

RESOLUTION NO. 2361

A RESOLUTION OF THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PAYSON, ARIZONA, APPROVING AND AUTHORIZING THE MAYOR TO EXECUTE A CONTRACT OF EMPLOYMENT WITH TOWN MANAGER DEBRA A. GALBRAITH.

WHEREAS, the Mayor and Common Council have appointed Debra A. Galbraith Town Manager of the Town of Payson; and

WHEREAS, an employment agreement has been negotiated and accepted by Ms. Galbraith; and

WHEREAS, the Town and the Manager desire to reduce the terms of the Manager's employment to writing,

NOW, THEREFORE, THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PAYSON, ARIZONA, DO HEREBY RESOLVE AS FOLLOWS:

Section 1. That the Employment Agreement between the Town of Payson and Debra A. Galbraith, attached hereto as Exhibit "A" and made a part hereof by this reference be and is hereby approved in substantially the form as attached.

Section 3. That F. Robert Edwards, Mayor of the Town of Payson, be and is hereby authorized to execute said Employment Agreement in substantially the form as attached as Exhibit "A".

Section 4. That the Town of Payson be and is hereby authorized to take such other or further actions as are necessary or appropriate to carry out the intent and purposes of said Agreement.

PASSED AND ADOPTED BY THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PAYSON, ARIZONA, this ____ day of _____, 2008, by the following vote:

AYES _____ NOES _____ ABSTENTIONS _____ ABSENT _____

F. Robert Edwards, Mayor

ATTEST:

APPROVED AS TO FORM:

Silvia Smith, Town Clerk

Samuel I. Streichman, Town Attorney

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EXHIBIT "A"

to Resolution No. 2361

EMPLOYMENT AGREEMENT TOWN MANAGER

THIS AGREEMENT is made and entered into this ____ day of _____, 2008, by and between the Town of Payson, an Arizona municipal corporation (the "Town"), and Debra A. Galbraith (the "Manager"), collectively the "Parties".

RECITALS

- A. Debra A. Galbraith has been functioning as permanent Town Manager since January 10, 2008.
- B. The Town desires to employ the individual services of Debra A. Galbraith as and for the Town Manager of the Town of Payson, Arizona.
- C. Debra A. Galbraith desires to be Town Manager of the Town of Payson, Arizona, in accordance with the terms and provisions of this Agreement.
- D. The Town and the Manager desire to reduce the major terms and conditions of employment to writing.

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions herein contained, the Parties agree as follows:

- 1. *Duties.* The Town agrees to employ Debra A. Galbraith as Town Manager for the Town of Payson, Arizona, to perform the functions and duties specified in A.R.S. § 9-303, the Town Code and ordinances of the Town of Payson, and further to perform such other legally permissible and proper duties and functions as the Mayor and Common Council of the Town of Payson shall from time to time assign and direct. The Manager shall be an exempt employee of the Town.
- 2. *Term.* This Agreement shall be of a continuing nature; provided, however, that:
 - a. Any termination of the services of the Manager at any time shall be subject to applicable law and the provisions herein.
 - b. Nothing in the Agreement shall prevent, limit or otherwise interfere with the right of the Manager to resign at any time, subject only to the provisions in paragraph 2.d hereunder.
 - c. This Agreement shall be effective upon its execution by both Parties.
 - d. The Manager shall provide the Town with sixty (60) days' written notice in advance of her intention to voluntarily resign employment with the Town.
- 3. *Termination and Severance Pay.*
 - a. In the event Manager resigns or is terminated by the Mayor and Common Council during such time that Manager is willing and able to perform the duties of Town Manager, then in that event the Town agrees to pay Manager severance pay as provided herein; provided, however, that in the event Manager is terminated because of Manager's conviction of any illegal act involving personal gain to the Manager, or of any crime of moral turpitude, or if Manager is terminated as a result of an alcohol or drug related offense, including, but not limited to, driving under the influence, then, in such event, the Town shall have no obligation to provide the Manager with any severance pay, but may terminate the Manager without further obligation on the part of the Town.

- b. In the event of resignation or termination as provided in subsection (a.) hereinabove, the Manager shall be entitled to receive from the Town severance pay, exclusive of benefits, to be calculated and paid on a monthly basis following the Manager's termination, according to the following schedule: the Manager shall be paid six months of severance pay at the then-current rate of pay for the Manager (at the time of termination).
4. *Salary.* The Town agrees to pay Manager for Manager's services a beginning annual base salary of One Hundred Twenty-five Thousand Dollars (\$125,000) per year, payable in twenty-six (26) equal installments. Any adjustments to such annual salary or other benefits provided to the Manager will be made, if at all, at the time of an annual performance review.
5. *Vehicle Reimbursement.* Manager will be reimbursed for mileage accumulated in the use of Manager's personal vehicle on Town business at the rate of a minimum of \$150.00 per month. Any such mileage accumulated by Manager of a value in excess of said amount shall be reimbursed at the then current federal approved rate of reimbursement, currently \$.505 per mile. Manager will obtain and maintain liability insurance for such use of such personal vehicle.
6. *Dues, Subscriptions, and Professional Development.* To the extent permitted by budget constraints, reasonable amounts for payment of dues, subscriptions, and professional development costs will be included in the annual budgeting process.
7. *General Expenses.* The Town recognizes that certain expenses of a non-personal and job-affiliated nature may be incurred by the Manager, and hereby agrees to reimburse or to pay such general expenses in accordance with the general policies of the Town.
8. *Vacation.* Manager shall be credited with twenty (20) working days of vacation leave on the effective date of this contract and shall earn an additional twenty (20) working days of vacation to be credited on January 1 of each year of Manager's employment with the Town. The Manager shall be permitted to carry over past the end of each calendar year days of vacation leave not used during the previous calendar year. In the event that Manager leaves the employ of the Town after twelve (12) months of service, the Manager shall be entitled to compensation for all days of vacation leave posted to Manager's credit at such time. In addition, Manager will receive three (3) days of personal leave each calendar year, but shall not be permitted to carry over past the end of each calendar year any unused amount of such personal leave.
9. *Health Insurance.* Town agrees to put into force and maintain those insurance policies provided by the Town to its employees, in the same manner as such insurance is provided to employees of the Town generally.
10. *Other Benefits.* Except as specifically provided for or prohibited herein, Manager shall be provided the same benefits in the same manner as provided to other exempt employees of the Town.
11. *Annual Review.* The Mayor and Common Council may conduct a review of the Manager's performance annually. Such review and evaluation shall follow criteria and procedures determined by the Mayor and Common Council. The Parties agree that the primary purpose of such review and evaluation is to facilitate open and frank discussion, define roles and expectations, identify performance strengths and weaknesses, and provide an opportunity for Manager to take affirmative action to address weaknesses and areas needing improvement and to also provide the opportunity to reaffirm and fortify areas of strength and competency.

12. *Retirement/Deferred Compensation.* The Town will contribute an amount equal to seven percent (7%) of Manager's then-current salary to such retirement plan of Manager's choice as is available and lawful for such purpose. To the extent permitted by such plan, the Manager will not be required to, but may, at Manager's sole option, match any part of such amount.
13. *Other Terms and Conditions of Employment.*
 - a. The Mayor and Common Council shall fix any other terms and conditions of employment as it may determine from time to time, provided such terms and conditions are not inconsistent or in conflict with the provisions of this Agreement, the Town Code, or any other provision of law.
 - b. All provisions of the Town Code, Personnel Rules, and regulations of the Town not inconsistent or in conflict with the provisions in this Agreement relating to sick leave, holidays, benefits and working conditions, as they now exist or hereafter may be modified, also shall apply to the Manager as they would to other exempt employees of the Town in addition to the benefits specifically enumerated herein, and except as herein provided.
14. *General Provisions.*
 - a. Entire Agreement. This Agreement constitutes the entire agreement between the parties hereto pertaining to the subject matter contained in this Agreement. All prior and contemporaneous agreements, representations and understandings of the Parties, whether oral or written, are superseded by and merged into this Agreement. No supplement, modification or amendment of this Agreement shall be binding unless in writing and executed by the Parties.
 - b. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the heirs at law, executors and administrators of the Manager.
 - c. Severability. If any provision or portion of this Agreement is declared unconstitutional, void or unenforceable by a court of competent jurisdiction, such provision or portion shall be severed from this Agreement, which shall otherwise remain in full force and effect.
 - d. Headings and Counterparts. The headings of this Agreement are for purposes of reference only and shall not limit or define the meaning of any provision of this Agreement. This Agreement may be executed in any number of counterparts, each of which shall be an original but all of which shall constitute one and the same instrument.
 - e. Dispute Resolution. This Agreement shall be governed and construed in accordance with the internal laws of the State of Arizona. Any dispute, controversy, claim or cause of action arising out of or related to this Agreement may, but in no event need, with the written consent of both Parties be settled by submission to binding arbitration in accordance with the rules of the American Arbitration Association and the Arizona Uniform Arbitration Act, A.R.S. § 12-1501, et seq., and judgment upon any award rendered by the arbitrator(s) shall be entered in the Superior Court of Gila County, Arizona, or any such dispute, controversy, claim, or cause of action may be litigated in the Superior Court of Gila County, Arizona. The venue for any such dispute shall be Gila County, Arizona. Both Parties consent in advance to such venue and jurisdiction and waive any right to object that Gila County is an inconvenient or improper forum based upon lack of venue. Neither Party shall be entitled to recover from the other party any of its attorneys' fees, costs, or expert witness fees incurred in any such dispute, controversy, claim, or cause of action, but each party shall bear its own attorneys' fees without contribution from the other party, whether the same is resolved through arbitration, litigation in a court, or otherwise.

- f. Cancellation. This Agreement is subject to the provisions of A.R.S. § 38-511, the terms of which are incorporated herein.
- g. Construction. This Agreement shall be construed according to the internal law of Arizona without the application of any principles of conflicts of law that would require or permit the application of the laws of any other jurisdiction. This Agreement shall be construed and interpreted according to its plain meaning, and no presumption shall be deemed to apply in favor or against the party drafting this Agreement. The parties acknowledge and agree that each has had the opportunity to seek and utilize legal counsel in the drafting of, review of, and entry into this Agreement.

IN WITNESS WHEREOF, the Town of Payson, Arizona, has caused this Agreement to be signed and executed on its behalf by its Mayor and to be duly attested by its Town Clerk, and the Manager has signed and executed this Agreement, on the date first above written.

MANAGER

**TOWN OF PAYSON,
an Arizona municipal corporation**

Debra A. Galbraith

By _____
F. Robert Edwards, Mayor

ATTEST:

Silvia Smith, Town Clerk

APPROVED AS TO FORM:

Samuel I. Streichman, Town Attorney

*Prepared by the Town of Payson Legal Department
SIS:drs April 9, 2008 (1:16PM)
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