City of Benson
City Council Communication

Regular Meeting **August 12, 2013**

To: Mayor and Council Agenda Item # 6

From: Jim Cox, Interim City Manager

Subject:

Discussion and possible action regarding the City Manager position, possible appointment of a City Manager and approval of an employment contract

Discussion:

This item provides the Mayor and Council with an opportunity to consider hiring a City Manager. Included in your packet is a draft employment agreement. The agreement is similar to that the City had with previous City Managers.

Staff Recommendation:

Council pleasure

CITY OF BENSON

EMPLOYMENT AGREEMENT

CITY MANAGER

_____

_____, 2013

Employment Agreement

This Agreement, made and entered into this _____ day of _____, 2013, by and between the **City of Benson**, Arizona, an Arizona body politic, (hereinafter referred to as "City") and _____, (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 City Manager shall be two (2) years from the effective date of this Agreement. Thereafter, upon reaffirmation of Manager's employment as City Manager by a majority of the then elected Council, said Agreement shall thereafter be renewed annually for consecutive two-year terms. If extended, Manager's employment shall be on the same terms and conditions as herein provided, except that any salary adjustments granted during the prior period shall continue on without reduction.

This Agreement may be terminated by the City or Manager as provided in Sections 9, 10 or 11 of this Agreement.

Section 2: Duties and Authority

City agrees to employ _____ as City Manager to perform the functions and duties specified in the applicable Arizona Revised Statutes, 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.

Section 3: Compensation

A. Beginning _____, 2013, City agrees to pay Manager an annual base salary of _____ ($_____), continuing at that amount until amended, payable in installments at the same time that the other employees of the City are paid.

B. At the first anniversary of this agreement, Manager's salary shall be increased by $_____.

C. This Agreement shall be automatically amended to reflect any salary adjustments that are provided or required by the City's compensation policies. The City agrees that consideration shall be given on an annual basis to increase the compensation of the Manager dependent upon the results of a formal performance evaluation conducted under the provisions of Section 12 of this Agreement.

D. At a minimum, City agrees to increase the compensation each year by the minimum increase granted to other City employees.

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.

Section 5: Vacation and Sick Leave

A. The Manager shall accrue sick leave at the rate of 4 hours each pay period and accrue vacation leave at the rate of ____ hours each pay period.

B. The Manager is entitled to accrue all unused leave, subject to personnel policy limits. In the event the Manager's employment is terminated, 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 vehicle which he may take home, to be used for City business. City shall pay all costs related to the vehicle, including insurance, operating costs, maintenance and periodic replacement.

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

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

B. City agrees to budget for and to pay for travel and subsistence expenses of Manager for professional and official travel, meetings, and occasions to adequately continue the professional development of Manager and to pursue necessary official functions for City, including but not limited to, the state league of municipalities, and such other national, regional, state, and local governmental groups and committees in which Manager serves as a member.

C. City also agrees to budget for and to pay for travel and subsistence expenses of Manager for educational courses, institutes, and seminars that are necessary for the Manager's professional development and for the good of the City with pre-approval by the City Council.

D. 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.

E. City acknowledges the value of having Manager participate and be directly involved in local civic clubs or organizations. Accordingly, City shall pay for the reasonable membership fees and/or dues to enable the Manager to become an active member in local civic clubs or organizations.

F. 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.

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, the Employer shall provide a maximum severance payment equal to three (3) months salary at the current rate of pay and Manager shall also be compensated for all accrued vacation time. This severance shall be paid in a lump sum unless otherwise agreed to by the City and the Manager.

C. For a maximum period of three (3) months following termination, the City shall pay the cost to continue health insurance for the Manager and all dependents.

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: Performance Evaluation

City shall annually provide an oral performance review of the Manager, which shall be conducted in executive session, to be completed on or before _____ of each year, subject to a process, form, criteria, and format for the evaluation which shall be mutually agreed upon by the City and Manager.

Section 13: 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 14: Outside Activities

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

Section 15: Miscellaneous

A. Manager agrees to maintain residence within the corporate boundaries of the City.

Section 16: 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 17: 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 18: 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 19: 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 _____, 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 _____ day of _____, 2013.

_____
_____, 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

_____
_____
Benson, Arizona 85602