City of Benson
City Council Communication

Regular Meeting **October 14, 2013**

To: Mayor and Council Agenda Item # 5

From: Toney D. King, Sr., Mayor

Subject:

Discussion and possible action regarding the Interim City Manager's contract

Discussion:

This item in on the agenda at the request of Mayor King.

Staff Recommendation:

Council pleasure

CITY OF BENSON

EMPLOYMENT AGREEMENT

INTERIM CITY MANAGER

JAMES F. COX

April 22, 2013

Employment Agreement

This Agreement, made and entered into this 22nd day of April, 2013, by and between the **City of Benson**, Arizona, an Arizona body politic, (hereinafter referred to as "City") and **JAMES F. COX**, (hereinafter referred to as "Manager") acting in his individual capacity, both of whom agree as follows:

Section 1: Term

The duration of Manager's employment as Interim City Manager shall be sixty (60) days from the effective date of this Agreement. Thereafter, until such time as council by majority vote shall select a permanent city manager or otherwise terminate this Agreement in accordance with Sections 9 or 12, this Agreement shall automatically be renewed for additional renewal terms of thirty (30) days each until such time as council shall either select a permanent city manager or terminate this Agreement. Manager's employment shall continue on the same terms and conditions as herein provided for each renewal term.

This Agreement may be terminated by the City or Manager as provided in Sections 9, 11 or 12 of this Agreement.

Section 2: Duties and Authority

City agrees to employ Manager as Interim City Manager to perform the functions and duties of city manager as specified in the applicable Arizona Revised Statutes, City Code and the Human Resources Administration Manual, including but not limited to, A.R.S. § 9-303 and Section 3-2-1 of the Code of the City of Benson, and to perform other legally permissible and proper duties and functions as the City Council may direct.

It is anticipated that during the final renewal term a permanent city manager shall assume office upon appointment by council. At such time as a permanent city manager is appointed, Manager shall immediately assume the duties of special advisor to the city manager for the remainder of the final renewal term. Manager's duties during such period of overlap shall be principally devoted to informing and advising the permanent city manager on the City's procedures, policies and methods of day-to-day city administration and proper functioning of the city government, and pursuant to additional and further directions of the permanent city manager.

Section 3: Compensation

Beginning April 15, 2013 and until this Agreement is terminated City agrees to pay Manager an annual base salary of his current salary of EIGHTY THOUSAND TWO HUNDRED FORTY-ONE DOLLARS AND 41 CENTS ($80,241.41), payable in equal installments at the same time that the other employees of the City are paid.

Section 4: Health, Disability and State Retirement Insurance Benefits

The City agrees to provide Manager and his dependents all of the benefits accruing to regular City employees, including but not limited to, participation in the Arizona Retirement System, holiday pay, vacation and sick leave, short term and long term disability coverage, and health and life insurance, in the same manner as provided for all other employees of the City of Benson.

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Section 5: Vacation and Sick Leave

A. The Manager shall accrue paid vacation and sick time in the same manner as other employees of the City of Benson.

B. The Manager is entitled to accrue all unused leave, subject to personnel policy limits. Upon termination of this Agreement, either voluntarily or involuntarily, the Manager shall be compensated for all accrued vacation time.

Section 6: Automobile

City shall provide Manager with a full-size automobile which he may take home, provided at the City's expense, to be used for City business. The City shall be responsible for paying for liability, property damage, and comprehensive insurance, and for the purchase (or lease), operation, maintenance, repair, and regular replacement of the automobile.

Section 7: Retirement

The City agrees to keep the Manager in the applicable state retirement system, and to make the appropriate City contributions.

Section 8: General Business Expenses and Conditions of Employment

A. City recognizes that certain expenses of a non-personal, but job related nature are incurred by Manager, and agrees to reimburse or to pay said general expenses. The City Clerk is authorized to disburse such moneys upon receipt of duly executed expense or petty cash vouchers, receipts, statements or personal affidavits.

B. Manager shall be provided with an office with all necessary modern equipment to function as City Manager. In addition, Manager shall be provided with a modern laptop computer available to him to use away from the office to conduct City business. The Manager shall be entitled to City provided technical support to maintain and use the computer for City business while at home. The Manager shall also be provided with a modern "smartphone" at the City's expense.

Section 9: Termination

For the purposes of this Agreement, termination shall occur when:

1. The majority of the governing body votes to terminate the Manager at a duly authorized public meeting pursuant to A.R.S. §9-303(C) and the City Code.

2. If the City, citizens or legislature acts to amend any provisions of the Code, pertaining to the role, powers, duties, authority, or responsibilities of the Manager's position that substantially changes the form of government, the Manager shall have the right to declare that such amendments constitute termination.

3. If the Manager resigns following an offer of resignation made by the City as a result of a majority vote of the City Council to accept resignation, then the Manager may declare a termination as of the date of the suggestion.

4. Breach of contract declared by either party with a thirty (30) day cure period for either Manager or City. Written notice of a breach of contract shall be provided in accordance with the provisions of Section 18.

5. Termination pursuant to the terms of this Agreement shall occur when the council shall appoint a permanent city manager who assumes office, in which event the date of termination shall be the last day of either the initial term or renewal term, whichever is then in effect when the permanent city manager assumes office.

Section 10: Severance

A. Severance shall be paid to the Manager when employment is terminated as defined in Section 9.

B. If the Manager is terminated during the initial sixty-day term of this Agreement, then City shall provide a severance payment equal to one month's salary at the current rate of pay, in addition to all accrued vacation time in accordance with Section 5. This severance shall be paid in a lump sum unless otherwise agreed to by the City and the Manager.

C. If Manager is terminated after completion of the initial term of this Agreement, then City shall provide severance payment equal to one month's salary at the current rate of pay plus one week's salary for every renewal term that has accrued under Section 1, in addition to all accrued vacation time in accordance with Section 5. This severance shall be paid in a lump sum unless otherwise agreed to by the City and the Manager.

D. If the Manager is terminated because of a conviction of a felony, then the City is not obligated to pay severance under this section.

Section 11: Resignation

In the event that the Manager voluntarily resigns his position with the City, the Manager shall provide a minimum of sixty (60) days notice unless the parties agree otherwise.

Section 12: Hours of Work

A. Manager shall be required to maintain office hours at City Hall from 8:00 a.m. until 5:00 p.m. with one (1) hour provided for lunch, taking exception for absences during which City Manager is conducting business outside of City Hall.

B. As a requirement of Manager's salaried position, Manager shall be required to attend City Council Meetings, Work Sessions and other functions requiring representation on behalf of the City of Benson beyond the business day subject to approved absences by the Mayor.

Section 13: Outside Activities

The employment provided for by this Agreement shall be the Manager's sole employment.

Section 14: Indemnification

Beyond that required under Federal, State or Local Law, City shall defend, save harmless and indemnify Manager 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 Manager's duties as City Manager or resulting from the exercise of judgment or discretion in connection with the performance of program duties or responsibilities, unless the act or omission involved willful or wanton conduct. The City shall indemnify Manager against any and all losses, damages, judgments, interest, settlements, fines, court costs and other reasonable costs and expenses of legal proceedings including attorneys fees, and any other liabilities incurred by, imposed upon, or suffered by such Manager 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 his duties. Any settlement of any claim must be made with prior approval of the City in order for indemnification, as provided in this Section, to be available.

Section 15: Other Terms and Conditions of Employment

The City, only upon agreement with Manager, shall fix any such other terms and conditions of employment, as it may determine from time to time, relating to the performance of the Manager, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this Agreement, or any other law.

Section 16: Notices

A. Notice pursuant to this Agreement shall be given by depositing the same in the custody of the United States Postal Service, postage prepaid, to the addresses listed on the signature page for the City and Manager.

B. 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 17: General Provisions

A. Integration. This Agreement sets forth and establishes the entire understanding between the City and the Manager relating to the employment of the Manager by the City. 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 City and the Manager as well as their heirs, assigns, executors, personal representatives and successors in interest.

C. Effective Date. This Agreement shall become effective on April 22, 2013.

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.

Dated this 22nd day of April, 2012.

JAMES F. COX, Interim City Manager

TONEY D. KING, Sr., Mayor

ATTEST:

VICKI L. VIVIAN, CMC, City Clerk

APPROVED AS TO FORM:

MICHAEL J. MASSEE, City Attorney

Address for notification purposes:

CITY OF BENSON
120 W. 6th Street
Benson, Arizona 85602

JIM COX
797 E. McNEIL RD.
Benson, Arizona 85602