

**CITY OF FLAGSTAFF
STAFF SUMMARY REPORT**



To: The Honorable Mayor and Council
From: Shannon Anderson
Human Resources Director, ext. 7226
Date: December 11, 2008
Meeting Date: December 23, 2008

TITLE: Consideration of appointment of City Manager.

RECOMMENDED ACTION:

Appoint Kevin Burke as the City Manager for the City of Flagstaff and extend the current agreement for services for an additional two years.

ACTION SUMMARY:

Appoint Kevin Burke as the City Manager for the City of Flagstaff and extend the current agreement for services for an additional two years.

DISCUSSION:

Background/History:

The City Manager was hired on January 1, 2008 and the original agreement for services concludes on January 1, 2009.

Key Considerations:

This provides for clarification and understanding between the Council and the City Attorney regarding mutual expectations and terms of employment.

Community Benefits and Considerations:

The community benefits by having a City Manager to provide leadership to the organization and ensure the Council's objectives are met.

Community Involvement:

Not applicable.

Financial Implications:

The salary and benefits for this position are currently budgeted.

Options and Alternatives:

The City Council may consider other terms to be included and execute an updated agreement.

Attachments/Exhibits:

Agreement of Services

Department Head (*Acknowledgment that all reviews have been completed and required approvals initialed below.*)

INITIALS	RESPONSIBILITY	DATE	INITIALS	RESPONSIBILITY	DATE
_____	BIDS/PURCHASES	_____	_____	FINANCE/BUDGET	_____
_____	GRANTS	_____	_____	CONTRACTS	_____
_____	LEGAL	_____	_____	IGAS	_____

DATE OF COUNCIL APPROVAL: _____

AGREEMENT FOR SERVICES

This Agreement for Services ("Agreement") is made and entered into in the City of Flagstaff, Coconino County, Arizona, by and between the City of Flagstaff (the "City"), an Arizona municipal corporation, and Kevin Burke ("Burke") this ____ day of December, 2008.

RECITALS

A. The City and Burke entered into an Agreement for Services dated November 26, 2007 ("Original Agreement"), under which Burke agreed to serve as the City Manager for the City of Flagstaff. Burke's services under the Original Agreement commenced on January 1, 2008, for a one year period.

B. The Council of the City of Flagstaff ("City Council") and Burke both desire to continue Burke's services in the capacity of City Manager for an additional two year period, under the terms and conditions set forth below.

NOW, THEREFORE, for and in consideration of the mutual covenants contained in this Agreement, the City and Burke agree as follows:

1. EMPLOYMENT AND SERVICES

The City agrees to continue employing Burke as City Manager of the City of Flagstaff, and Burke agrees to serve as the City Manager in accordance with the terms and conditions set forth below. Burke shall perform the duties set forth in Article III, Section 3 of the Charter of the City of Flagstaff ("City Charter"), a copy of which is designated Exhibit A, attached to and incorporated herein, and such other duties as the City Council and Burke may, from time to time, agree.

2. TERM

The term of Burke's employment as City Manager under this Agreement shall be for two years commencing on January 1, 2009, and concluding on January 1, 2011, subject to continuation or termination as set forth below. Except as provided in **Section 16** hereof, Burke agrees not to accept other employment during his employment with the City.

Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the City to terminate Burke's services any time, subject to the provisions set forth in **Sections 12** and **13** of this Agreement and Article III of the City Charter. Likewise, nothing in this Agreement shall prevent, limit or otherwise interfere with Burke's right to resign at any time from his position with the City, subject to the provisions set forth in **Section 12** of this Agreement and Article III of the Charter.

In the event that neither the City nor Burke provides written notice to the other at least six (6) weeks prior to the termination date as hereinabove provided, this Agreement shall be extended on the same terms and conditions as herein provided for additional periods of two years unless either party hereto gives at least six (6) weeks written notice prior to the termination date of that

current two year term to the other that the noticing party does not wish to extend this Agreement for any additional two year terms.

3. SALARY

The City shall pay Burke for his services under this Agreement an annual base salary of one hundred seventy thousand and no/100 dollars (\$170,000.00), payable in installments at the same time as other City employees are paid. In addition, the City shall increase Burke's base salary and/or other benefits in such amounts and to such extent as the City Council may determine desirable on the basis of an annual performance review and evaluation of Burke as set forth in **Section 14** below.

4. HOUSING ASSISTANCE

The City shall pay Burke transitional housing assistance of one thousand and no/100 dollars (\$1,000.00) per month until June 30, 2009.

5. AQUAPLEX PASS

The City shall provide an annual family Aquaplex pass to Burke for the entire two year term of this Agreement.

6. AUTOMOBILE ALLOWANCE

Burke shall receive an automobile allowance in the amount of three hundred fifty and no/100 dollars (\$350.00) per month. In addition, Burke shall have the right to use a rental vehicle or his own vehicle in accordance with the City of Flagstaff Travel Policy.

7. VACATION AND SICK LEAVE

Burke shall accrue vacation at the rate reflecting ten to fourteen (10 – 14) years of public service, which accrual rate is twenty-one (21) days per year. Burke shall accrue sick leave at the rate of twelve (12) days per year.

8. HEALTH AND LIFE INSURANCE

The City shall provide family health and dental care insurance coverage to Burke available to and at the same cost as paid by its other management employees.

The City shall enroll Burke in the life insurance program available to its other management employees and shall pay the premium cost.

9. RETIREMENT

9.1 The City shall continue paying the contribution for Burke in the Arizona State Retirement System in the same manner as it does with its other management employees.

9.2 The City shall make an annual lump sum contribution of ten thousand and no/100 dollars (\$10,000.00) per year into the City's deferred compensation plan for the benefit of Burke on or before January 31st.

10. INDEMNIFICATION

The City shall defend, hold harmless and indemnify Burke 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 Burke's duties as City Manager.

11. BONDING

The City shall bear the full cost of any fidelity or other bonds required of Burke under any law or ordinance.

12. SUSPENSION, TERMINATION AND SEVERANCE PAY

12.1 As authorized by Article III of the City Charter, the City may suspend or terminate Burke from the position of City Manager during the term of this Agreement, but only pursuant to the terms of Article III of the City Charter and **Sections 12 and 13** of this Agreement.

12.2 In the event Burke is terminated or this Agreement is not renewed by the City during such time that Burke is willing and able to perform his duties under this Agreement, then in that event the City agrees to pay Burke a lump sum cash payment equal to six (6) months aggregate salary. In addition, the City shall provide employee and family health insurance benefits to Burke for an additional six (6) months beyond termination.

12.3 In the event that Burke resigns following a request, whether formal or informal, by at least five (5) members of the City Council that he resign, then, in that event, Burke may at his option deem himself to be "terminated" at the date of such request to resign, within the meaning and context of this Agreement.

12.4 In the event that Burke voluntarily resigns his position with the City before expiration of the term of employment as provided above, Burke shall give the City at least six (6) weeks prior notice thereof, unless the parties otherwise agree; and the City shall not then be obligated to provide severance pay and extended health benefits to Burke.

13. DISABILITY

If Burke is permanently disabled or is otherwise unable to perform his duties because of sickness, accident, injury, mental incapacity or health for a period of six (6) successive months beyond any accrued sick leave, the City shall have the option to terminate this Agreement, subject to the severance pay requirements of **Section 12**.

14. PERFORMANCE EVALUATION

14.1 The City Council shall review and evaluate Burke's performance at least annually. The City Council shall provide adequate opportunity for Burke to discuss his evaluation with the City Council. The City Council shall conclude Burke's review and evaluation no later than December 31st of each year. Burke's review and evaluation shall be in accordance with specific criteria developed jointly by the City Council and Burke.

14.2 The City Council and Burke 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.

15. HOURS OF WORK

Burke shall devote full time to his duties as City Manager, except as otherwise specified in Section 16 below.

16. OUTSIDE ACTIVITIES

Burke shall spend no more than ten (10) hours per week in teaching, counseling or other non-City connected business without the prior approval of the City Council.

17. OTHER TERMS AND CONDITIONS OF EMPLOYMENT

The City Council, in consultation with Burke, shall fix any other terms and conditions of employment as it may determine to be desirable, from time to time, relating to Burke's performance, provided that such terms and conditions are not inconsistent with or in conflict with the provisions of this Agreement, the Flagstaff City Code or any other law.

All provisions of the City Charter, City Code, and City regulations and policies relating to vacation and sick leave, retirement and pension system contributions, holidays, and other fringe benefits and working conditions as they now exist or hereafter may be amended shall also apply to Burke as they would to other employees of the City, in addition to the benefits enumerated specifically as herein provided.

18. NOTICE PROVISIONS

Any notice concerning this Agreement must be in writing delivered personally or sent by certified or registered mail as follows:

To the City:

Human Resources Director
City of Flagstaff
211 W. Aspen
Flagstaff, Arizona 86001

To Burke:

Kevin Burke
City of Flagstaff
211 W. Aspen Avenue
Flagstaff, Arizona 86001

19. GENERAL PROVISIONS

19.1 Headings. The section headings contained herein are for convenience in reference and are not intended to define or limit the scope of any provision of this Agreement.

19.2 Jurisdiction and Venue. This Agreement shall be administered and interpreted under the laws of the State of Arizona, and venue for any legal action hereunder shall be the Coconino County Superior Court in Flagstaff, Arizona.

19.3 Attorney's Fees. If suit or action is initiated in connection with any controversy arising out of this Agreement, the prevailing party shall be entitled to recover in addition to costs such sum as the court may adjudge reasonable as attorney fees, or in event of appeal as allowed by the appellate court.

19.4 Severability. If any part of this Agreement is determined by a court to be in conflict with any statute or constitution or to be unlawful for any reason, the parties intend that the remaining provisions of this Agreement shall remain in full force and effect unless the stricken provision leaves the remaining Agreement unenforceable.

19.5 Conflict of Interest. Burke 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.

19.6 Entire Agreement. This Agreement constitutes the entire agreement between the parties and shall not be changed or added to except by written amendment. All prior and contemporaneous agreements, representations and understandings of the parties, oral or written, other than specifically incorporated herein by reference, are superseded by this Agreement.

19.7 No waiver. No waiver of, acquiescence in, or consent to any breach of any term, covenant, or condition hereof shall be construed as, or constitute, a waiver of, acquiescence in, or consent to any other, further, or succeeding breach of the same or any other term, covenant or condition.

IN WITNESS WHEREOF, the City of Flagstaff has caused this Agreement to be signed and executed in its behalf by the undersigned Mayor of the City of Flagstaff, and Kevin Burke has signed and executed this Agreement, both in duplicate, the day and year first above written.

City of Flagstaff

Kevin Burke

Sara Presler, Mayor

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Attest:

City Clerk

Approved as to form:

City Attorney



EXHIBIT A

COUNCIL-MANAGER CHARTER

FOR THE

CITY OF FLAGSTAFF, ARIZONA

The original Charter for the City of Flagstaff was prepared by the Board of Freeholders, as provided by law, and submitted to the qualified electors on September 12, 1958. Approval was granted for the Charter by Governor Ernest W. McFarland on October 3, 1958.

Amendments were proposed by the City Council and submitted to the qualified electors of the City on June 20, 1972. The amendments were approved August 14, 1972 by Governor Jack Williams.

Amendments were again proposed by the City Council and submitted to the qualified electors of the City on March 2, 1982. The amendments were approved June 7, 1982 by Governor Bruce Babbitt.

Amendments were again proposed by the City Council and submitted to the qualified electors of the City on March 6, 1984. The amendments were approved April 10, 1984 by Governor Bruce Babbitt.

Amendments were again proposed by the City Council and submitted to the qualified electors of the City on March 1, 1988. The amendments were approved May 4, 1988 by Governor Rose Mofford.

Amendments were again proposed by the City Council and submitted to the qualified electors of the City on May 19, 1998. The amendments were approved June 29, 1998 by Governor Jane Dee Hull.

~~or in any manner take part in the appointment or removal of officers and employees in the administrative service of the City, except as otherwise provided by this Charter. Except for purposes of inquiry, the Council and its members shall deal with the administrative service solely through the City Manager, and neither the Council nor any member thereof shall give orders to any subordinates of the City Manager, either publicly or privately. Any Councilmember violating the provisions of this Section, or voting for a resolution or ordinance in violation of this Section, shall be subject to expulsion by the unanimous vote of the remaining Councilmembers. Nothing in this Section shall be construed, however, as prohibiting the Council while in open or executive sessions from fully and freely discussing with or suggesting to the City Manager anything pertaining to City affairs or the interests of the City.~~

Section 19—CONDUCT OF COUNCIL AS TO POWERS AUTHORIZED BY CHARTER WHEN NO PROCEDURE HAS BEEN ESTABLISHED BY STATE LAW

~~Whenever, by any provision of this Charter, it is prescribed that any power, duty, or procedure shall or may be exercised, performed, or adopted in the manner established by any law of this State, and there be no procedure established by law therefor, then the Council shall by ordinance prescribe the procedure.~~

**ARTICLE III
THE CITY MANAGER**

Section 1—APPOINTMENT OF THE CITY MANAGER

The Council shall appoint an officer of the City who shall have the title of City Manager, and shall have the powers and perform the duties in this Charter provided. No Councilmember shall receive such appointment during the term for which elected, nor within one year after the expiration of the term.

Section 2—THE CITY MANAGER; QUALIFICATIONS

The City Manager shall be chosen by the Council solely on the basis of executive and administrative qualifications, with special reference to actual experience in, or knowledge of, accepted practice in respect to the duties of the City Manager's office, as hereinafter set forth. At the time of appointment, the City Manager need not be a resident of the City or State, but during the tenure of office, shall reside within the city.

Section 3—POWERS AND DUTIES

The City Manager shall:

- (a) Devote entire time to the discharge of official duties, prepare the agenda for, and attend, all meetings of the Council, unless excused therefrom by the Council or the Mayor;

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- (b) See that all ordinances are enforced, and that the provisions of all franchises, leases, contracts, permits, and privileges granted by the City are observed;
- (c) Appoint and, when necessary for the good of the service, lay off, suspend, transfer, demote, or remove all officers and employees of the City, except as otherwise provided by this Charter, and except as the Manager may authorize the head of a department or office to appoint and remove subordinates in such department or office, subject to such merit system regulations as the Council may adopt;
- (d) Prepare the annual budget estimates and submit them to the Council, and be responsible for the administration of the budget after adoption;
- (e) Keep the Council advised at all times of the affairs and needs of the City, and make reports annually, or more frequently, if requested by the Council, of all affairs of the City;
- (f) Act as purchasing agent for all departments of the City, giving due consideration to the recommendations and counsel of department heads;
- (g) Have such other powers, duties, and functions as this Charter may prescribe, and such powers, duties, and functions consistent with this Charter that the Council may prescribe.

Section 4—RIGHT OF THE CITY MANAGER TO A SEAT IN THE COUNCIL

The City Manager shall be entitled to a seat in the Council, except in matters involving the conduct or the performance of the City Manager's duties, but shall have no vote therein. The City Manager shall have the right to take part in the discussion of all other matters coming before the Council.

Section 5—THE ACTING CITY MANAGER

- (a) The City Manager shall designate, with the approval of the Council, a qualified administrative officer of the City to perform duties during the City Manager's temporary absence or disability.
- (b) If the City Manager is suspended by the Council, or if there is a vacancy in the office of the City Manager, the Council shall appoint an Acting City Manager to serve until the suspension ceases, or until another City Manager is appointed and qualified, as the case may be. No Acting City Manager shall hold the position as such for more than eight (8) months, and no appointment of an Acting City Manager shall be renewed. When there is a vacancy in the office, the Council shall fill the position within eight (8) months of the creation of the vacancy.

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Section 6—REMOVAL OF THE CITY MANAGER

The Council shall appoint the City Manager for an indefinite term and may remove the Manager by an affirmative vote of five (5) members of the Council. The City Manager may, within ten (10) days from the date of said vote, request a public hearing to be held not later than thirty (30) days thereafter. Severance pay will be at the discretion of the Council. The action of the Council in suspending or removing the Manager shall be final and conclusive on everyone, it being the intention of this Charter to vest all authority and fix all responsibility for such suspension and removal in the Council.

**ARTICLE IV
ADMINISTRATIVE DEPARTMENTS, OFFICES, AND EMPLOYEES**

Section 1—ADMINISTRATIVE DEPARTMENTS AND OFFICES

- (a) The Council, by ordinance not inconsistent with this Charter, shall provide for the organization, conduct, and operation of the several offices and departments of the City as established by this Charter, for the creation of additional departments, divisions, offices, and agencies, and for their consolidation, alteration, or abolition.
- (b) The Council, by ordinance not inconsistent with this Charter, may assign additional functions or duties to offices, departments, divisions, or agencies. Where the positions are not incompatible, the Council may combine in one person the powers and duties of two or more offices created or authorized by this Charter.
- (c) The Council shall provide for the number, titles, qualifications, powers, duties, and compensation of all appointive officers of the City.
- (d) City officials, as designated by this Article, and all heads of departments shall be residents of the City during their tenure of office.

Section 2—THE CITY CLERK

The City Manager shall, with approval of the Council, appoint an officer of the City, who shall have the title of City Clerk, and who shall give notice of all Council meetings, keep the journal of the Council's proceedings, authenticate by signature, and record in full in books kept for the purpose, all ordinances and resolutions, and perform such other duties as shall be required by this Charter, or by ordinance. The City Clerk will serve at the pleasure of the City Manager.

Section 3—THE CITY TREASURER

The City Manager shall, with approval of the Council, appoint an officer of the City, who shall have the title of City Treasurer, and who shall receive and have custody of all the money of the City, and shall keep and save said money, and dispense the same only as

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