

# **AGREEMENT FOR EMPLOYMENT OF CITY MANAGER**

THIS AGREEMENT for employment of City Manager, (hereafter "Agreement") is made and entered into this the 31<sup>st</sup> day of January 2012, by and between the City of Gautier, Mississippi, a municipal corporation formed and existing under the laws of the State of Mississippi (hereafter "City") and Samantha Abell (hereafter "Employee"), as follows, to-wit:

## **WITNESSETH**

WHEREAS, City desires to employ the services of Samantha Abell as City Manager of the City of Gautier, Mississippi, under the terms and conditions set forth herein; and,

WHEREAS, Samantha Abell desires to accept employment as City Manager of the City of Gautier, Mississippi under the terms and conditions set forth herein; and,

WHEREAS, both City and Employee herein wish to provide mutually acceptable terms and conditions of employment that would be conducive to a healthy and mutually beneficial employment relationship between City and Employee and, thereby, enhance the quality of governmental services to citizens and a productive relationship with employees of the City of Gautier;

NOW, THEREFORE, in consideration of the mutual covenants expressed herein, City and Abell agree as follows, to-wit:

### **Section 1: Duties**

City hereby agrees to employ Samantha Abell as City Manager of the City of Gautier, Mississippi, to perform the functions and duties specified in Section 21-9-29 of the Mississippi Code of 1972, as amended and to perform such other lawful and permissible functions and duties as may be prescribed and/or assigned by the City Council from time to time.

At no time during the term of this Agreement shall Employee act adversely toward or in direct conflict with the interest of the City of Gautier while serving in her position as City Manager except as may be permitted or required by law.

### **Section 2: Term**

The effective term of this Agreement shall begin February 20, 2012. The City and Employee recognize and agree that Employee is an "at will" employee.

### **Section 3: Salary and Compensation**

Employee's compensation shall be Eighty-two Thousand and no/100 Dollars (\$82,000.00) in annual salary. City shall review Employee's performance on an annual basis on or before the anniversary date of this Agreement and may adjust her salary at their discretion.

City and Employee specifically agree that she shall not be included in the City's Major Medical Insurance plan, as she has other coverage.

City shall provide Employee with a city vehicle in good operating condition for official city business and incidental personal use, including travel to and from Employee's home and work. City shall be responsible for providing appropriate insurance coverage on the vehicle including liability, property damage and comprehensive. City shall also be responsible for all related maintenance and fuel costs, expenses, state license/tag and inspection fees for the vehicle.

### **Section 4: Termination of Agreement**

In the event a majority of the City Council votes to terminate Employee during such time as Employee is willing and able to perform her duties under this Agreement, then in that event, pursuant to Section 21-9-27 of the Mississippi Code of 1972, as amended, City shall furnish to Employee in writing the reasons for her proposed termination and, further, if Employee so requests, City shall provide Employee a public hearing thereon before the City Council. Pending and during such hearing, City may suspend Employee from her duties as City Manager with full pay and benefits.

Upon termination or resignation of Employee or upon other expiration of this Agreement, Employee shall immediately return all property of the City of Gautier, including, but not limited to, keys, files, records, credit cards, vehicle, identification cards/badges, computers, discs, computer programs and access codes, manuals, plats, business plans, City Council minutes, correspondence, diaries, logs, reports, audio or video tapes and other material, tangible or intangible, belonging to the City of Gautier.

### **Section 5: Death or Disability**

In the event Employee becomes permanently disabled or is otherwise unable to perform her functions and duties as City Manager because of sickness, injury, mental incapacity or other health reason(s) for a period of at least twelve (12) successive weeks, City shall have the option to terminate this Agreement with no further obligation to pay Employee's base salary.

In the unfortunate event of the death of Employee, this Agreement shall be deemed null and void at the time of death. City agrees to pay up to thirty (30) days of accrued and unused Personal Leave to Employee's heirs or designated representative.

**Section 6: Performance Evaluation**

The City Council shall review and evaluate the performance of Employee on or before the anniversary date of this Agreement. Said review shall be conducted in accordance with specific criteria developed by City and Employee and attached to this Agreement as "Attachment A" and made a part hereof as if fully copied in words and figures herein. The criteria may be added to or deleted from time to time as deemed appropriate by the City Council and Employee.

The City and Employee specifically agree that at or before the first anniversary of this Agreement that the City Council shall evaluate the performance of Employee using the criteria set forth in Attachment A, and if she receives a performance rating of 3.0 or greater, then in that event, her annual salary shall be increased to not less than the total compensation of the previous full time City Manager.

**Section 7: Hours of Work**

Regular office hours of the City are 7:30 a.m. to 5:00 p.m., Monday through Thursday, and 7:30 a.m. to 12:00 noon, on Fridays. Employee shall be required to attend all regular and special meetings of the City Council.

It is recognized and agreed that Employee must devote a great deal of time outside the normal business hours and, to that end, Employee will be allowed to take time off as she shall deem appropriate during said normal office hours. It is specifically agreed that Employee is an "Exempt" employee under the Fair Labor Standards Act (F.L.S.A). Employee shall work full-time and shall work sufficient hours necessary to fully perform her duties and responsibilities. Employee shall be readily available within the City or where appropriate for all job requirements.

**Section 8: Personal Leave, Sick Leave and Retirement**

Employee shall accrue personal leave and sick leave at the same rate and under the same conditions as provided to Department Heads of the City. Employee shall retain the personal leave and sick leave she has accumulated in her position as Director of Planning/Economic Development.

City agrees to provide Employee with retirement benefits commensurate with those benefits provided to Department Heads of the City under the State of Mississippi Public Employees' Retirement System and in accordance with its procedures.

**Section 9: Insurance Benefits**

At the present time, Employee agrees NOT to participate in the City's Major Medical Insurance Plan.

**Section 10: Dues and Subscriptions**

The City agrees to budget and pay for the professional dues and subscriptions of Employee necessary for her continuation and full participation in Mississippi Municipal League (MML), and in such other national, regional, state and local associations and organizations necessary and desirable as deemed by the City for the continued professional participation, growth and advancement of Employee, and for the good of the City.

**Section 11: Professional Development**

City agrees to budget and pay for the registration, travel, and subsistence expenses of Employee for professional and official travel, meetings, courses, and occasions adequate to continue the professional development of Employee and to pursue necessary official and other functions, including but not limited to the annual conference of the MML, and such other national, regional, state, and local government groups, and educational courses as deemed necessary by the City for the professional development of Employee and for the good of the City.

**Section 12: General Expenses**

City recognizes that certain expenses of a non-personal and job-affiliated nature are incurred by Employee and hereby agrees to reimburse or to pay said general expenses upon receipt of a duly executed expense or petty cash voucher, receipts, or statement and after said expenses have been placed on the Docket of Claims and approved pursuant to Section 21-39-7 of the Mississippi Code of 1972, as amended.

**Section 13: Indemnification**

City shall defend, save harmless, and indemnify Employee 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 within the course and scope of Employee's performance of her duties and responsibilities as City Manager. City shall be responsible for any settlement of or judgment rendered on such a claim or suit.

**Section 14: Bonding**

City shall bear the full cost of any fidelity or other bonds, required of Employee under any law or ordinance for the fulfillment of Employee's job duties or responsibilities.

**Section 15: Other Terms and Conditions of Employment**

City, in consultation with Employee, may fix any such other terms and conditions of employment, as deemed appropriate from time to time, relating to the performance of Employee, provided such terms and conditions are not inconsistent or in conflict with the provisions of this Agreement or any law or ordinance. Such other terms and conditions shall be in writing, signed and attached hereto as an amendment to this Agreement.

**Section 16: No Reduction of Benefits**

City shall not at any time during any term of this Agreement reduce the salary, compensation or other financial benefits to Employee, except to the degree of such reduction across-the-board for all employees of City.

**Section 17: Notices**

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

CITY                      City Council  
                                 City of Gautier, Mississippi  
                                 3330 U.S. Highway 90  
                                 Gautier, MS 39553

With copy to: City Clerk

EMPLOYEE                Samantha Abell  
                                 8307 Pine Cone Drive  
                                 Gautier, MS 39553

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, in the case of mailing, as of the date of deposit of such written notice in the normal course of transmission in the United States Postal Service.

**Section 18: General Provisions**

- A. The terms and conditions stated herein shall constitute the entire agreement between the parties.
- B. If any provisions or any portion of this Agreement shall be deemed unconstitutional, invalid or unenforceable by a court of competent jurisdiction or through legislative action, the remainder of this Agreement, or portion thereof, shall be deemed severable, shall not be affected and shall remain in full force and effect.

- C. This Agreement shall be deemed effective as of January 31, 2012.
- D. This Agreement shall be interpreted, enforced, and governed by the laws of the State of Mississippi, without regard to conflicts of law principles.
- E. No delay or omission by either party hereto to exercise any right or power accruing upon noncompliance or default by the other party with respect to any of the terms of this Agreement shall impair any such right or power or be construed as a waiver thereof, except as otherwise provided in this Agreement. A waiver by either City or Employee of any covenant, term or condition herein shall not be construed to be a waiver of any succeeding breach thereof or of any other covenant, term or condition of this Agreement.
- F. Neither City nor Employee shall be liable for damages, delays, or failure to perform their respective obligations under this Agreement if performance is made impossible or impractical as a result of any unforeseen occurrence including, but not limited to, fire, flood, strike, acts of God, or other occurrences beyond City and Employee's control.

IN WITNESS WHEREOF, the City of Gautier, Mississippi, has caused this Agreement to be signed and executed on it's behalf by it's Mayor, and duly attested by it's City Clerk, and the Employee has signed and executed this Agreement, both in duplicate, on the date first stated above.

**City of Gautier, Mississippi**  
City

**Samantha Abell**  
Employee

By: Tommy Fortenberry  
Tommy Fortenberry, Mayor

Samantha D Abell

ATTEST:

Wendy McClain  
Wendy McClain, City Clerk

Approved as to form:

Robert G. Ramsay  
Robert G. Ramsay, City Attorney

City Manager Performance Evaluation

City of Gautier

Evaluation period: \_\_\_\_\_ to \_\_\_\_\_

\_\_\_\_\_  
Governing Body Member's Name

Each member of the governing body should complete this evaluation form, sign it in the space below, and return it to \_\_\_\_\_. The deadline for submitting this performance evaluation is \_\_\_\_\_. Evaluations will be summarized and included on the agenda for discussion at the work session on \_\_\_\_\_.

\_\_\_\_\_  
Mayor's Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Governing Body Member's Signature

\_\_\_\_\_  
Date Submitted

## INSTRUCTIONS

This evaluation form contains ten categories of evaluation criteria. Each category contains a statement to describe a behavior standard in that category. For each statement, use the following scale to indicate your rating of the city manager's performance.

- 5 = Excellent** (almost always exceeds the performance standard)
- 4 = Above average** (generally exceeds the performance standard)
- 3 = Average** (generally meets the performance standard)
- 2 = Below average** (usually does not meet the performance standard)
- 1 = Poor** (rarely meets the performance standard)

Any item left blank will be interpreted as a score of "3 = Average"

This evaluation form also contains a provision for entering narrative comments, including an opportunity to enter responses to specific questions and an opportunity to list any comments you believe appropriate and pertinent to the rating period. Please write legibly.

Leave all pages of this evaluation form attached. Initial each page. Sign and date the cover page. On the date space of the cover page, enter the date the evaluation form was submitted. All evaluations presented prior to the deadline identified on the cover page will be summarized into a performance evaluation to be presented by the governing body to the city manager as part of the agenda for the meeting indicated on the cover page.

## PERFORMANCE CATEGORY SCORING

### 1. INDIVIDUAL CHARACTERISTICS

- \_\_\_\_ Diligent and thorough in the discharge of duties, "self-starter"
- \_\_\_\_ Exercises good judgment
- \_\_\_\_ Displays enthusiasm, cooperation, and will to adapt
- \_\_\_\_ Mental and physical stamina appropriate for the position
- \_\_\_\_ Exhibits composure, appearance and attitude appropriate for executive position

Add the values from above and enter the subtotal \_\_\_\_ ÷ 5 = \_\_\_\_ score for this category

**2. PROFESSIONAL SKILLS AND STATUS**

- \_\_\_\_\_ Maintains knowledge of current developments affecting the practice of local government management
- \_\_\_\_\_ Demonstrates a capacity for innovation and creativity
- \_\_\_\_\_ Anticipates and analyzes problems to develop effective approaches for solving them
- \_\_\_\_\_ Willing to try new ideas proposed by governing body members and/or staff
- \_\_\_\_\_ Sets a professional example by handling affairs of the public office in a fair and impartial manner

Add the values from above and enter the subtotal \_\_\_\_\_ ÷ 5 = \_\_\_\_\_ score for this category

**3. RELATIONS WITH ELECTED MEMBERS OF THE GOVERNING BODY**

- \_\_\_\_\_ Carries out directives of the body as a whole as opposed to those of any one member or minority group
- \_\_\_\_\_ Sets meeting agendas that reflect the guidance of the governing body and avoids unnecessary involvement in administrative actions
- \_\_\_\_\_ Disseminates complete and accurate information equally to all members in a timely manner
- \_\_\_\_\_ Assists by facilitating decision making without usurping authority
- \_\_\_\_\_ Responds well to requests, advice, and constructive criticism

Add the values from above and enter the subtotal \_\_\_\_\_ ÷ 5 = \_\_\_\_\_ score for this category

**4. POLICY EXECUTION**

- \_\_\_\_\_ Implements governing body actions in accordance with the intent of council
- \_\_\_\_\_ Supports the actions of the governing body after a decision has been reached, both inside and outside the organization
- \_\_\_\_\_ Understands, supports, and enforces local government's laws, policies, and ordinances
- \_\_\_\_\_ Reviews ordinance and policy procedures periodically to suggest improvements to their effectiveness
- \_\_\_\_\_ Offers workable alternatives to the governing body for changes in law or policy when an existing policy or ordinance is no longer practical

Add the values from above and enter the subtotal \_\_\_\_\_ ÷ 5 = \_\_\_\_\_ score for this category

**5. REPORTING**

- \_\_\_\_\_ Provides regular information and reports to the governing body concerning matters of importance to the local government, using the city charter as guide
- \_\_\_\_\_ Responds in a timely manner to requests from the governing body for special reports
- \_\_\_\_\_ Takes the initiative to provide information, advice, and recommendations to the governing body on matters that are non-routine and not administrative in nature
- \_\_\_\_\_ Reports produced by the manager are accurate, comprehensive, concise and written to their intended audience
- \_\_\_\_\_ Produces and handles reports in a way to convey the message that affairs of the organization are open to public scrutiny

Add the values from above and enter the subtotal \_\_\_\_\_ + 5 = \_\_\_\_\_ score for this category

**6. CITIZEN RELATIONS**

- \_\_\_\_\_ Responsive to requests from citizens
- \_\_\_\_\_ Demonstrates a dedication to service to the community and its citizens
- \_\_\_\_\_ Maintains a nonpartisan approach in dealing with the news media
- \_\_\_\_\_ Meets with and listens to members of the community to discuss their concerns and strives to understand their interests
- \_\_\_\_\_ Gives an appropriate effort to maintain citizen satisfaction with city services

Add the values from above and enter the subtotal \_\_\_\_\_ + 5 = \_\_\_\_\_ score for this category

**7. STAFFING**

- \_\_\_\_\_ Recruits and retains competent personnel for staff positions
- \_\_\_\_\_ Applies an appropriate level of supervision to improve any areas of substandard performance
- \_\_\_\_\_ Stays accurately informed and appropriately concerned about employee relations
- \_\_\_\_\_ Professionally manages the compensation and benefits plan
- \_\_\_\_\_ Promotes training and development opportunities for employees at all levels of the organization

Add the values from above and enter the subtotal \_\_\_\_\_ + 5 = \_\_\_\_\_ score for this category

**8. SUPERVISION**

- \_\_\_\_\_ Encourages heads of departments to make decisions within their jurisdictions with minimal city manager involvement, yet maintains general control of operations by providing the right amount of communication to the staff
- \_\_\_\_\_ Instills confidence and promotes initiative in subordinates through supportive rather than restrictive controls for their programs while still monitoring operations at the department level
- \_\_\_\_\_ Develops and maintains a friendly and informal relationship with the staff and work force in general, yet maintains the professional dignity of the city manager's office
- \_\_\_\_\_ Sustains or improves staff performance by evaluating the performance of staff members at least annually, setting goals and objectives for them, periodically assessing their progress, and providing appropriate feedback
- \_\_\_\_\_ Encourages teamwork, innovation, and effective problem-solving among the staff members

Add the values from above and enter the subtotal \_\_\_\_\_ ÷ 5 = \_\_\_\_\_ score for this category

**9. FISCAL MANAGEMENT**

- \_\_\_\_\_ Prepares a balanced budget to provide services at a level directed by council
- \_\_\_\_\_ Makes the best possible use of available funds, conscious of the need to operate the local government efficiently and effectively
- \_\_\_\_\_ Prepares a budget and budgetary recommendations in an intelligent and accessible format
- \_\_\_\_\_ Ensures actions and decisions reflect an appropriate level of responsibility for financial planning and accountability
- \_\_\_\_\_ Appropriately monitors and manages fiscal activities of the organization

Add the values from above and enter the subtotal \_\_\_\_\_ ÷ 5 = \_\_\_\_\_ score for this category

**10. COMMUNITY**

- \_\_\_\_\_ Shares responsibility for addressing the difficult issues facing the city
- \_\_\_\_\_ Avoids unnecessary controversy
- \_\_\_\_\_ Cooperates with neighboring communities and the county
- \_\_\_\_\_ Helps the council address future needs and develop adequate plans to address long term trends
- \_\_\_\_\_ Cooperates with other regional, state and federal government agencies

Add the values from above and enter the subtotal \_\_\_\_\_ + 5 = \_\_\_\_\_ score for this category

**NARRATIVE EVALUATION**

What would you identify as the manager's strength(s), expressed in terms of the principle results achieved during the rating period? \_\_\_\_\_

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What performance area(s) would you identify as most critical for improvement? \_\_\_\_\_

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What constructive suggestions or assistance can you offer the manager to enhance performance? \_\_\_\_\_  
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What other comments do you have for the manager; e.g., priorities, expectations, goals or objectives for the new rating period? \_\_\_\_\_  
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