

## **EMPLOYMENT AGREEMENT BETWEEN THE CITY OF RAPID CITY AND JAMES GILBERT FOR THE POSITION OF INFORMATION TECHNOLOGY DIRECTOR**

This Agreement, made this \_\_\_\_ day of February, 2019, by and between the City of Rapid City (the “City”), a municipal corporation of the State of South Dakota, and James Gilbert (the “employee”).

Subject to ratification of the appointment by the Common Council, the City agrees to employ James Gilbert as the Information Technology Director for the City of Rapid City, subject to the following terms and conditions:

A. Employment at Will. The employee is an at-will employee who serves at the pleasure of the Mayor. Nothing in this Agreement should be construed as limiting the power of the Mayor pursuant to SDCL 9-14-13 to remove the employee from his/her position if the Mayor is of the opinion that the interests of the City demand his/her removal.

B. Term. This Agreement will commence on the above date and continue until terminated by either party in accordance with the provisions of this Agreement.

C. Basic Compensation. The employee’s salary shall be based on the City’s adopted pay scale for this position. The employee will initially be placed on the pay scale at Grade 27 Step 12. The employee shall be paid either bi-weekly or monthly in accordance with the City’s normal payroll schedule. The employee will be entitled to receive any general increases in salary, benefits, or compensation granted to the City’s other non-union employees. Any increases in salary or grade shall become incorporated into and become part of this Agreement.

D. Duties and Responsibilities as Information Technology Director. The employee’s basic duties and responsibilities are set forth in the job description, which has been attached hereto as Exhibit A. The job description in Exhibit A may be amended or revised at the sole discretion of the City. The City will inform the employee of the substance of any changes to his/her job description and the duties and responsibilities contained therein. The employee’s duties and responsibilities also include any legally permissible and proper duties and functions the Mayor or City Council may from time to time assign.

The employee will be present/available during most normal work hours and devote such time to the conduct of the business of the City as may be reasonably required to effectively discharge his/her duties under this Agreement, including time in the mornings, evenings, and on week-ends. Since the employee’s position is “exempt” under the Fair Labor Standards Act, the employee shall not receive overtime or extra compensation for any work performed outside of normal work hours. Given that the employee will regularly be required devote time outside of

normal office hours to his/her duties, the employee shall be allowed to establish an appropriate work schedule and will accrue additional annual leave as provided for exempt employees in the City's Non-Union Employee Guide.

E. Outside Activities. The employee shall not accept secondary employment while an employee of the City. The term "secondary employment" shall not be construed to include occasional teaching, and writing performed on the employee's time off. The employee may serve as a member of a professional, charitable, or civic organization, so long as such services does not measurably impact the employee's performance in this position or create the appearance of a conflict of interest that would impair the employee's ability to work effectively herein.

F. Travel and Professional Development. Subject to the City's annual appropriation ordinance and any travel policies adopted by the City, the City will pay for reasonable travel and subsistence expenses of the employee for official travel. Official travel includes attendance at meetings and events related to his/her employment with the City, including but not limited to the South Dakota Municipal League and other regional, state and local governmental groups and committees in which the employee may serve as a member.

The City also agrees to pay for reasonable travel expenses of the employee to attend conferences, conventions, short courses, institutes, and/or seminars that are necessary for the employee's professional development, or that benefit the City. Such expenses are also governed by any travel policies the City has adopted.

The City will pay any dues or fees required for the employee to maintain any professional licenses related to his/her position and for memberships in any professional organizations which are reasonably related to his/her position.

G. Vacation, Sick Leave, Worker's Compensation, and Other Paid Leave. Unless otherwise designated in this Agreement, the employee shall accrue annual leave, sick leave, and other paid leave at the same rate and in the same manner as the City's other non-union employees. The use of such leave shall be in accordance with the City's Non-Union Employee Guide.

H. Retirement. The City participates in the South Dakota Retirement System (SDRS). The employee shall participate in this plan so long as the City continues to be a participating member. The employee's participation in the plan will be governed by the City's Non-Union Employee Guide and Chapter 3-12 of the State Code.

I. Indemnification. Pursuant to SDCL 3-19-1, the City shall defend, save harmless and indemnify the employee against any tort, professional liability claim, demand, or other legal action arising out of an alleged act or omission occurring in the performance of the employee's

duties under this Agreement, except those acts or omissions constituting criminal acts, or those acts outside the scope of his/her official duties, or as a result of wanton or malicious conduct. The City will defend, compromise, or settle any such claim or suit not excepted from the provisions of this section, and pay the amount of any settlement or judgment rendered thereon.

J. Use of Information Technology. If a City owned cellular phone and/or laptop computer is provided to the employee in order to perform the duties of his/her job, the employee will follow the City's policies governing the use of such devices. Limited personal use of these items by the employee that does not impair the employee's ability to perform the functions of the employee's position is acceptable.

Upon the termination of his/her employment with City for any reason whatsoever, the employee will promptly return to the City all City-owned property and equipment including, but not limited to, any manuals, records, training materials, files, phones, computers, digital media, or vehicles in his/her possession. The employee also agrees to return any items/equipment provided to the employee by City for use in performance of his/her duties, including items/equipment purchased by the employee for which he/she was subsequently reimbursed by the City.

K. Other Benefits. The employee shall be eligible to participate in all benefits provided to the City's non-union employees including, but not limited to, health insurance, life insurance, disability insurance and the flexible benefits plan. The employee's participation in these benefits will be in accordance with the City's Non-Union Employee Guide.

L. Performance Evaluation. The Mayor will make reasonable efforts to conduct a performance review at least annually and may evaluate the employee at any lesser interval at his/her sole discretion. Evaluations and performance reviews will be for the purpose of determining the employee's level of performance, attainment of goals and objectives, progress in professional development and development of appropriate relationships within the City and with organizations or entities with which the employee is expected to work and interact. The employee shall be able to put a written response in his/her personnel file if the employee disputes the results of an evaluation or performance review.

M. Termination of Employment. Nothing in this Agreement shall prevent, limit, or otherwise interfere with the employee's ability to resign at any time from this position. In the event the employee chooses to resign his/her position, the employee will provide the City with at least thirty (30) days written notice, unless the Mayor agrees to a lesser time frame. This Agreement may be terminated by the City at any time with or without just cause. In the event the employee's termination is without just cause, the City shall pay the employee severance pay in accordance with Section N of this Agreement. Severance pay shall not be paid in the event that

the employee resigns, quits, dies, or if the employee is terminated for just cause. Just cause shall include but not be limited to the following:

1. Conviction of a felony or a crime involving moral turpitude; or
2. Loss of license essential to performance of the duties & functions of the position; or
3. Neglect of duty or misconduct in office as defined by SDCL 9-14-37; or
4. An injury or other disability which prevents the employee from performing the essential functions, duties, and responsibilities of his/her position which cannot be reasonably accommodated; or
5. A willful violation by the employee of any term or condition contained in this Agreement.

N. Severance. Severance pay shall consist of an amount equivalent to six months of the employee's salary at the employee's rate of pay on the date of termination. The severance payment shall be made in a single lump sum payable with the employee's final pay check. The severance payment is in addition to any other payments made to the employee for unused leave that he/she is entitled to under the terms of the City's Non-Union Employee Guide.

The payment of severance under this provision is conditioned upon the employee executing a release of all claims or causes of action that the employee has, or may have, against the City, its employees, elected officials, agents, or officers arising out of his/her employment with the City or out of his/her termination from the City.

O. Other Terms and Conditions of Employment. Where not otherwise specifically addressed in this Agreement, the employee's terms and conditions of employment will be governed by the City's Non-Union Employee Guide. If there is a conflict between the Non-Union Employee Guide and this Agreement, the terms and conditions contained in this Agreement shall control.

The employee acknowledges that the City has the right to modify both the City's Non-Union Employee Guide and the benefits provided to the City's non-union employees. The employee further acknowledges that any subsequent modification to benefits, not directly in conflict with a specific term or provision of this Agreement, will be applicable to the employee.

P. Notices. Any notice given pursuant to this Agreement shall be given in person, by mail, or e-mail to the last known address of the employee maintained on file with the City's Human Resources Department. Notice to the City shall be provided in person, by mail, or by e-mail to the Mayor, or in his/her absence, the President of the Council, and the City's Human Resources Director.

Q. Construction. This Agreement has been negotiated between the City and the employee and the parties acknowledge that they have each contributed to the making of this Agreement. The employee further acknowledges that he/she had an adequate opportunity to consult with his/her

own legal counsel in the negotiation and preparation of this Agreement. In the event of a dispute between the parties over interpretation of this Agreement, ambiguities shall not be attributed to either party.

R. Severability. If any provision or term of this Agreement is held to be unconstitutional, invalid, or unenforceable by any court or tribunal having jurisdiction over the parties, the remainder of this Agreement shall remain in full force and such invalidity shall not affect any other provision of this Agreement if the remaining sections or provisions can be given effect without the invalid section or provision.

S. Amendments. The terms and conditions of the Agreement may be modified only in writing that is duly executed by the employee and the City. The City Council must approve and authorize the Mayor's signature for any modification, or amendment to this Agreement.

T. Waiver. Failure of a party to insist upon adherence to any term of this Agreement on any occasion shall not be considered a waiver, or deprive that party of the right thereafter to insist upon adherence to that term, or any other term, of this Agreement.

U. Venue and Choice of Law. The validity, interpretation, construction and performance of this Agreement shall be governed by the laws of the State of South Dakota. Any private mediation or arbitration to interpret or enforce this Agreement shall be conducted in Pennington County, South Dakota. Any court action shall be venued in the Seventh Judicial Circuit in Pennington County, South Dakota. This Agreement shall be interpreted with all necessary changes in gender and in number as the context may require.

V. Merger. This document constitutes the entire agreement of the parties. No other promises or consideration form a part of this Agreement. All prior discussions and negotiations are merged into this document or intentionally omitted.

Dated this \_\_\_\_\_ day of February, 2019.

THE CITY OF RAPID CITY

\_\_\_\_\_  
Steve Allender, Mayor

ATTEST:

\_\_\_\_\_  
Pauline Sumption, Finance Officer

**(The rest of this page has been intentionally left blank)**

EMPLOYEE

\_\_\_\_\_  
James Gilbert

State of South Dakota        )  
                                          ss.  
County of Pennington        )

On this the \_\_\_\_ day of February, 2019, before me, the undersigned officer, personally appeared \_\_\_\_\_, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that he/she executed the foregoing instrument for the purposes herein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

\_\_\_\_\_  
Notary Public, \_\_\_\_\_

My Commission Expires:

(SEAL)