



Board of Aldermen Request for Action

MEETING DATE: 4/3/2023

DEPARTMENT: Administration

AGENDA ITEM: Resolution 1206, City Administrator Employment Agreement

REQUESTED BOARD ACTION:

Motion to Approve Resolution 1206, authorizing the Mayor to execute an updated employment agreement with Cynthia Wagner for the City Administrator position.

SUMMARY:

This Resolution approves an updated agreement with Cynthia Wagner for services as City Administrator based on a performance review conducted March 7, 2023 by the Board of Aldermen. The updated Employment Agreement incorporates the following changes:

- Increases annual compensation.
- Increases contribution to retirement provided in lieu of health insurance.
(Current City of Smithville costs for employee health insurance range from \$7,968 to \$18,529 annually depending on plan selected.)

PREVIOUS ACTION:

Original agreement adopted in April 2018 was amended in April 2019, July 2020, April 2021 and April 2022.

POLICY ISSUE:

None.

FINANCIAL CONSIDERATIONS:

FY2023 Budget includes compensation increases for all employees.

ATTACHMENTS:

- | | |
|--|--|
| <input type="checkbox"/> Ordinance | <input checked="" type="checkbox"/> Contract |
| <input checked="" type="checkbox"/> Resolution | <input type="checkbox"/> Plans |
| <input type="checkbox"/> Staff Report | <input type="checkbox"/> Minutes |
| <input type="checkbox"/> Other: | |

RESOLUTION 1206

AN RESOLUTION AUTHORIZING AND DIRECTING THE MAYOR TO EXECUTE AN UPDATED EMPLOYMENT CONTRACT WITH CYNTHIA WAGNER FOR THE CITY ADMINISTRATOR POSITION.

WHEREAS Cynthia Wagner and the City of Smithville, Missouri desire to amend the employment agreement between the parties; and

WHEREAS Exhibit A attached hereto is a true and accurate copy of the newly modified and agreed Employee contract between Cynthia Wagner and the City of Smithville. Said **Exhibit A** is incorporated herein by reference as if more fully set forth verbatim.

**NOW THEREFORE BE IT RESOLVED BY THE BOARD OF ALDERMEN OF THE
CITY OF SMITHVILLE, MISSOURI, AS FOLLOWS:**

**THAT BE IT RESOLVED BY THE CITY OF SMITHVILLE, MISSOURI THAT THE
MAYOR IS AUTHORIZED AND DIRECTED TO EXECUTE ON BEHALF OF THE
CITY THE EMPLOYMENT AGREEMENT WITH CYNTHIA WAGNER FOR THE
CITY ADMINISTRATOR POSITION IN THE FORM OF THE AGREEMENT
ATTACHED HERETO AS EXHIBIT A WHICH IS INCORPORATED HEREIN BY
REFERENCE AS IF MORE FULLY SET FORTH VERBATIM.**

PASSED AND ADOPTED by the Board of Aldermen and **APPROVED** by the Mayor of the City of Smithville, Missouri, the 3rd day of April 2023.

Damien Boley, Mayor

ATTEST:

Linda Drummond, City Clerk

RESOLUTION EXHIBIT A

CITY OF SMITHVILLE, MISSOURI EMPLOYMENT AGREEMENT FOR THE POSITION OF CITY ADMINISTRATOR

This Agreement is made and entered into this 3rd day of April 2023, between the City of Smithville, Missouri (hereinafter called "City" or "Employer"), and Cynthia Wagner (hereinafter called Employee), pursuant to these terms and conditions:

1. Whereas the City wishes to continue the employment of Cynthia Wagner as City Administrator of the City of Smithville Missouri; and
2. Whereas the CITY first employed Employee on April 17, 2018 and executed a contract which provided certain procedures, benefits and requirements regarding the employment of EMPLOYEE by the City; and
3. Whereas there have been several modifications of Employee's contract since that time in accord with the Employee's previous positive annual performance reviews. After this year's performance review, the City wishes to update Employee's contract and the Employee wishes to accept continued employment as City Administrator of said City under the terms and conditions recited herein. Rather than create a fourth modification of the Original Contract the City and the Employee have agreed to ratify the terms of her continued employment in one document. Therefore, the City and Employee agree this Employment Agreement supersedes all previous Agreements between the parties.

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

I. TERM

1.1 EMPLOYEE shall be employed as City Administrator of the City of Smithville Missouri for an indefinite term in accordance with Section 105.020 of the City Code of Ordinances. It is the intent of the parties that Employee's continued employment as City Administrator is subject to an annual performance review to be conducted at or near the anniversary date of Employee's commencement of duties under this Agreement.

II. EMPLOYMENT STATUS AND HOURS

2.1 It is expected that the EMPLOYEE will exercise her full and best efforts in her employment hereunder and will work a minimum of forty (40) hours per week or as otherwise necessary to complete the duties set forth in Section III of this Agreement. Except as allowed for vacation, sick leave, holiday or compensatory time off, Employee is generally expected to be accessible to the Employer and other employees during normal

office hours. It is recognized that the Employee must devote a great deal of time outside the normal office hours on business for the Employer, and to that end Employee shall be allowed to establish an appropriate work schedule subject to the Employer's expectations. It is agreed and understood that EMPLOYEE is exempt from the overtime provisions of the Fair Labor Standards Act and is not eligible for overtime or compensatory time off. Employee shall be available to perform all duties during normal business hours, as well as attend all meetings scheduled outside the regular business hours, unless the Mayor has approved such absence.

III. DUTIES

3.1 Employee shall perform such duties and have such powers as are set out in Section 105.030 (or as hereinafter amended) of the City Ordinances and as provided for in any adopted job description. At no time shall the duties and powers of the position of City Administrator supersede action by the Mayor and Board of Aldermen.

IV. COMPENSATION

4.1 City agrees to pay Employee as compensation for the duties to be performed under this Agreement the base salary of One Hundred Sixty-Three Thousand Dollars (\$163,000.00) per year, to be payable in 26 equal payments at the time, and as a part of the regular payroll of the City, and subject to all such lawful deductions for payment to employees of the City.

V. FRINGE BENEFITS/ ADDITIONAL COMPENSATION:

5.1 Sick and Vacation Leave. In accordance with the Employee Handbook, Employee shall retain all (if any) currently accrued vacation and sick leave. Henceforth, Employee shall accrue vacation and sick leave at the highest accrual rate for any Employee provided in the Employee Handbook, regardless of years of service. The Employee shall further be entitled to five days of "personal/executive leave" on an annual basis calculated from the employment anniversary of April 16. This leave is on a "use it or lose it" basis, accrued on each anniversary date. If the leave is not used within the employees employment calendar year (April 16) the Employee is not entitled to accrue the "personal/executive leave" or receive cash for it. In addition to the above, Employee shall be entitled to all other leaves granted employees of the City and contained in Employer's Personnel Manual.

5.2 In Lieu of Health Insurance. Employee Represents that she has health Insurance through another source and wishes to decline all Health, Dental or Vision Insurance through the current Plans in place by the City on such terms and conditions as is available for all other employees of the City. The City will pay Twenty-Two Thousand Five Hundred Dollars (\$22,500.00) per year, to be payable in 24 equal payments (two

per month) to Employee's IRS 457 plan subject to all applicable rules and regulations in lieu of the City providing Employee any Health, Dental or Vision insurance.

5.3 Retirement: The City agrees, as a part of the compensation to Employee, that it will make contributions to LAGERS on behalf of the Employee, and Employee will also make contributions to such plan in accordance with the agreement with LAGERS for the retirement of all employees.

5.4 Vehicle Allowance: In addition to the moneys paid as salary, the City agrees to pay Employee an additional sum for a car allowance in the amount of Forty-Five Hundred (\$4,500.00) per year to be payable in 26 equal payments in accordance with the current payroll procedures for these payments, to be used as a vehicle allowance to be used to purchase, lease, or own, operate and maintain a vehicle. Consideration shall be given on an annual basis to adjust the monthly allowance dependent upon changes in travel demands and routine vehicle fuel and maintenance costs. The Employee shall be responsible for paying for liability, property damage, and comprehensive insurance coverage upon such vehicle and shall further be responsible for all expenses attendant to the purchase, operation, maintenance, repair, and regular replacement of said vehicle. The Employer shall reimburse the Employee at the IRS standard mileage rate for any business use of the vehicle beyond the greater Kansas City area, subject to current policy for travel reimbursement that applies to all other employees. Travel to and from Employee's home outside the City of Smithville to the City shall not be eligible for reimbursement.

5.5 Life Insurance: EMPLOYEE shall be entitled to Life Insurance to the extent made available to other City employees.

5.6 Other Insurance: EMPLOYEE shall be entitled, on such terms and conditions as is available to any other employee of the City, to participate in other Insurance programs made available through the City, which may be at EMPLOYEE'S expense.

VI. OUTSIDE ACTIVITIES

6.1 The employment provided for by this Agreement shall be the Employee's sole employment. Recognizing that certain outside consulting or teaching opportunities provide indirect benefits to the Employer and the community, the Employee may elect to accept limited teaching, consulting or other business opportunities, subject to approval by the Employer, with the understanding that such arrangements shall not interfere with Employee's responsibilities under this Agreement. Employee shall disclose all such engagements to the Employer.

VII. BOND

7.1 The City shall pay the premium for a bond for Employee as required by Code Section 105.040.

VIII. PROFESSIONAL ASSOCIATIONS/TRAINING

8.1 Employee agrees to join and reasonably participate at City Expense, the Smithville Chamber of Commerce, Smithville Lyons Club and the Smithville Rotary Club.

8.2 The City shall pay any such dues or fees for professional organizations, certifications and conferences, or training seminars, which are preapproved by the Mayor and subject to such fees being included in the General Fund Budget as approved by the Board.

IX. PERFORMANCE AND REVIEW

9.1 The City and Employee agree that they will meet and set out definitive goals and objectives at the beginning of Employee's performance of her duties under this Agreement and may, from time to time amend such goals and objectives. Both agree that at Employee's anniversary date the City will perform a review of Employee's performance based upon those goals and objectives. After completion of such performance review, the City may increase the base salary to an amount the Mayor and Board deem appropriate. It is expressly declared that any cost-of-living adjustments or raises included in the budget for all regular employees do not apply to this Agreement. It is the intent of the parties to make any and all salary adjustments to the base pay hereunder after such performance review process is completed.

X. TERMINATION

10.1 At Will Employment Status: It is agreed and understood that the employment relationship is at will and may be terminated by either party with or without "Cause" (as defined below) and with or without notice, except as provided herein. Under this Agreement, there is no contractual right to employment for a definite period. Accordingly, either party may terminate the employment relationship at any time.

10.2 City Termination for Cause: In the event the Employer terminates Employee's employment for Cause, Employer agrees to pay Employee any wages earned up to the effective date of termination, as well as applicable and accrued benefits, including accrued but unused vacation and sick leave (subject to any restrictions or caps set forth in Employer's Personnel Manual, as amended from time to time). In the event of a termination for Cause, the severance benefit described in the Section 11 of this Agreement will not be available to Employee. "Cause" means:

- (a) Employee is convicted of any illegal act involving moral turpitude; or

(b) The conviction of any felony, or for engaging in any unethical conduct as described in the ICMA' Code of Ethics, and/or any Code of Ethics hereinafter adopted by the City applicable to all employees, or for failing to comply with any material term or condition of this Agreement or the willful refusal to follow lawful directions from the Employer after given a reasonable time to comply.

10.3 City Termination without Cause: In the event the Employer terminates Employee's employment without Cause, Employer agrees to pay Employee any wages earned up to the effective date of termination, as well as applicable and accrued benefits, including accrued but unused vacation and sick leave (subject to any restrictions or caps set forth in Employer's Personnel Manual, as amended from time to time). The Employer also agrees to pay, in exchange for a full release, the severance benefit described in Section 11 of this Agreement. Vacation and sick leave do not accrue after the termination date. The Employer's contributions to life insurance premiums cease at the time of termination. Eligibility and reimbursement for continued participation in the Employer's group health insurance plan shall be as described in Section 11. If Employee is indicted or formally charged by any state or the United States with any such act or crime as described in paragraph 10.02 above, or if Employee is charged with a violation of ICMA' Code of Ethics, or any Code of Ethics hereinafter adopted by the City applicable to all employees, or for failing to comply with any material term or condition of this Agreement or the willful refusal to follow lawful directions from the Employer after given a reasonable time to comply and if her employment is thereby terminated, the Employer shall not be obligated to pay Employee any severance pay as set forth in Section XI unless and until the matter is resolved in favor of the Employee. In the event that the Mayor, after first being authorized by the Board of Aldermen, offers to permit Employee to resign in lieu of termination, such resignation will constitute a termination without Cause under this Employment Agreement. In such event, the Mayor will provide Employee with a written request to resign in lieu of termination which request shall acknowledge that the Employee shall receive the same compensation as she would be entitled to receive if terminated without Cause, as set forth in Section 11.2

10.4 Employee Termination: The Employee may terminate this Agreement and her employment with the Employer by providing a thirty (30) day written notice. In this circumstance, the severance benefit described in Section 11 of this Agreement will not be available to Employee. The Employee will be paid any accrued and unused/unpaid benefits in accordance with Employer's Personnel Manual (subject to applicable restrictions or caps), except that accrued but unused/unpaid benefits will be withheld and not paid if the thirty (30) day written notice is not provided by Employee.

10.05 Return of City Property. All records, patents, trademarks, business plans, financial statements, manuals, memoranda, lists and other property delivered to or compiled by Employee by or on behalf of the City, which pertain to the business of the City shall be and remain the property of the City and be subject at all times to its discretion and control thereof. Likewise, all correspondence, reports, records, charts, advertising materials and other similar data pertaining to the business, activities or

future plans of the City which is collected by Employee shall be delivered promptly to the City without request by it upon termination of Employee's employment.

XI. SEVERANCE

11.1 So long as Employee is entitled to severance as provided in this Agreement and provided Employee signs a standard Severance Agreement and Release of All Claims:

11.2 Severance Pay: City will continue payment to the Employee as set forth herein.

(a) The severance pay is a benefit equal to Twenty-Four Months (24) Months of salary as set forth in paragraph 4.1. If entitled to severance pay, the EMPLOYEE shall also be compensated for all accrued but unused vacation and sick leave (subject to any restrictions or caps set forth in Employer's Personnel Manual, as amended from time to time). Severance pay shall not include any unaccrued amounts due under paragraphs 5.1 through 5.6 of this Agreement.

(b) This severance benefit shall be paid in a lump sum unless otherwise agreed. Employer shall be entitled to withhold from said payments all amounts required to be withheld pursuant to applicable law. The amounts due under this section shall be paid within thirty (30) days of the date of termination, provided, however, that in the event the provisions of the Older Workers Benefit Protection Act apply to this Employee (i.e., she is forty (40) years of age or older at the time of termination), she shall not be paid until the first regular payday following the expiration of the applicable consideration period and the seven (7) day revocation period.

XII. INDEMNIFICATION

12.1 To the extent permitted by applicable law, Employer 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 in the performance of Employee's duties as City Administrator or resulting from the exercise of judgment or discretion in connection with the performance of the duties or responsibilities of the City Administrator, unless the act or omission involved intentional, willful or wanton conduct or criminal action. Legal representation, provided by Employer for Employee, shall extend until a final determination of the legal action including any appeals. The Employer shall indemnify Employee, to the extent permitted by law, against any and all losses, damages, judgments, interest, settlements, fines, court costs and other reasonable costs and expenses of legal proceedings including attorney's fees, and any other liabilities incurred by, imposed upon, or suffered by Employee in connection with or resulting from any claim, action, suit, or proceeding, actual or threatened, arising out of or in connection with the performance of Employee's duties

and occurring within the course and scope of her employment unless the act or omission involved intentional, willful or wanton conduct or criminal action.

12.2 Employee recognizes that Employer shall have the absolute right to compromise any and all claims.

12.3 To the extent permitted by applicable law, Employer agrees to pay all reasonable litigation expenses of Employee throughout the pendency of any litigation to which the Employee is a party, witness, or advisor to the Employer, resulting from the exercise of judgment or discretion in connection with the performance of Employee's duties as City Administrator, unless such act involved willful or wanton conduct or criminal action. Such expense payments shall continue beyond Employee's service to the Employer as long as the litigation is pending. Further, if no longer employed by Employer, Employer agrees to pay Employee reasonable consulting fees and travel expenses when Employee serves as a witness, advisor or consultant to Employer regarding pending litigation.

XIII. APPLICABLE LAW, JURISDICTION AND VENUE

13.1 The terms of this Agreement are subject to and shall be interpreted and enforced pursuant to the laws of the State of Missouri. Any action in regard to the content or arising out of the terms and conditions shall be instituted and litigated in the courts of the State of Missouri, County of Clay and in no other. The parties submit to the Jurisdiction of the courts of the State of Missouri and to venue in Clay County.

XIV. NOTICES

14.1 Any Notice as set forth herein must be served by Federal Express or similar overnight delivery service or by certified mail, return receipt requested, addressed to the party and shall be deemed given as of the deposit in the U. S. Mails or with overnight delivery service. Notice to the City shall be sent to the Mayor, City of Smithville Missouri 107 W. Main Street Smithville, MO 64089. Notice to Employee shall be sent to the Employee at 8244 Primrose Street DeSoto Kansas 66018. Either party may designate such other Person and/or delivery address from time to time by written Notice. Alternatively, notice 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.

XV. GENERAL PROVISIONS

15.1 Integration. This Agreement and the Municipal Code of the City of the City of Smithville, Missouri, including the Employer's Employee Handbook/Personnel Manual (which may be amended by the Employer pursuant to the terms of the Handbook or Manual) , current policy or other law, except when in conflict with this Agreement, sets forth and establishes the entire understanding between the Employer and the Employee relating to the employment of the Employee by the Employer. Any prior discussions or

representations by or between the parties are merged into and rendered null and void by this Agreement. The parties by mutual written agreement may amend any provision of this Agreement during the life of the Agreement. Such amendments shall be incorporated and made a part of this Agreement.

15.2 Condition Precedent: This Contract shall be null and void and of no effect unless and until the City has by Ordinance or Resolution passed by the City Board of Alderpersons, obtained the authority to enter into this Employment Agreement Contract.

15.2 Binding Effect. This Agreement shall be binding on the Employer and the Employee as well as her heirs, assigns, executors, personal representatives and successors in interest.

15.3 Effective Date. This Agreement shall become effective after the Condition Precedent as set forth in paragraph 15.2 has been satisfied and all parties have executed this Agreement

15.4 Severability. The invalidity or partial invalidity of any portion of this Agreement will not affect the validity of any other provision. In the event that any provision of this Agreement is held to be invalid, the remaining provisions shall be deemed to be in full force and effect as if they have been executed by both parties subsequent to the expungement or judicial modification of the invalid provision.

15.5 Contract Language: The language of this Agreement reflects negotiations between Employee and the City, each of whom have had the opportunity to modify the text. In the event of litigation or other dispute concerning the language of this Agreement, general rules construing ambiguities against the drafter shall not apply. It is agreed that if more than one copy of this document may be executed and that the original filed with the City Clerk shall be deemed to be the controlling original.

15.6 Entire Agreement: This Agreement sets forth the entire Agreement and understanding between the parties as to the subject matter of this Agreement, and supersedes, cancels, and merges all Agreements, negotiations, commitments, writings, and discussions between them as to the subject prior to the date of the execution of this Agreement. No modifications to this Agreement shall be binding on either party unless such modifications are in writing and signed by both parties.

IN WITNESS WHEREOF, the parties herein have executed this Agreement as of the date first written above.

THE CITY OF SMITHVILLE

By: _____
Damien Boley, Mayor

EMPLOYEE

By: _____
Cynthia Wagner