

EMPLOYMENT AGREEMENT WITH CITY MANAGER

THIS AGREEMENT is made and entered into this ____ day of _____, 2017 by and between the CITY OF APACHE JUNCTION, an Arizona municipal corporation ("City") and BRYANT POWELL ("Employee") both of whom understand the following:

RECITALS

A. Employee was first hired by the City in 2001 as an Assistant to the City Manager and then promoted in 2004 to Assistant City Manager, a position he has continuously held to the present.

B. Effective July 1, 2015, the City Council of the City of Apache Junction, Arizona ("Council") promoted and appointed Employee to the position of City Manager pursuant to A.R.S. § 9-303 and Apache Junction City Code ("A.J.C.C."), Vol. I, Chapter 3, Administration, Article 3-1, City Manager, § 3-1-2, Office of City Manager Created.

C. Employee, as City Manager, serves at the pleasure of the Council.

D. It is the desire of the Parties to enter this Employment Agreement to set forth the terms and conditions by which the City shall receive and retain the services of Employee effective July 1, 2017, and to provide for him to remain in such employment, to make possible full work productivity by assuring his peace of mind with respect to future security, and to provide for terminating his services at such time as he may be unable to fully discharge his duties and when Council may otherwise desire to terminate the employment relationship.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties agree as follows:

SECTION 1. DUTIES

Council hereby agrees to employ Employee as City Manager to assume the powers of and perform the functions and duties specified in the A.J.C.C., Vol. I, Chapter 3, Administration, Article 3-1, City Manager, § 3-1-8, Power and Duties, and the City Manager job description on file with the Human Resources Division (hereinafter combined as the "City Manager" function).

SECTION 2. AT-WILL STATUS

A. Employee shall fulfill the powers, functions and duties of City Manager and shall serve at will in this capacity subject to the Termination provisions pursuant to Section 3, below.

- B. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of Council to terminate the services of Employee at any time subject only to the provisions set forth in Section 3 below.
- C. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of Employee to resign at any time from his position as City Manager, subject only to the provisions set forth in Section 3 below.
- D. Employee agrees to remain in the exclusive employ of City and further agrees neither to accept other employment nor to become employed by any other employer without Council approval, or until this Agreement is terminated.

SECTION 3. TERMINATION / RESIGNATION

- A. In the event the Council desires to terminate this Agreement with Employee, an affirmative vote of four (4) or more members of the Council at any regular meeting or special meeting is required and the removal procedures set forth in A.J.C.C., Vol. I, Chapter 3, Administration, Article 3-1, City Manager, § 3-1-10 shall be observed.
- B. If Council terminates Employee pursuant to subsection A above, a lump sum payment equal to six (6) months of Employee's then current aggregate salary, the value of Employee's health, dental and life insurance premiums and Deferred Compensation 457 Plan amounts for six (6) months, will be paid to Employee, in addition to all accrued vacation and sick leave in accordance with the then existing Personnel Rules as other employees receive at the time of termination/separation from service. These amounts are deemed as fully earned at the time any termination decision is made official. Employee shall sign a Waiver and Release of all claims and causes of action against the City in order to process this pay out provision.
- C. In the event Employee resigns on his own volition, Employee shall be paid his accrued salary, vacation and sick leave in accordance with the then existing Personnel Rules as other employees receive at the time of termination/separation from service. However, if he resigns, he shall give Council ninety (90) calendar days' written notice of such resignation. Council may choose to accept and effectuate his resignation before the end of the ninety (90) calendar day period, in which case the City shall pay Employee a lump sum cash payment equal to his unpaid accrued salary, vacation and sick leave, as the then existing Personnel Rules allow, through and to Employee's initially announced last day.
- D. In the event Employee is terminated because of a conviction relating to any felony, Council shall have no obligation to make any extra payment

referenced in subsection (A) except for all of Employee's accrued salary, vacation and sick leave in accordance with the then existing Personnel Rules as other employees receive at the time of termination/separation from service. Council reserves the right to suspend any payment referenced in subsection (A) while felony charges are pending, or during any proceedings which involve a felony conviction.

SECTION 4. SALARY

- A. City agrees to pay Employee One Hundred Fifty Thousand Dollars (\$150,000.00) per annum for services, payable in installments at the same time as other employees of the City are paid. Employee and City may negotiate additional compensation and benefit terms as they deem fit at any time this Agreement is in effect, except that: 1) Employee agrees not to seek any contract modifications until after January 1, 2021; and 2) the Council shall conduct an evaluation of Employee starting in April of each year this Agreement is in effect.
- B. City shall also pay Employee any cost of living, base wage adjustment, step adjustment, step increase, or however else coded in the City's payroll system, any other general city-wide increase which is passed and adopted by the City Council, or the value of any non-merit based automatic step increase that non-contract, career status classified city employees receive under the then-current fiscal year classification and compensation plan adopted by the mayor and city council, applicable any time when this Agreement is in effect.

SECTION 5. AUTOMOBILE

City will provide Employee a vehicle and gasoline allowance of Four Hundred and Fifty dollars (\$450.00) per month.

SECTION 6. OTHER SUPPLEMENTAL BENEFITS

- A. Vacation Leave. Employee shall on a fiscal year basis accrue One Hundred Forty Four (144) hours, or whatever amount the then current Personnel Rules dictate, whichever is higher.
- B. Sick Leave. Employee shall on a fiscal year basis accrue Ninety-Six (96) hours, or whatever amount the then current Personnel Rules dictate, whichever is higher.
- C. Other Benefits. All action taken by Council relating to fringe benefits for employees in the executive ranges shall be considered actions granting the same benefits to Employee. The term "fringe benefits" include but are

not limited to vacation, sick leave, holidays, retirement, health, dental, vision, long-term disability and life insurance.

- D. Professional Dues and Seminar Costs. Within the departmental budget, City will pay for all seminars and educational programs which relate to municipal issues and those which assist the City Manager in the performance of his duties.
- E. Deferred Compensation. Employee may contribute to City's approved Deferred Compensation 457 plan the maximum amount allowable under I.R.S. rules and regulations during each calendar year this Agreement is in effect. Per each fiscal year this Agreement is in effect, City shall contribute into any approved 457 Deferred Compensation Plan on behalf of Employee, the value of the health and dental premiums Employee is paying for himself and his family.

SECTION 7. INDEMNIFICATION

City shall defend, save harmless and indemnify Employee against any tort, professional liability claim or demand or any other legal action, whether groundless or otherwise, arising out of any alleged act or omission occurring in the course and scope of performance of Employee's functions and duties. City will compromise and settle any such claim or suit and pay the amount of all settlements or judgments rendered against Employee and/or City.

SECTION 8. OTHER TERMS AND CONDITIONS

Council, in consultation with Employee, shall fix any such other terms and conditions of employment, as it may determine from time to time, relating to the performance of Employee, provided such terms and conditions are not inconsistent with or conflict with the provisions of this Agreement, the Apache Junction City Code, or any other statute, ordinance or regulation.

SECTION 9. NOTICES

Notices pursuant to this Agreement shall be in writing and be given by: 1) personal delivery by the party or their agent; or 2) deposit in the custody of the United States Postal Service, postage prepaid, return receipt requested, or private sector overnight or one-day service and addressed as follows or as such address may be changed from time to time upon notice to the other:

City: Mayor Jeff Serdy
City of Apache Junction
300 East Superstition Boulevard
Apache Junction, AZ 85119

Employee: Bryant Powell
[REDACTED]
Apache Junction, AZ 85119

SECTION 10. ATTORNEY FEES

In the event it becomes necessary for either Party to bring legal action to enforce any provision of this Agreement, the Parties agree that the prevailing party shall be entitled to attorney fees.

SECTION 11. ENTIRE AGREEMENT

This Agreement contains the entire agreement between the Parties. No other promises, representations, warranties, or covenants have been relied on by either Party in executing this Agreement.

SECTION 12. ASSIGNMENT

This Agreement is not assignable by either City or Employee.

SECTION 13. SEVERABILITY

City and Employee each believe that the execution, delivery and performance of this Agreement are in compliance with all applicable laws. However, in the unlikely event that any provision of this Agreement is declared void or unenforceable (or is construed as requiring City to do any act in violation of any applicable laws, including any constitutional provision, law, regulation, or city code), such provision shall be deemed severed from this Agreement and this Agreement shall otherwise remain in full force and effect; provided that this Agreement shall retroactively be deemed reformed to the extent reasonably possible in such a manner so that the reformed agreement (and any related agreements effective as of the same date) provide essentially the same rights and benefits (economic and otherwise) to the City and Employee as if such severance and reformation were not required. Unless prohibited by applicable laws, the City and Employee further shall perform all acts and execute, acknowledge and/or deliver all amendments, instruments and consents necessary to accomplish and to give effect to the purposes of this Agreement, as reformed.

IN WITNESS WHEREOF, City and Employee have caused this Agreement to be executed the day and year first above written.

6-7-2017
Date

EMPLOYEE
By: Bryant Powell
Bryant Powell

CITY OF APACHE JUNCTION,
an Arizona municipal corporation

Date

By: _____
Jeff Serdy, Mayor

ATTEST:

Kathleen Connelly, City Clerk

APPROVED AS TO FORM:

 6.7.17

Richard J. Stern, City Attorney