

EMPLOYMENT AGREEMENT

This Employment Agreement (“Agreement”) is made and entered into this second day of July 2019, by and between the City of Flagstaff, an Arizona municipal corporation in the City of Flagstaff, County of Coconino, State of Arizona (hereinafter called the “City” or the “Employer”) and Greg Clifton (hereinafter called “Employee”).

RECITALS:

WHEREAS, in order to secure the services of the Employee, the City desires to enter into an agreement embodying the terms of such employment (the “Agreement”); and

WHEREAS, the Employee desires to accept such employment and enter into such Agreement.

AGREEMENT:

NOW, THEREFORE, in consideration of the premises, agreements and mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and the Employee hereby agree as follows:

1. Agreement to Employ. Upon the terms and subject to the conditions of this Agreement, the City hereby employs the Employee, and the Employee hereby accepts employment by the City.

2. Term of Employment; Position and Responsibilities.

(a) Term of Employment. The City shall employ the Employee for an indefinite period, commencing on August 26, 2019, and continuing until such employment is terminated by either the City or the Employee as set forth in this Agreement. The period during which the Employee is employed pursuant to this Agreement shall be referred to as the “Employment Period.”

(b) Position and Responsibilities. During the Employment Period, the Employee will serve as City Manager of the City of Flagstaff. Employee shall perform the functions and duties set forth in Article III, Section 3, of the Charter of the City of Flagstaff, and Chapter 1-08 of the Flagstaff City Code, and shall perform consistent with federal law, state law and the City Code of Flagstaff. Employee shall perform other legally permissible and proper duties and functions as the City Council shall from time to time assign. The Employee will devote substantially all of his skill, knowledge and working time to the conscientious performance of such duties except for reasonable vacation time, absence for sickness and authorized leaves of absence. To the extent that it does not significantly interfere with the performance of the Employee’s duties hereunder, it shall not be a violation of this Agreement for the Employee to (i) serve on civic or charitable boards or committees and (ii) deliver lectures or fulfill speaking engagements at educational institutions. Employee shall not spend more than ten (10) hours per week in teaching, counseling or other non-Employer connected business without the prior approval of City Council.

The Employee represents that he is entering into this Agreement voluntarily and that, to the best of his knowledge, his employment hereunder and compliance by him with the terms and conditions of this Agreement will not conflict with or result in the breach of any agreement to which he is a party or by which he may be bound.

3. Base Salary. As compensation for the services to be performed during the Employment Period by the Employee hereunder, the City will pay the Employee an annual base salary of not less than Two Hundred Five Thousand and 00/100 dollars (\$205,000). The City may review Employee's base salary at any time, and may, in its discretion, change such base salary as City deems appropriate; provided, however, that Employee's base salary under this agreement shall not be less than Two Hundred Five Thousand and 00/100 dollars (\$205,000). The Employee will also receive increases in pay as provided to other management employees, such that any increases based upon a percentage of pay and applied equally to all employees (e.g. cost of living increases) shall occur automatically without the need for further action by the City Council, and any merit-based increases shall be determined by the City Council at the time such increases are established for other employees.

4. Employee Benefits. During the Employment Period, Employee and the Employee's dependents are eligible and may participate in Employee benefit programs in accordance with the programs made available to employees by the City. Such benefits may include (without limitation) medical, dental, vision, employee assistance programs, accidental death and dismemberment, individual and group life insurance, and other such benefits (sometimes referred to hereinafter as "welfare benefits") as determined by the City Council. The City may amend its welfare benefits program at any time without limitation in accordance with applicable State and Federal law. Employee shall also be entitled to participate in the Arizona State Retirement System.

5. Perquisites and Expenses.

(a) General. During the Employment Period, the Employee shall be entitled to participate in any special benefit or perquisite program generally available from time to time to employees of the City on the terms and conditions then prevailing under such programs.

(b) Automobile Expense. During the Employment Period, Employee shall receive an automobile allowance in the amount of Three Hundred Fifty and no/100 dollars (\$350.00) per month. Employee shall have the right to use a rental vehicle or his own vehicle in accordance with the City of Flagstaff Travel Policy. This allowance shall be split evenly between the first two pay periods each month (One Hundred Seventy-Five and 00/100 dollars (\$175.00) per pay period).

(c) Business Travel, Lodging, etc. The City, subject to budget constraints, shall reimburse the Employee for reasonable travel, lodging and meal expenses incurred in condition with his performance of services hereunder or professional development, upon submission of evidence, satisfactory to the Employer, of the incurrence and purpose of each such expense.

(d) Professional Development. The City agrees, subject to budgeting constraints, to budget for and to pay the Employee's professional dues and subscriptions necessary for continuation and full participation in national, regional, state and local professional associations and organizations, and chapters thereof, of which Employee is currently a member or expected to be a member because of the position as City Manager, and for other suitable and desirable expenses for Employee's continued professional participation, growth, and advancement, and for the good of the City, as the City Council deems appropriate. These associations and organizations include, but are not limited to the annual conferences of the International and Arizona City/County Management Associations, the Arizona League of Cities and Towns and such other national, regional, state and local government groups and committees thereof for which Employee serves as a member. These benefits shall not be included as a portion of the severance pay under Section 6(a) below.

(e) Vacation. Employee shall accrue vacation leave pursuant to Section 1-50-020 of the Employee Handbook of Regulations (the "Handbook"), which as of the date of this Agreement is sixteen (16) days per year of vacation, reflecting one to four (1-4) years of public service for an exempt employee. The Employee shall be provided five (5) days of vacation upon hire for immediate use.

(f) Sick Leave. Employee shall accrue paid sick time pursuant to Section 1-50-029 of the Handbook, which as of the date of this Agreement is twelve (12) days per year.

(g) Cellular Phone Expense. Employee shall receive a cellular phone allowance in the amount of Fifty and 00/100 dollars (\$50.00) per month. This allowance shall be included in the first pay period each month.

(h) Housing Assistance. Employee shall receive transitional housing assistance of One Thousand and 00/100 dollars (\$1,000) per month until February 29, 2020.

(i) Relocation; Expenses. Employee shall receive relocation expenses reimbursement relating to the transportation of household goods from Employee's current residence to a new residence within the corporate limits of the City. The reimbursement will be made based on the lowest of three (3) bids up to a maximum of \$5,000. The three (3) bids and receipts for relocation expenses must be submitted prior to receiving reimbursement. Pursuant to Article III, Section 3, of the Charter of the City of Flagstaff, and Chapter 1-08 of the Flagstaff City Code, Employee shall reside within the corporate limits of the City at all times during the Employment Period.

6. Termination of Employment.

(a) Termination for Cause. The City shall be entitled at any time to terminate Employee's employment with City for Cause. For purposes of this Agreement, the City shall have "Cause" to terminate the Employee's employment as authorized by Article III of the City Charter. Without limiting the foregoing, "Cause" shall mean that the City Council, at a duly posted public meeting, has determined that Employee has (i) committed an act of gross insubordination by refusing to take a legal, valid action that is clearly within the scope of the City Manager's

employment when specifically directed to do so by a majority of the City Council at a duly posted public meeting, (ii) been incarcerated and charged with a felony as defined in Arizona Revised Statutes (the City Council may choose to suspend Employee with pay during the pendency of any such prosecution), (iii) either in a personal or professional capacity, severely damaged the reputation of the City or the City Council or otherwise substantially impaired the City's ability to maintain or attract businesses, (iv) materially failed to perform a significant portion of the City Manager duties as set forth in this Agreement or (v) caused or allowed any practice, activity, decision or organizational circumstance which is either illegal, immoral, imprudent or in violation of the ICMA Code of Ethics. Upon the Employee's Date of Termination (defined in Subsection 6(f) below) for Cause, the Employment Period will immediately terminate and all obligations of the City and the Employee under this Agreement will immediately cease. Upon Termination for Cause, the City shall pay to Employee the following amounts:

(i) Any accrued, unpaid portion of Base Salary through the Date of Termination shall be paid within seven (7) days after the Employee's Date of Termination or the next payday, whichever is sooner; and

(ii) Any leave or benefits accrued at the Date of Termination pursuant to the applicable policies in the Employee Handbook of Regulations in effect at the time of termination.

(b) Termination Due to Death or Disability. The City may terminate this Agreement immediately upon Employee's death or disability. "Disability," for purposes of this Agreement, means a condition that results in benefits to the Employee under any long-term disability arrangement of the City or an Affiliate, or the failure of the Employee to render and perform the services required of him under this Agreement, for a total of one hundred and eighty (180) days or more during any consecutive twelve (12) month period, because of any physical or mental incapacity. Upon the Employee's Date of Termination due to his death or disability, the Employment Period will immediately terminate and all obligations of the City and the Employee under this Agreement will immediately cease. Upon Termination due to Death or Disability, the City shall pay the Employee the following:

(i) Any accrued, unpaid portion of Base Salary through the Date of Termination. If termination is due to death, the amount shall be paid on the next applicable pay period after the Employee's Date of Termination. If termination is due to disability, the amount shall be paid within seven (7) days after the Employee's Date of Termination or the next payday, whichever is sooner; and

(ii) If termination is due to disability, an amount equal to six (6) months of Base Salary shall be paid within seven (7) days after the Employee's Date of Termination or the next payday, whichever is sooner; and

(iii) Any leave or benefits accrued at the Date of Termination pursuant to the applicable policies in the Employee Handbook of Regulations in effect at the time of termination.

(c) Termination by the City Without Cause. The City may terminate the Agreement without cause by providing Employee with forty-five (45) days written notice of its intent to terminate the Agreement. In the event Employee resigns following a request, whether formal or informal, by at least five (5) members of the City Council that he resign, Employee may at his option deem himself to be “Terminated without Cause” for purposes of this Agreement. Upon termination of Employee’s employment without Cause, the Employment Period will immediately terminate and all obligations of the City and the Employee under this Agreement will immediately cease. The City shall pay the Employee, and the Employee shall be entitled to receive, contingent upon Employee providing the City with a release agreement (in a form approved by the City Attorney) relating to his employment, the following:

(i) Any accrued, unpaid portion of Base Salary through the Date of Termination shall be paid within seven (7) days after the Employee’s Date of Termination or the next payday, whichever is sooner; and

(ii) An amount equal to six (6) months of Base Salary shall be paid within seven (7) days after the Employee’s Date of Termination or the next payday, whichever is sooner; and

(iii) Any leave or benefits accrued at the Date of Termination pursuant to the applicable policies in the Employee Handbook of Regulations in effect at the time of termination; and

(iv) Insurance coverage for a period of six (6) months following the Employee’s Date of Termination.

(d) Voluntary Termination by the Employee. Employee may terminate this Agreement by providing forty-five (45) days written notice of his intent to terminate pursuant to this section. Upon voluntary termination by the Employee, the Employment Period will immediately terminate, and all obligations of the City under this Agreement will immediately cease. The City shall pay the Employee, upon the Employee’s voluntary termination, the following:

(i) Any accrued, unpaid portion of Base Salary through the Date of Termination shall be paid on the next applicable payday after the Employee’s Date of Termination; and

(ii) Any leave or benefits accrued at the Date of Termination pursuant to the applicable policies in the Employee Handbook of Regulations in effect at the time of termination.

(e) Notice of Termination. Any termination of the Employee’s employment (other than by reason of death) shall be communicated by written Notice of Termination from one party hereto to the other party hereto. For purposes of this Agreement, a “Notice of Termination” shall mean a notice which shall indicate the specific termination provision of this Agreement relied upon and shall set forth in reasonable detail the facts and circumstances claimed to provide a basis for termination of the Employee’s employment under the provision so indicated.

(f) “Date of Termination” shall mean (i) if the Employee’s employment is terminated by his death, the date of his death, (ii) if the Employee’s employment is terminated by the Employer for Cause, the date on which Cause is determined, (iii) if the Employee’s employment is terminated by the Employer Without Cause or voluntarily by the Employee, forty-five (45) days after the date on which Notice of Termination is given, and (iv) if the Employee’s employment is terminated by his disability, the date of the Notice of Termination.

(g) Suspension. If the City Council has made a determination in a public meeting that a “Cause” termination is appropriate as set forth in Section 6(a) above, the City Council may, in its sole discretion, as an alternative to termination, suspend Employee without pay for a period of up to thirty (30) days.

7. Performance Evaluation. The City Council shall review and evaluate Employee’s performance at least twice annually as set forth below. The City shall provide adequate opportunity for Employee to discuss the evaluation with the City Council.

(a) Informal Evaluation. Employee shall provide the City Council with an informal verbal or written performance status report no later than February 26th of each year, reporting progress on City Council-assigned goals.

(b) Formal Evaluation. The City Council shall conclude Employee’s formal review and evaluation no later than August 26th of each year. Employee’s review and evaluation shall be in accordance with specific criteria developed jointly by the City Council and Employee. The City Council and Employee shall define goals and performance objectives annually, which they determine necessary for the proper operation of the City of Flagstaff and in attainment of the City Council’s written policy objectives.

8. Entire Agreement. Except as otherwise expressly provided herein, this Agreement constitutes the entire agreement among the parties hereto with respect to the subject matter hereof, and all promises, representations, understandings, arrangements and prior agreements relating to such subject matter (including those made to or with the Employee by any other person or entity) are merged herein and superseded hereby.

9. Indemnification and Bonding. The City shall defend, hold harmless and indemnify Employee 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 lawful performance of Employee’s duties as City Manager. The City shall bear the full cost of any fidelity or other bonds required of Employee under any law or ordinance.

10. Miscellaneous.

(a) Governing Law. This Agreement is governed by and is to be construed, administered and enforced in accordance with the laws of the State of Arizona, without regard to Arizona conflicts of law principles, except insofar as federal laws and regulations may be applicable. If under the governing law, any portion of this Agreement is at any time deemed to be in conflict with any applicable statute, rule, regulation, ordinance or other principle of law, such

portion shall be deemed to be modified or altered to the extent necessary to conform thereto or, if that is not possible, to be omitted from this Agreement. The invalidity of any such portion shall not affect the force, effect and validity of the remaining portion hereof.

(b) Withholding. All payments to be made to the Employee under this Agreement will be subject to required withholding of taxes and other required deductions.

(c) Amendments. No provisions of this Agreement may be modified, waived or discharged unless such modification, waiver or discharge is approved in writing by the City and the Employee. No waiver by any party hereto at any time of any breach by any other party hereto of, or compliance with, any condition or provision of this Agreement to be performed by such other party shall be deemed a waiver of similar or dissimilar provisions or conditions at the same or at any prior or subsequent time. No waiver of any provision of this Agreement shall be implied from any course of dealing between or among the parties hereto or from any failure by any party hereto to assert its rights hereunder on any occasion or series of occasions.

(d) Severability. In the event that any one or more of the provisions of this Agreement shall be or become invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not be affected thereby.

(e) Notices. Any notice or other communication required or permitted to be delivered under this Agreement shall be (i) in writing, (ii) delivered personally, by courier service or by certified or registered mail, first-class postage prepaid and return receipt requested, (iii) deemed to have been received on the date of delivery or on the third business day after the mailing thereof, and (iv) addressed as follows (or to such other address as the party entitled to notice shall hereafter designate:

(A) if to the City, at:
Human Resources Director
City of Flagstaff
211 West Aspen Avenue
Flagstaff, Arizona 86001

(B) if to the Employee, at
City Manager's Office
City of Flagstaff
211 West Aspen Avenue
Flagstaff, Arizona 86001

(f) Reimbursement of Expenses in Enforcing Rights. If any action at law or in equity, or any arbitration proceeding is brought to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees, costs and necessary disbursements in addition to other relief so provided.

(g) No General Waivers. The failure of any party at any time to require performance by any other party of any provision hereof or to resort to any remedy provided herein

or at law or in equity shall in no way affect the right of such party to require such performance or to resort to such remedy at any time thereafter, nor shall the waiver by any party or a breach of any of the provisions hereof be deemed to be a waiver of any subsequent breach of such provisions. No such waiver shall be effective unless in writing and signed by the party against whom such waiver is sought to be enforced.

(h) Authority. The City represents and warrants that this Agreement has been authorized by all necessary action of the City and is a valid and binding agreement of the City enforceable against it in accordance with its terms.

(i) Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

(j) Headings. The section and other headings contained in this Agreement are for the convenience of the parties only and are not intended to be a part hereof or to affect the meaning or interpretation hereof.

(k) Conflict of Interest. Employee covenants that he presently has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of services required to be performed under this Agreement. The parties agree that this Agreement may be cancelled for conflict of interest in accordance with Arizona Revised Statutes § 38-511.

IN WITNESS WHEREOF, the City has duly executed this Agreement by its authorized representatives and the Employee has hereunto set his hand, in each case effective as of the date first above written.

GREG CLIFTON

CITY OF FLAGSTAFF



By: _____

Coral Evans, Mayor

ATTEST:

APPROVED AS TO FORM:

By: _____

City Clerk

By: _____

Andrew J. McGuire, Outside Counsel