

## **Town of Davidson Employment Agreement**

### **Introduction**

This Agreement, made and entered into October , 2015 by and between the Town of Davidson, North Carolina, a municipal corporation, (hereinafter called "Employer") and James Justice (hereinafter called "Employee") an individual who has the education, training and experience in local government management and who, as a member of ICMA, is subject to the ICMA Code of Ethics, both of whom agree as follows:

### **Section 1: Term**

The term of this agreement shall be for an initial period of seven and one-half (7 ½ ) months from November 16, 2015 (the "Commencement Date") to June 30, 2016. This Agreement shall automatically be renewed at the beginning of each fiscal year unless notice that the Agreement shall terminate is given at least one month before the expiration date. Notwithstanding the stated term of this agreement, Employee shall be an employee at will and the severance provisions contained herein shall be the Employee's sole remedy in the event that the Employer terminates this Agreement prior to the end of its current term.

### **Section 2: Duties, Role, and Authority**

Employer agrees to employ Employee as Town Manager (a wage and hour exempt position) to perform the functions and duties specified in the Davidson Town Charter, the Davidson Town Code, and the NC General Statutes. Employer agrees that the town manager under § 160A-148 has the authority and statutory role to direct and supervise the administration of all departments, offices, and agencies of the town; and hire, direct, assign, reassign, evaluate, suspend, or remove all Town officers and employees not elected by the people or designated by statute as Town Board appointees. In addition, the Employee agrees to perform such other duties and responsibilities, not inconsistent with the above, as requested by the Town Board from time to time.

### **Section 3: Compensation**

A. Base Salary: Employer agrees to pay Employee an annual base salary of \$130,000.00, payable in installments at the same time that the other management employees of the Employer are paid.

B. Residency Incentive: The Employer agrees to pay to the Employee a relocation bonus in the amount of \$ 5,000.00 if Employee moves his permanent residence into the corporate limits of the Town at any time within five (5) years after the Commencement Date. The relocation bonus shall be paid in one lump sum no later than ninety (90) days after Employee moves his residence into the corporate limits of the Town.

C. The Employer agrees to consider an annual increase to the Employees dependent upon the results of the performance evaluation conducted under the provisions of Section 12 of this Agreement. Increased compensation can be in the form of a salary increase and/or a bonus.

#### **Section 4: Health, Disability and Life Insurance Benefits**

The Employer agrees to provide and to pay the premiums for health, hospitalization, surgical, vision, dental, comprehensive medical insurance, life and disability for the Employee and his/her dependents equal to that which is provided to all other employees of the Town of Davidson.

#### **Section 5: Vacation, Sick, and Military Leave**

Upon commencing employment, the Employee shall be credited with sick and vacation leave equal to that of a 17 year employee (at least 10 days vacation at commencement of employment). The Employee shall then accrue sick and vacation leave on an annual basis at the rate provided to other employees with consistent with years of service and Town policies.

#### **Section 6: Automobile**

The Employer shall pay to Employee an automobile expense allowance in the amount of Five Hundred Dollars (\$500.00) per month.

#### **Section 7: Retirement**

The Employer agrees to enroll the Employee into the applicable state or local retirement system and to make all the appropriate contributions on the Employee's behalf, for both the Employer and Employee share required. In addition, Employer agrees to contribution an amount equal to five percent (5%) of Employee's Annual Base salary to a 457 Plan.

#### **Section 8: General Business Expenses**

1. Employer agrees to budget for and to pay for professional dues and subscriptions of the Employee necessary for continuation and full participation in national, regional, state, and local associations, and organizations necessary and desirable for the Employee's continued professional participation, growth, and advancement, and for the good of the Employer.

2. Employer agrees to budget for and to pay for travel and subsistence expenses of Employee for professional and official travel, meetings, and occasions to adequately continue the professional development of Employee and to pursue necessary official functions for Employer, including but not limited to the ICMA Annual Conference, the North Carolina League of Municipalities, North Carolina City County Managers Association, and such other national, regional, state, and local governmental groups and committees in which Employee serves as a member.

3. Employer also agrees to budget for and to pay for travel and subsistence expenses of Employee for short courses, institutes, and seminars that are necessary for the Employee's professional development and for the good of the Employer.

4. Employer recognizes that certain expenses of a non-personal but job related nature are incurred by Employee, and agrees to reimburse or to pay said general expenses, including, but not limited to, Rotary Club and Davidson College activities. The finance director is authorized to disburse such moneys upon receipt of duly executed expense or petty cash vouchers, receipts, statements or personal affidavits.

5. The Employer shall provide Employee with a computer, software, fax/modem, cell phone stipend and tablet required for the Employee to perform the job and to maintain communication.

### **Section 9: Termination**

Notwithstanding the stated term of this agreement, Employee shall be an employee at will and the severance provisions contained herein shall be the Employee's sole remedy in the event that the Employer terminates this Agreement prior to the end of its current term.

For the purpose of this agreement, termination shall occur when:

1. The governing body votes to terminate the Employee.
2. The governing body votes not to renew the agreement as outlined in Section 1.
3. Expiration of the term of this agreement.
4. Mutual agreement of the Employer and Employee in writing and signed by them.
5. If the Employer, citizens or legislature acts to amend any provisions of the Davidson Town Charter or Town Code pertaining to the role, powers, duties, authority, responsibilities of the Employee's position that substantially changes the form of government, such amendments shall constitute termination.
6. If the Employer reduces the base salary, compensation in an amount greater than the average across the board percent reduction of substantially all employees (unless Manager consents to such reduction), or any other material financial benefit of the Employee, such action shall constitute a breach of this agreement and will be regarded as a termination.
7. If the Employee resigns following a request for resignation and offer to accept resignation, whether formal or informal, by the Employer as representative of the governing body that the Employee resign.
8. Breach of contract declared by either party with a 30 day cure period for either Employee or Employer. Written notice of a breach of contract shall be provided in accordance with the provisions of Section 18.
9. Resignation. The Employee delivers to the Employer voluntary resignation. Employee agrees to give Employer at least 60 days notice before resignation.

In the event of Employee's termination under Section 9, Employer and Employee agree not to make disparaging comments or statements concerning either party (Board or

Town Manager), publicly or in private. Employer shall comply with applicable law with respect to any request for information or documentation contained in the employee's employment records.

In order to promote the smooth transition in the leadership and management of the Town's organization and to maintain the confidence of the public in their elected officials, Employer and Employee may agree to an additional separation agreement in the event of a termination as outlined in Section 9. The separation agreement may have additional terms not outlined in this agreement.

## **Section 10: Severance**

Severance shall be paid to the Employee, as Employee's sole remedy for termination, if employment is terminated as defined in Section 9, except a termination for just cause, as defined below, or the resignation of Employee.

Beginning on the Commencement Date the Employer shall provide a minimum severance payment equal to (a) six (6) month's salary at the then current salary, plus an additional amount equal to one (1) month's salary for each year of service with a maximum severance payment equal to nine (9) months' salary, plus an amount equal to six (6) months of COBRA payments. This severance shall be paid in a lump sum unless otherwise agreed to by the Employer and the Employee.

The Employee shall also be compensated for all accrued annual leave, sick leave, vacation time, and all paid holidays.

As used throughout this Agreement, "just cause" is defined and limited to the following reasons:

(i) A determination by the Employer, in good faith, that Employee (A) has breached in any material respect any of the terms or conditions of this Agreement, or (B) is engaging or has engaged in willful conduct which is detrimental to the Employer or which has had or likely will have a material adverse effect on the Employer's reputation. Prior to any termination by the Employer of Employee's employment for a breach, failure to perform or conduct described in this subparagraph (i), the Employer shall give Employee written notice which describes such breach, failure to perform or conduct and if during a period of thirty (30) business days following such notice Employee cures or corrects the same to the reasonable satisfaction of the Employer, then this Agreement shall remain in full force and effect; however, notwithstanding the above, if the Employer has given written notice to Employee on a previous occasion of the same or a substantially similar breach, failure to perform or conduct, or of a breach, failure to perform or conduct which the Employer determines in good faith to be of substantially similar import, or if the Employer determines in good faith that the then current breach, failure to perform or conduct is not reasonably curable, then termination under this subparagraph (i) shall be effective immediately and Employee shall have no right to cure such breach, failure to perform or conduct.

- (ii) The violation by Employee of any applicable federal or state law, or any applicable rule, regulation, order or statement of policy promulgated by any governmental agency or authority having jurisdiction over the Employer (a "Regulatory Authority"), which results from Employee's gross negligence, willful misconduct or intentional disregard of such law, rule, regulation, order or policy statement and results in any substantial damage, monetary or otherwise, to the Employer or to the Employer's reputation;
- (iii) The commission in the course of Employee's employment with the Employer of an act of fraud, embezzlement, theft or proven personal dishonesty (whether or not resulting in criminal prosecution or conviction);
- (iv) The conviction of Employee of any felony or any criminal offense involving dishonesty or breach of trust;
- (v) The occurrence of any event believed by the Employer, in good faith, to have resulted in Employee being excluded from coverage, or having coverage limited as to Employee as compared to other covered officers or Employees, under the Employer's then current "blanket bond" or other fidelity bond or insurance policy covering its directors, officers or employees.

#### **Section 11: Resignation**

In the event that the Employee voluntarily resigns his/her position with the Employer, the Employee shall provide a minimum of 60 days' notice unless the parties agree otherwise.

#### **Section 12: Performance Evaluation**

Each fiscal year, including the first year of employment, Employer shall review the performance of the Employee in a process which shall be mutually agreed upon by the Employer and Employee. The process at a minimum shall include the opportunity for both parties to: (1) prepare a written evaluation, (2) meet and discuss the evaluation, and (3) present a written summary of the evaluation results. The final written evaluation should be completed and delivered to the Employee within 30 days of the evaluation meeting. At the initiation of this agreement the Employee shall provide the Employer with a series of annual goals to be met during the first year of employment as Town Manager.

The evaluation of the Employee shall at all times be conducted in closed session of the Board and shall be confidential to the maximum and full extent permitted by law. Nothing herein shall prohibit the Board or the Town Manager from sharing the content of the Town Manager's evaluation with their respective legal counsel.

#### **Section 13: Outside Activities**

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 with the

understanding that such arrangements shall not constitute interference with, nor a conflict of interest with, his or her responsibilities under this Agreement.

#### **Section 14: Indemnification**

Beyond that required under Federal, State or Local 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 Town Manager or resulting from the exercise of judgment or discretion in connection with the performance of program duties or responsibilities, but only to the extent that Employer has insurance coverage in effect which covers such claim that and that includes coverage for Employee.

Employee recognizes that Employer or its insurer shall have the right to compromise in any claim or suit.

#### **Section 15: Bonding**

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

**Section 16:** Left blank intentionally.

#### **Section 17: Notices**

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

- (1) EMPLOYER: The Honorable John Woods, Mayor, Town of Davidson, 216 Main Street, Davidson, North Carolina
- (2) EMPLOYEE: Mr. James Justice

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 or as the date of deposit of such written notice in the course of transmission in the United States Postal Service.

#### **Section 18: General Provisions**

A. Integration. 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.

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

C. Effective Date. This Agreement shall become effective on the date first above appearing.

D. 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.

E. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same Agreement.

IN WITNESS WHEREOF the Parties have executed this Agreement as of the day and year first above written.

EMPLOYEE

\_\_\_\_\_  
Name: James Justice

EMPLOYER:

TOWN OF DAVIDSON, NORTH CAROLINA

A Municipal Corporation

By: \_\_\_\_\_

Mayor:

ATTEST: \_\_\_\_\_

Town Clerk

APPROVED AS TO FORM:

By: \_\_\_\_\_

Town Attorney