

**AGREEMENT FOR EMPLOYMENT OF COUNTY ADMINISTRATOR
FOR COCHISE COUNTY, ARIZONA**

This Agreement is made and entered into this 5th day of October, 2020, between COCHISE COUNTY, an Arizona Political Subdivision, acting by and through its duly authorized officers, hereinafter referred to as the "County", and RICHARD G. KARWACZKA, hereinafter referred to as the "Administrator."

**SECTION 1.
NATURE OF EMPLOYMENT**

The County hereby retains and employs the Administrator to serve as County Administrator in accordance with the provisions set forth in Cochise County Resolution No. 03-15 as adopted or as it may hereafter be amended.

**SECTION 2.
ACCEPTANCE OF EMPLOYMENT**

The Administrator accepts the employment as County Administrator, effective this 5th day of October, 2020 and will, to the best of his ability, perform the services and duties of a County Administrator.

**SECTION 3.
COMPENSATION**

In consideration of the services rendered as County Administrator, Administrator shall receive the following compensation and other consideration:

The Administrator shall be paid a gross annual salary of \$150,000.00 per year.

**SECTION 4.
OTHER BENEFITS**

In addition to the compensation set out in the prior Section, the Administrator shall receive the following additional benefits as consideration for the services performed as County Administrator:

a. The Administrator shall accrue paid time off at the same rate as other County employees as defined by County policy and practice and in all other respects the Administrator's leave shall be governed by County policy and practice.

b. The Administrator shall be granted sick leave each year as defined by County policy and practice in the manner provided for all other County employees.

c. County shall provide at County's cost, health benefits, including medical, dental, and vision insurance, and such other benefits, as are provided to other employees of the County.

d. The Administrator will be allocated a car allowance of \$500 per month for in-county travel and will be reimbursed at the County personal convenience rate for out-of-county travel.

e. The Administrator will be provided a laptop computer, printer, modem, and internet access for use at home for County business. In addition, the Administrator will be given a smart phone or equivalent device supported by the County Information Technology Department.

f. County shall reimburse Administrator for all reasonable expenses and expenditures made or incurred by him directly in connection with his employment, provided that such expenses and reimbursements shall at all times be subject to Arizona law and the rules and regulations established by the County.

g. County shall pay Administrator's bar dues and pay or reimburse him for costs of Continuing Legal Education, not to exceed \$1,500.00 per year, necessary for him to remain in good standing with the Arizona Bar Association. Notwithstanding the foregoing, the parties agree and acknowledge that Administrator shall not function as the County's legal counsel or legal advisor in any way during the term of this Agreement.

h. In addition to the benefits set out in this Section, the Board of Supervisors may provide additional benefits to the Administrator if such benefits are deemed appropriate as a result of its annual evaluation and review of the Administrator's performance.

**SECTION 5.
TERM OF AGREEMENT**

This Agreement shall begin on October 5, 2020 and terminate on October 4, 2022. On or before October 5, 2021, the Board of Supervisors, following an evaluation of Administrator, shall determine whether to extend this Agreement by one or more years, which determination shall be acknowledged in writing by the Board and Administrator. If there is no such acknowledgment in writing this Agreement will terminate on October 4, 2022 with no further action of the parties. If the Agreement is extended, the Board and Administrator shall repeat this process of evaluation and determination of an extension each year on or before the anniversary of this Agreement.

**SECTION 6.
TERMINATION OR RESIGNATION OF SERVICES**

The Administrator shall be an "at-will" employee of Cochise County in its unclassified service and shall serve at the pleasure of the Board of Supervisors, subject to the terms of this Agreement. No other provision in this contract either expressed or implied shall be construed in opposition to this at-will status. Administrator shall be exempt from the Cochise County Merit System. The appointment, removal, suspension or request for resignation, or modification of this Agreement, shall require the affirmative vote of a majority of all members of the Board of Supervisors.

Nothing herein shall prevent, limit or otherwise interfere with the right of the County to terminate the services of the County Administrator at any time, or legally bind a new Board of Supervisors, to retain the services of the Administrator. Administrator expressly acknowledges that he may be removed with or without cause.

Should the Administrator be terminated without cause at any time during the Agreement by either the existing Board or a future Board, the Administrator shall be compensated for 12 months at the base salary at the time of termination, plus all paid time off and sick leave payout at 100% of the base salary. For purposes of this Agreement, the term "cause" shall mean any one of the following:

- a. Material neglect by Administrator of his duties such as abandonment of his duties and/or his responsibilities as Administrator;

- b. Conviction of any felony, or acknowledgment of guilt of a felony;
- c. A determination by a majority of the Board of Supervisors that Administrator has committed acts which would constitute a crime which may materially affect the suitability for continued employment as Administrator, provided, however, that if subsequent criminal or civil proceedings fail to establish that Administrator committed such acts, or that such acts constituted a crime that materially affect Administrator's suitability for continued employment as County Administrator, then removal shall be deemed to be without cause.
- d. Due to physical or mental health, the Administrator becomes unable to discharge his essential duties for a period of at least six (6) months.
- e. Acts of moral turpitude or other conduct which impugns, discredits or adversely affects the County and/or the Administrator's ability to provide effective leadership within the organization.
- f. Misdemeanor conviction for fraud, misrepresentation, theft, embezzlement or dishonesty.

Should the Administrator be terminated for cause, he shall not receive further compensation after the effective date of termination with the exception of all paid time off and sick leave payout at 100% of the base salary.

Notwithstanding any other provisions herein, the Board of Supervisors upon a majority vote may, at any time, reassign the Administrator to alternative duties or place the Administrator on administrative leave with pay for up to the remainder of the contract term, if the Board of Supervisors deems such action to be in the best interest of the County. In the event of such reassignment, Administrator shall continue to receive compensation at the Administrator's then-current rate of pay.

If the Administrator voluntarily chooses to resign before the end of the term of this Agreement, he will give the County at least sixty (60) days' notice and he will receive no other compensation after the effective date of the termination of his employment, with the exception that he shall receive a payout of 100% of his accrued personal leave at 100% of the annual salary. He shall forfeit all accrued but unused sick leave. If County terminates Administrator's employment during the 60-day notice period, such termination shall be deemed a termination without cause as described above.

**SECTION 7.
SURETY BOND**

The Administrator warrants that, to the best of his knowledge, he is eligible for corporate surety bonding as may be required by County Resolution 03-15 and he affirmatively agrees to remain eligible for bonding in a reasonable sum, as required by the Resolution, during the tenure of his appointment as County Administrator.

**SECTION 8.
INDEMNIFICATION**

County shall defend, save harmless, and indemnify Administrator against any tort, professional liability claim or demand, or other legal action, groundless or otherwise, arising out of an alleged act or omission occurring during the performance of his duties, and will pay the amount of any settlement or judgment arising therefrom; provided, however, that this indemnification clause shall not apply to any tort, liability, claim, demand or legal action brought on behalf of the County against the Administrator. Acts of criminal conduct made intentionally, negligently, or recklessly will be considered to fall outside the "performance of duties" of the Administrator.

**SECTION 9.
POLITICAL SUBDIVISIONS AND STATE CONTRACTS**

This Agreement is subject to the provisions of ARS § 38-511.

**SECTION 10.
ARIZONA LAW; SEVERABILITY**

This Agreement shall be construed and enforced in accordance with the laws of the State of Arizona. If a court of competent jurisdiction determines that any provision of this Agreement is invalid or unenforceable, then the invalidity or unenforceability of that provision shall not affect the validity or enforceability of any other provision of this Agreement and all other provisions shall remain in full force and effect.

**SECTION 11.
EVALUATION**

In addition to the reviews and evaluations described in Section 3, the Board shall review and evaluate the performance of the County Administrator at least once annually. Said review and evaluation shall be in accordance with specific criteria developed jointly by the Board and the County Administrator. Said criteria may be added to or deleted from as the Board may from time to time determine in consultation with the County Administrator.

Annually, or at any other time the Board deems necessary, the Board and the County Administrator shall review and define such goals and objectives as they determine necessary for the proper operation of the County, which achieve the Board's policy objectives and further establish a relative priority among those various goals and objectives. Said goals and objectives shall be reduced to writing and shall be reasonably attainable within the time limits as specified and the annual operating and capital budgets and appropriations provided.

**SECTION 12.
OUTSIDE ACTIVITIES**

The employment provided for by this Agreement shall be the Administrator's sole employment. Recognizing that certain outside teaching or consulting opportunities may provide indirect benefits to the Employer and the community, the Administrator may accept such opportunities upon approval by the Board of Supervisors, provided that such arrangements shall not constitute interference with nor a conflict of interest with his responsibilities under this agreement.

**SECTION 13.
DEFAULT/ARBITRATION**

In the event of any default or other non-performance of any term or provision of this Agreement or in the event of any claim arising hereunder, including any dispute as to whether termination for just cause exists, the parties hereto shall resolve any such claim

through mediation followed by binding arbitration.

Before instituting mediation or arbitration, the non-defaulting party shall serve the defaulting party with written notice of the acts alleged to be in default of this Agreement, and allow a period of thirty (30) days for the defaulting party to cure such alleged default. If the matter is not resolved after said 30-day period, the parties shall proceed as described below.

The parties agree to first attempt a mediation of any controversy, claim or dispute between them arising out of or relating to this Agreement, its enforcement or interpretation, or because of an alleged breach, default, or misrepresentation in connection with any of its provisions, or arising out of or relating in any way to the employment relationship between the County and Administrator (“Disputes”). The mediation shall be conducted in Cochise County, Arizona before a mediator mutually acceptable to County and Administrator. The parties agree to make a good faith effort at mediating any Dispute prior to filing a claim for arbitration. Each party shall pay one-half (1/2) of the fees and costs of the mediation.

Should mediation as provided above not be successful, any Disputes between County and Administrator may then be submitted to binding arbitration, to be held in Cochise County, Arizona. Arbitration shall be handled in accordance with the Employment Arbitration Rules of the American Arbitration Association (AAA). The County Board of Supervisors and the Administrator shall request a list of five possible AAA members and within five working days of their receipt of such list select an arbitrator. The County Board of Supervisors and the Administrator will each strike one arbitrator's name from the list of five and both parties will then repeat the procedure. A coin toss shall determine which party strikes the first name. Each party shall bear the expenses of witnesses, attorneys and other costs of preparing and presenting its own case as well as the incidental expenses incurred as a result of the hearing and all fees and expenses of the arbitrator shall be divided equally between the parties provided however that the prevailing party may be reimbursed all such costs and fees in the sole judgment of the arbitrator.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year

first written above.

COCHISE COUNTY:

By: _____
Thomas E. Borer, Chair
Cochise County Board of Supervisors

Date

Attest:

Kim Lemons, Clerk of the Board

Approved as to form:

Britt Hanson

Britt Hanson
Of Counsel, County Attorney

10 06 20

Date

COUNTY ADMINISTRATOR

By: _____
Richard G. Karwaczka

Date