City of Benson
City Council Communication

Regular Meeting **April 25, 2016**

To: Mayor and Council Agenda Item # 7

From: William Stephens, City Manager

Subject:

Discussion and possible action about amending the first paragraph under Section 3 of the City Manager's Employment Agreement

Discussion:

Action to review and possibly amend the first paragraph under Section 3 of the City Manager's Employment Agreement. The intent of this agenda item is to discuss a possible increase in the City Manager's annual salary.

Staff Recommendation:

Mayor and Council pleasure

CITY OF BENSON

EMPLOYMENT AGREEMENT

CITY MANAGER

WILLIAM D. STEPHENS

January 13, 2014

Employment Agreement

This Agreement, made and entered into this 13 day of January, 2014, by and between the **City of Benson**, Arizona, an Arizona body politic, (hereinafter referred to as "City") and **WILLIAM D. STEPHENS**, (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 William D. Stephens, as the City Manager of the City of Benson, for a term commencing on the 31st day of March, 2014. 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 the 31st day of March, 2014.

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 Eighty Nine Thousand Eight Hundred Ninety Dollars and Twelve Cents ($89,890.12) 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. At a minimum, City agrees to increase the compensation each year by the cost of living (COLA) increase granted to other City employees. Merit increases shall be at the discretion of the Mayor and Council.

Section 4: Health, Disability and State Retirement Insurance Benefits

The Manager and his dependents 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 receive sick leave 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: Vacation and Compensated Time Off

The Manager shall be entitled to the same paid time off for City holidays as other unclassified employees of the City.

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.

In addition to the above, the Manager shall be entitled to 208 hours of vacation leave per year, to accrue at eight hours per two-week pay period, and which may accrue from year to year if not used up to 1.5 times the yearly allowance.

The Manager shall be provided with 10 business days of paid administrative leave credit effective upon execution of this Agreement. Administrative leave use shall be for, but not limited to, moving, purchase, rent or lease of a residence, registering vehicles, establishing utilities, among other requirements to relocate and maintain residency.

Section 6: Moving Expenses

Upon establishing residency pursuant to Section 11 of this Agreement, the Manager shall be entitled to reimbursement for the actual costs that he pays, and is neither reimbursable, reimbursed or subject to reimbursement by any third parties, for moving expenses associated with the movement of his household furnishings and belongings from his current residence in North Charleston, South Carolina to his new residence within the Corporate limits of the City of Benson, Arizona in the amount not to exceed $ 25,000.00. Additionally the Manager shall be entitled to travel expense per diem (lodging, meals, gas, etc.) for himself and his dependents, at the established City rate, while traveling to the City of Benson. The Manager is authorized up to (1) one month of temporary housing allowance up to a maximum amount of $3000.00 until the Manager can find and establish a permanent residence within the City of Benson Corporate limits. Receipts the Manager submits to the City in order to receive reimbursement under this Section must be provided with a notarized avowal that none have been reimbursed, will be reimbursed, or are subject to reimbursement, from any third parties.

Section 7: Vehicle and Equipment

The City shall provide the Manager with a suitable vehicle, in the City's discretion, to be used in connection with City business. The City shall provide all reasonable costs of operation to include maintenance, repair, fuel and insurance (liability, property damage, and comprehensive) 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 reasonable and appropriate travel outside of the City on City business.

The City shall provide the Manager with a "smart" cell phone and appropriate, in the City's discretion, electronic data device for the use and convenience of the Manager to conduct City business. Manager will be allowed reasonable minimal personal use. The City will pay for the reasonable costs of any appropriate and reasonable supporting data plans for the "smart" phone and any electronic data devices. 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. Suitable, reasonable and appropriate as used herein are all to be determined by the Mayor and Council in their discretion.

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.

Section 9: Termination and Severance Pay

If the Manager resigns or 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 allowable and appropriate accrued paid time off, 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 then the Manager shall be entitled to his accrued salary, all accrued paid time off to that date, and in addition, his then current salary that would have been earned in the next four (4)succeeding months. The immediately preceding term of four (4) months automatically increases to (i) five (5) months if the Manager is terminated in accordance with this Section after one (1) year of appointment; or (ii) six (6) months if the Manager is terminated in accordance with this Section after two (2) years or more of appointment. This severance payment shall be paid in a lump sum to the Manager by the City within fifteen (15) working days after the effective date of Manager's termination or separation, or may be paid in other increments as otherwise agreed upon in writing by the parties.

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. The 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 establish residence, *i.e.*, principle place of abode, within the City of Benson Corporate boundary limits or within fifty (50) days after his appointment. The city council may, from time to time, by a majority vote thereof, extend the period for establishment of such residence for such additional periods as it sees fit.

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, by third parties, 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, by third parties, including attorney's fees, and any other liabilities incurred by, imposed upon, or suffered by such Manager in connection with or resulting from any claim, by third parties, 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 acknowledges its interest in the continuing professional development of Manager and shall budget, allow and pay all reasonable expenses associated with attendance, to include official travel, at annual conferences of the International City/County Management Association, League of Arizona Cities and Towns, and the Arizona City/County Management Association. Further, the City shall pay for the Manager's membership (dues and subscriptions) in the Arizona

City/County Management Association and the International City/County Management Association, as reasonably 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 agrees to allow and provide funds for the membership, attendance and participation in reasonable and appropriate, additional civic clubs, organizations, conferences, educational courses, institutes, and seminars, depending upon the availability of funds. Reasonable, reasonably necessary and appropriate as used herein are all to be determined by the Mayor and Council in their discretion.

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 13th day of January, 2014.

MANAGER

WILLIAM D. STEPHENS

Address for notification purposes:

WILLIAM D. STEPHENS
8316 DYE MAKERS RIDGE
NORTH CHARLESTON, SC 29418
(Subject to future administrative updates)

CITY

TONEY D. KING, Sr., Mayor

ATTEST:

VICKI L. VIVIAN, CMC, City Clerk

APPROVED AS TO FORM:

MESCH, CLARK AND ROTHSCHILD, P.C.
By Gary J. Cohen
City's Attorney

Address for notification purposes:
CITY OF BENSON
120 W. 6th Street
Benson, Arizona 85602