City of Benson
City Council Communication

Special Meeting **September 30, 2013**

To: Mayor and Council Agenda Item # 3

From: Jim Cox, Interim City Manager

Subject:

Discussion and possible action in approving an employment contract with Donald Howard for the position of City Manager

Discussion:

Attached is a draft Employment Agreement between the City and Mr. Donald Howard for the position of City Manager. The items left blank are the start date for the position and the number of months of severance pay.

Mr. Howard will be available by telephone in the event Council would like to speak with him.

Staff Recommendation:

Council pleasure

CITY OF BENSON

EMPLOYMENT AGREEMENT

CITY MANAGER

Donald J. Howard

September 30, 2013

Employment Agreement

This Agreement, made and entered into this 30th day of September, 2013, by and between the **City of Benson**, Arizona, an Arizona body politic, (hereinafter referred to as ”City”) and **DONALD J. HOWARD**, (hereinafter referred to as “Manager”) acting in his individual capacity, both of whom agree as follows:

Section 1: Appointment and Duties

The Mayor and Council of the City of Benson hereby appoint Donald J. Howard as the City Manager of the City of Benson, for a term commencing on _____. The Manager shall serve as the administrative head of the government of this City with all of the authority, duties and responsibilities that are specified in the Arizona Revised Statutes and in the ordinances, resolutions and other actions of this City, as these may be amended from time to time.

The Manager hereby agrees to accept this appointment and to perform these duties and responsibilities faithfully and to the best of his ability, in a manner that is consistent with the requirements of the laws of this City and this State.

Section 2: Term and Termination

The Manager shall serve for an indefinite term, at the pleasure of the Mayor and Council, commencing on _____.

Pursuant to the provisions of the City Code, the Manager shall be subject to removal by majority vote of the Mayor and Council, with or without cause; provided that no dismissal for cause shall be made by council without first providing Manager prior notice of the grounds for dismissal for cause and an opportunity to be heard, which may be pursuant to an executive session in accordance with state law. Conviction of a felony or any offense related to the official duties of the Manager shall conclusively be deemed cause for dismissal.

Section 3: Compensation

The City shall pay Manager for his services the sum of $85,000 per year, to be paid in installments at the same time and same manner as other employees of the City are paid, subject to the same tax and retirement regulations applicable to other City employees.

This salary may be subject to subsequent adjustments, based upon increases in the cost of living or satisfactory performance evaluations, in such amounts as the City may determine to be appropriate in the future.

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Section 4: Health, Disability and State Retirement Insurance Benefits

The Manager shall also receive the same health, life, disability, vision and dental insurance benefits that are made available to other unclassified employees of the City. The Manager shall also be a participant in the Arizona State Retirement System, as a City employee. In addition, the Manager shall be entitled to receive all other fringe benefits that are available to other unclassified City employees, on the same basis as those employees.

Section 5: Holidays, Vacation and Sick Leave

The Manager shall be entitled to the same paid time off for City holidays as other unclassified employees of the City and will start employment with a balance of ten vacation days and five sick days.

It is recognized that the Manager is an executive employee of the City and exempt from the hourly wage requirements of federal law. No entitlement for overtime wages shall accrue. It is further recognized that the Manager must devote a certain amount of time outside of normal office hours to business of the City and to that end the Manager will be allowed to take compensatory time off as he shall deem appropriate during said normal business hours.

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

Section 6: Moving Expenses

Upon establishing residency pursuant to Section 11 of this Agreement, the Manager shall be entitled to reimbursement for actual costs, up to a maximum of $4,000, for moving his household furnishings and belongings from his current residence to his new residence in Benson, Arizona.

Section 7: Vehicle and Equipment

The City shall provide the Manager with a suitable vehicle to be used in connection with City business. The City shall provide the maintenance and fuel necessary for this vehicle. In addition, the Manager shall be entitled to per diem at the established City rate and subject to normal City regulations for travel outside of the City on City business.

The City shall provide the Manager with a “smart” cell phone and appropriate electronic data devices for the use and convenience of the Manager to conduct City business. Should any discrete additional costs accrue to the City resulting from the Manager’s use of said electronic communications devices arising from personal use, then the Manager shall reimburse the City for such additional costs.

Section 8: Resignation

The Manager shall provide the City not less than sixty (60) days written notice of his intent to resign from this position.

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Section 9: Termination and Severance Pay

If the Manager is removed for cause pursuant to Section 2 of this Agreement, then he shall be entitled to be paid for all salary that has accrued to him upon the date of removal, together with the value of all accrued vacation time, to be paid at his then current hourly rate of compensation.

If the Manager is terminated at the discretion of a majority of the Mayor and Council, or forced to resign in lieu thereof, then the Manager shall be entitled to his accrued salary, all accrued vacation time off. In addition, the Manager will be paid his salary that would have been earned in the next _____ succeeding months. This severance payment shall be paid in a lump sum unless the parties agree otherwise.

Section 10: Outside Employment

The primary obligation of the Manager shall be to the City and to the successful performance of this Agreement. The Manager shall not assume any additional employment that would be inconsistent with or interfere with the performance of this Agreement. That Manager shall be allowed to assume occasional teaching, writing, speaking, consulting and similar work on his own time, provided that this does not conflict with the performance of this Agreement. The Manager shall obtain specific approval from the Mayor and Council prior to accepting any additional employment responsibility, other than the occasional, part-time tasks listed above.

Section 11: Residency

The Manager shall be required to establish residency within the City of Benson within fifty (50) days of the beginning term of this Agreement, unless the Mayor and Council approve any extension or amendment to this requirement by amending the City Code.

Section 12: Office Hours and Attendance at Meetings

In general, and subject to the Manager's entitlement to paid time off of Section 5 of this Agreement, the Manager shall be required to maintain normal and customary 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.

As a further requirement of Manager's duties, the 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: Indemnification

Beyond that required under Federal, State or Local Law, City shall defend, save and hold 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

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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 14: Dues and Subscriptions

The City shall budget and pay for the Manager's membership and participation in the Arizona City Managers Association and the International City Managers Association, as necessary for the Manager to obtain the educational and information benefits offered by these organizations, for the overall good of the City; provided, however, that attendance at overnight or out-of-state seminars shall be subject to approval by the mayor. The City may provide funds for the participation in additional organizations, depending upon the availability of funds.

Section 15: Performance Evaluations

The City and Manager agree that periodically they shall meet to discuss and evaluate their mutual working relationship, rapport, goals and objectives. The Manager's performance shall be evaluated not less than every six (6) months for the first year of this Agreement. Thereafter they shall meet as often as the Mayor and Council deem to be necessary, but not less than annually. Following any such evaluation, the parties may also discuss the terms and conditions of this Agreement and any amendments that they may deem to be appropriate.

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. No right or interest in this Agreement shall be assigned by the Manager without prior written permission of the City, and no delegation of any duty of the Manager shall be made without prior written permission of the City.

C. Effective Date. This Agreement shall become effective upon adoption and execution by both parties.

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. Conflict of Interest. The provisions of A.R.S. § 38-511 are adopted as if fully set forth herein.

F. Interpretation and Venue. This Agreement shall be governed by the laws of the State of Arizona and shall be deemed to have been drafted by both parties. Suits pertaining to this Agreement may be brought only in the courts in the State of Arizona and venue for any such action shall be in the Cochise County Superior Court.

Dated this ____ day of _____, 2013.

MANAGER

_____
Donald J. Howard

Address for notification purposes:

DONALD J. HOWARD

(subject to future administrative updates)

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CITY

_____
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

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