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MEMORANDUM

TO: **The Mayor and the City Council**

FROM: **Mark J. Parmenter, City Attorney**

RE: **City Administrator's Employment Agreement**

DATE: **July 11, 2018**

I was asked to review and edit the City Administrator's Employment Agreement. As you are aware, the City and the City Administrator had an Employment Agreement through June 30, 2018. It is my understanding the City desires to continue to employ Kim Downs as the City Administrator and Kim Downs desires to continue to serve as the City Administrator for the City.

Enclosed with this Memorandum is a "redlined" draft of the City Administrator's Employment Agreement. The original language is from the prior agreement and the redlined revisions reflect changes for the City Council to consider. I encourage you to review the Employment Agreement in its entirety and I am available to answer any questions. I have also enclosed a clean draft accepting all of the revisions as shown in the "redlined" draft.

I want to point out some of the more important provisions of the Agreement. Paragraph 1.1. provides that the Agreement commences July 1, 2018 and is for five (5) years with an option to renew as agreed to by the Parties. Both the City and City Administrator agree to give the other at least ninety (90) days written notice of any intent to renew or not renew the Agreement.

Paragraph 1.3 provides that the City Administrator's annual salary shall be $131,325.00 commencing on July 1, 2018. It is my understanding that is the City Administrator's current salary. I also understand the Annual Review Committee, consisting of Mayor Bennett and Council Members Dick Olson and Rob Archibald, along with the City Administrator, are in agreement as to the terms in paragraph 1.3 which provides that the City Administrator shall receive a 3% performance bonus in the amount of $3,939.75 to be paid in the next pay period following approval of the Agreement by the City Council. Note Paragraph 1.3 also provides that the City Administrator may receive an annual increase in salary in the form of a merit increase according to the merit increase for City Employees, and/or the City Administrator may receive an annual bonus to reflect her prior year's performance and upon a positive performance evaluation by the City Council.

Paragraph 1.4 has been revised to reflect that the City Administrator shall receive an annual performance evaluation during the term of the Agreement.

Paragraph 3.2 provides the City Administrator's benefit package will be in accordance with other City employees.

Paragraph 4.1 provides the City's Administrator will receive vacation days each year pursuant to the City's Employee Policy Manual. Also, at the end of the fiscal year, any unused vacation will be paid to the City Administrator by check.

Paragraph 6.1 provides the City Administrator agrees to be a resident of the City during the term of the Agreement.

Assuming the City Council approves the revisions to the City Administrator's Employment Agreement, the City Council can authorize the Mayor to sign the Agreement where indicated. Please let me know of any questions. Thank you.

Respectively,

Mark J. Parmenter, City Attorney

EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT (the "Agreement") is entered into this _____ day of July——, 2018~~3~~, by and between the City of Hiawatha, Iowa (the "City"), and Kim Downs (the "City Administrator"). The City and City Administrator may hereinafter be referred to collectively as the "Parties".

RECITALS

WHEREAS, the City wishes to continue to employ the services of Kim Downs as City Administrator for the City of Hiawatha~~, Iowa~~;

WHEREAS, the City and Kim Downs desire~~s~~ to provide for certain procedures, benefits and requirements regarding the employment of Kim Downs by the City as the City Administrator; and

WHEREAS, Kim Downs desires to accept employment as City Administrator for the City~~Hiawatha~~, under the terms and conditions as set forth in this Agreement.

TERMS OF AGREEMENT

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

1. Employment.

1.1 Term. Subject to the terms and conditions of this Agreement, the City agrees to employ Kim Downs as the City Administrator, and Kim Downs agrees to accept such employment beginning July 1, 2018~~3~~ and thereafter unless terminated pursuant to this Agreement. The term of this Agreement ~~contract~~ is five (5) years with option to renew as agreed to by the Parties. The City and the City Administrator agree to give the other at least ninety (90) days written notice of any ~~their~~ intent to renew or not renew this Agreement.

1.2 Duties. City agrees to employ Kim Downs as the City Administrator for the City and to perform all duties as specified by law and ordinance and perform such other proper duties as may be assigned by the City Council.

1.3 Compensation. The City Administrator shall receive an annual salary of One Hundred Thirty-One Thousand Three Hundred Twenty-Five Dollars ~~Ninety Seven Thousand Dollars~~ ($131,325~~97,000~~.00) commencing July 1, 2018~~3~~ and paid according to the City's normal payroll calendar. The City agrees to pay the City Administrator a 3% performance bonus in the amount of $3,939.75. The performance bonus shall be paid the following pay period after approval of this Agreement by the City Council. The City Administrator may receive an annual increase in her salary in the form of a merit increase, according to the salary matrix for City

employees, and/or the City Administrator may receive an annual bonus to reflect her prior year's performance upon a positive performance evaluation by the City Council.

1.4 Annual Performance Review. The City Administrator will receive a performance evaluation ~~during the month of December 2013 and annually~~ annually for the term of this Agreement. ~~during the month of July thereafter. An adjustment in annual salary for the City Administrator may be considered after twelve (12) months provided the City Administrator receives an acceptable review. Any future salary adjustments will be granted at the same time as other management employees and are subject to City Council approval and completion of a satisfactory performance evaluation.~~

2. Termination.

2.1 Without Cause. The City Administrator shall serve at the will of the City Council. The City or the City Administrator may terminate this Agreement at any time without cause by giving the other party at least thirty (30) days written notice.

2.2 With Cause. The City may terminate the City Administrator employment under this Agreement, at any time, for cause. For purposes of this Agreement, cause shall exist under any of the following: (a) willful neglect of duty; (b) gross inefficiency or incompetence in office that is not corrected after a reasonable written notice; or (c) City Administrator is convicted of or pleads guilty or nolo contendere to a crime involving moral turpitude, a crime committed against the City or a crime involving fraud, theft, embezzlement or malfeasance or any felony.

2.3 Severance. Should the City elect to terminate the employment of the City Administrator for cause, the City Administrator shall not receive any severance pay or benefits. Should the City terminate the employment of the City Administrator without cause, the City Administrator shall receive six (6) months' severance pay and benefits.

3. Welfare and Retirement Benefits.

3.1 Iowa Public Employees Retirement System (IPERS). The City will contribute on behalf of the City Administrator the amounts required by State Law.

3.2 Insurance Coverage. The City Administrator's benefit package, including insurance coverage, will be ~~provided insurance coverage at the same~~ in accordance ~~rate~~ with ~~as~~ other ~~non-union~~ City Employees.

4. Vacation, Holidays, and Sick Leave, Compensation Time.

4.1 Vacation. The City Administrator will receive ~~twenty (20)~~ vacation days each year ~~per year beginning July 1, 2013 and each year thereafter on July 1st~~ pursuit to the City's Employee Policy Manual~~.~~ If at the end of the fiscal year the City Administrator's vacation is not used, the City will payout the balance of the vacation in a check separate from the City Administrator's regular pay. ~~Future increases in vacation benefits may be provided by the City Council as deemed appropriate.~~

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4.2 Holidays. The City Administrator will receive the same number of paid holidays as received by other City employees.

4.3 Sick Leave. The City Administrator shall earn sick leave at the same rate received by other City employees (8 hours per month until the maximum amount allowed is reached). All other provisions of the City's sick leave policy shall apply to the City Administrator.

4.4 Compensation Time. The Parties agree that part of the City Administrator's responsibilities is to attend after hours meetings, including, but not limited to, City Council meetings. The City Administrator shall not expect and shall not receive any compensation beyond what is provided for in this Agreement for attending any after hour meetings in the performance of the City Administrator's employment.

5. Professional Development

5.1 Business Expenses. The City shall reimburse the City Administrator for all reasonable employment related expenses including, but not limited to, meals, civic club memberships and subscriptions.

5.2 Dues and Subscriptions. The City shall budget and pay, up to the amount budgeted, the professional dues and subscriptions for the City Administrator which are deemed reasonable and necessary for the City Administrator's participation in national, regional, state and local associations necessary and desirable for the City Administrator's continued professional participation, growth and advancement. This shall include, but not be limited to, the International City/County Management Association (ICMA), Iowa City/County Management (IaCMA) and Iowa League of Cities.

The City shall budget and pay necessary and reasonable registration, travel and subsistence expenses of the City Administrator for professional and official travel, meetings and occasions adequate to continue the professional development of the City Administrator to adequately pursue necessary official and other committees thereof which the City Administrator serves as a member. The City Administrator shall use good judgment in participating in such outside activities and will not neglect the City Administrator's primary duties to the City. Professional development events include the ICMA annual conference, Iowa State Association Conferences, and Iowa League of Cities events.

6. Miscellaneous

6.1 Residency Requirement. The City ~~shall grant to the City~~ Administrator agrees to be a resident of the City during the Term of this Agreement. ~~residency waiver for a period not to exceed four (4) years from the date of this Agreement.~~

6.2 ~~Moving and Relocation Expenses. The City Administrator shall receive a lump-sum payment of up to Two Thousand Dollars ($2,000.00) in reimbursement for any moving~~

~~expenses, storage costs, insurance charges, and any other reasonable miscellaneous expenses incurred if the City Administrator relocates to Hiawatha, Iowa.~~

~~6.3~~ Indemnification. In addition to that which is required under state and local law, the City shall defend, save harmless and indemnify the City Administrator against any tort, other than any intentional torts, 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 City Administrator's duties.

6.34 Bonding. The City shall bear the full cost of any fidelity or other bonds required of the City Administrator under law or ordinance.

6.45 General Conditions of Employment. In addition to the benefits cited herein, the City shall provide the City Administrator with any all benefits that apply to any other City employees, except that the City Administrator shall not earn compensation time as provided under paragraph 45.4 of this Agreement.

6.56 Binding Effect. This Agreement and all rights of the City Administrator hereunder shall be binding on the City and the City Administrator and their successors, assigns, and heirs of each respectively.

6.6 No Waiver. The failure of any party to enforce any of the provisions hereof shall not be construed to be a waiver of the right of such party thereafter to enforce such provision.

6.7 Severability. ~~If for any reason any term of pro~~ If for any reason any term or provision of this Agreement is held to be invalid or unenforceable, all other valid terms and provisions hereof shall remain in full force and effect, and all of the terms and provisions of this Agreement shall be deemed to be severable in nature.

6.8 Jurisdiction; Choice of Forum. Each of the Parties to this Agreement submits to the exclusive jurisdiction of any state or federal court located in Linn County, Iowa, for any action or proceeding arising out of or relating to this Agreement.

6.9 Amendment. Any term or provision of this Agreement may be amended in writing and signed by the Parties.

~~6.8~~6.10 Entire Agreement. This Agreement constitutes the entire agreement between the Parties concerning the City Administrator's employment by the City, and supersedes all prior oral or written understandings between the Parties, relating to the City Administrator's employment by the City.

IN WITNESS WHEREOR, the Parties hereto have executed this Agreement on the date and year first above written.

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City of Hiawatha, Iowa

By _____
William Bennett ~~Tom Theis~~,
Mayor

By _____
Kim Downs

ATTEST:

_____
Kelly Kornegor, ~~Deputy~~ City Clerk

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RECITALS

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WHEREAS, the City and Kim Downs desire to provide for certain procedures, benefits and requirements regarding the employment of Kim Downs by the City as the City Administrator; and

WHEREAS, Kim Downs desires to accept employment as City Administrator for the City, under the terms and conditions as set forth in this Agreement.

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1.2 Duties. City agrees to employ Kim Downs as the City Administrator for the City and to perform all duties as specified by law and ordinance and perform such other proper duties as may be assigned by the City Council.

1.3 Compensation. The City Administrator shall receive an annual salary of One Hundred Thirty-One Thousand Three Hundred Twenty-Five Dollars ($131,325.00) commencing July 1, 2018 and paid according to the City's normal payroll calendar. The City agrees to pay the City Administrator a 3% performance bonus in the amount of $3,939.75. The performance bonus shall be paid the following pay period after approval of this Agreement by the City Council. The City Administrator may receive an annual increase in her salary in the form of a merit increase, according to the salary matrix for City employees, and/or the City Administrator

may receive an annual bonus to reflect her prior year's performance upon a positive performance evaluation by the City Council.

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2.2 With Cause. The City may terminate the City Administrator employment under this Agreement, at any time, for cause. For purposes of this Agreement, cause shall exist under any of the following: (a) willful neglect of duty; (b) gross inefficiency or incompetence in office that is not corrected after a reasonable written notice; or (c) City Administrator is convicted of or pleads guilty or nolo contendere to a crime involving moral turpitude, a crime committed against the City or a crime involving fraud, theft, embezzlement or malfeasance or any felony.

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6.3 Bonding. The City shall bear the full cost of any fidelity or other bonds required of the City Administrator under law or ordinance.

6.4 General Conditions of Employment. In addition to the benefits cited herein, the City shall provide the City Administrator with any all benefits that apply to any other City

employees, except that the City Administrator shall not earn compensation time as provided under paragraph 4.4 of this Agreement.

6.5 Binding Effect. This Agreement and all rights of the City Administrator hereunder shall be binding on the City and the City Administrator and their successors, assigns, and heirs of each respectively.

6.6 No Waiver. The failure of any party to enforce any of the provisions hereof shall not be construed to be a waiver of the right of such party thereafter to enforce such provision.

6.7 Severability. If for any reason any term or provision of this Agreement is held to be invalid or unenforceable, all other valid terms and provisions hereof shall remain in full force and effect, and all of the terms and provisions of this Agreement shall be deemed to be severable in nature.

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6.9 Amendment. Any term or provision of this Agreement may be amended in writing and signed by the Parties.

6.10 Entire Agreement. This Agreement constitutes the entire agreement between the Parties concerning the City Administrator's employment by the City, and supersedes all prior oral or written understandings between the Parties, relating to the City Administrator's employment by the City.

IN WITNESS WHEREOR, the Parties hereto have executed this Agreement on the date and year first above written.

City of Hiawatha, Iowa

By _____
William Bennett, Mayor

By _____
Kim Downs

ATTEST:

_____
Kelly Kornegor, City Clerk

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RESOLUTION NO. 18-
City Council

RESOLUTION APPROVING RENEWAL OF CITY ADMINISTRATOR EMPLOYMENT AGREEMENT

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF HIAWATHA, IOWA, hereby approving renewal of the Employment Agreement setting the terms of employment, benefits and compensation for the City Administrator effective July 1, 2018, and continuing for five (5) years with an option to renew, as shown in the attached Exhibit 'A', and

BE IT FURTHER RESOLVED that the Mayor is directed to execute said Employment Agreement on behalf of the City.

AYES:
NAYS:
ABSENT:

PASSED AND APPROVED this 18th day of July, 2018.

_____
Bill Bennett, Mayor

ATTEST:

_____
Kelly Kornegor, City Clerk