS 1-39-101 *et. sec.*, 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 the EMPLOYEE's duties as City Administrator. CITY may compromise and settle any such claim or suit and pay the amount of any settlement or judgment rendered thereon.

Except as specifically directed by the City Attorney, the Employee may not engage in any of the following acts with respect to actions or proceedings for damages defended

pursuant to this resolution.

- A. Negotiate or otherwise affect the settlement of such an action or proceeding for damages against the City;
- B. Make an admission of liability involving such an action or proceeding for damages against the City; or
- C. Discuss with persons who are not City employees, incidents which could reasonably lead to actions or proceedings for damages against the City, or its officers or employees.

This indemnification provision shall survive termination of this contract. The Employee agrees to cooperate and participate as may be necessary to carry out the defense of any action, and if not a current employee to be compensated for all such activities at an hourly rate equal to the Employee's salary, adjusted to an hourly rate.

Section 18. Bonding

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

Section 19. Other Terms and Conditions

- A. The Council, in consultation with the 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, city ordinance or other law.
- B. All provisions of said City ordinance and regulation and rules of the CITY relating to vacation and sick leave, retirement and pension system contributions, holiday and other fringe benefits and working conditions, as they now exist or hereafter may be adopted, shall apply to EMPLOYEE as they would to other EMPLOYEES of the CITY, in addition to said benefits enumerated specifically for the benefit of the EMPLOYEE, except as related to Section 11 of this Agreement

Section 20. No Reduction of Benefits

CITY shall not at any time during the terms of this Agreement, reduce the salary, compensation or other financial benefits of EMPLOYEE, except to the degree of such a reduction across the board for all EMPLOYEES of the CITY.

Section 21. Notices

Notices pursuant to this Agreement shall be given by deposit in the custody of the United States Postal Services, postage prepaid, addressed as follows:

(1) CITY:

Mayor
City of Gillette
Box 3003,
Gillette WY 82717-3003

With a copy to the
City Attorney
P.O. Box 3003
Gillette, WY 82717-3003

(2) EMPLOYEE:
James Carter Napier
2122 Prairie Road
Riverton, WY 82501

Alternatively, notices 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 of the date of deposit of such written notice in the course of transmission in the United States Postal Services.

Section 22. Amendment

The terms of this agreement may not be altered, amended, or otherwise modified except by the express written agreement of the parties.

Section 23. Severability

If any provision of this agreement is held to be invalid or unenforceable, the remaining provisions shall remain in full force and effect.

Section 24. Waiver

The waiver or the failure to take action with respect to breach of any term, covenant or condition shall not affect the Employee's duties hereunder or waive any rights concerning any subsequent breach. All remedies afforded in this Contract shall be taken as cumulative, that is, in addition to every other remedy provided therein or by law.

Section 25. General Provisions

- A. The text herein shall constitute the entire Agreement between the parties and amendments must be in writing.
- B. This Agreement shall be binding upon and inure to the benefit of the heirs at law and executors of EMPLOYEE.
- C. If any provision, or any portion thereof, contained in this Agreement is held 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.

IN WITNESS HEREOF, the City of Gillette, Wyoming, through its City Council, has caused this Agreement to be signed and executed in its behalf by its Mayor, and duly attested by its City Clerk, and the EMPLOYEE has signed and executed this Agreement, both in duplicate, the day and the year first written above.

City of Gillette, Wyoming

Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

EMPLOYEE

James Carter Napier