

LAKE HAVASU CITY EMPLOYMENT CONTRACT CITY ATTORNEY

This Employment Contract ("Contract") is entered into June 13, 2017, by and between Kelly C. Garry ("City Attorney"), and Lake Havasu City, an Arizona municipal corporation ("City"), collectively referred to as the "Parties." The Parties agree as follows:

1. Employment: City agrees to employ City Attorney and City Attorney accepts employment upon the terms and conditions in this Contract.
2. Term of Employment: The term of this Contract is for two (2) years. City Attorney's performance may be reviewed, at minimum, every twelve (12) months during the course of this Contract. At least six months prior to the expiration of the term, City Council and City Attorney may begin negotiations for a new employment contract for the City Attorney position. If it is the intent of the City Council not to enter into a new employment contract with City Attorney, City Council agrees to provide notice of intent not to enter into a new employment contract with City Attorney at least three months prior to the expiration of the term.
3. Duties and Responsibilities: City Attorney agrees to perform the duties and responsibilities of the City Attorney position as prescribed by the Lake Havasu City Municipal Code, the operating policies and procedures of Lake Havasu City, and the laws of the State of Arizona. City attorney agrees to devote the time necessary for the effective and efficient administration of the City Attorney's Office. City Attorney shall have all powers and authority granted to the City Attorney under the Lake Havasu City Municipal Code, and applicable federal and state laws and regulations.
4. Compensation: Beginning July 1, 2017, and during the term of this Contract, City Attorney will be compensated as follows:
 - 4.1. Annual salary in the amount of \$161,150 paid in accordance with City's bi-weekly payroll schedule. See paragraph "4.3" below for annual salary adjustment after the initial twelve (12) months of Contract approval and subsequent annual salary adjustments during the term of this Contract.
 - 4.2. The City Attorney position is a FLSA exempt position, and is not eligible for overtime compensation; however, City Attorney is expected to engage in those hours of work that are necessary to fulfill the obligations of the position.
 - 4.3. Upon City Attorney evaluation, if the average overall evaluation rating is acceptable performance, the annual salary of the City Attorney may be adjusted in an amount determined by the City Council.

4.4. City Attorney requires the use of an automobile during employment with City. No vehicle allowance is provided for that purpose. If City Attorney's duties require driving more than ten (10) miles from the City Hall address, City Attorney is entitled to reimbursement of mileage at the IRS rate in effect at that time, or City Attorney may use an available City vehicle for travel. Any insurance, maintenance of repairs, gas, or other cost of operation of City Attorney's personal vehicle is the responsibility of City Attorney. Each year during the term of this Contract, City Attorney may be asked to provide the City with proof of automobile liability insurance including coverage for property damage, with minimum limits of \$100,000/\$300,000/\$25,000.

4.5. City Attorney shall accrue paid time off and other leave benefits at her current rate as outlined in the City's operating policies and procedures. Leave is to be scheduled as City Attorney deems most efficient for the proper operation of the City Attorney's Office. In addition, City Attorney is entitled to the same regular benefits available to other non-public safety department directors of City, unless otherwise specifically provided for in this Contract.

4.6. City agrees to contribute both City's share and City Attorney's match at the rate as provided by the Arizona State Retirement System for participation in the program, which may be modified from time to time. The retirement contributions shall be made in equal installments in accordance with City's bi-weekly payroll schedule. In the event City Attorney resigns, retires, or is terminated for cause by City, contribution installments shall cease on/after the effective date of such resignation or termination for cause.

4.7. City Attorney shall be entitled to group health insurance provided and available to department director level employees of City.

4.8. City agrees to budget and pay for subscriptions and professional dues for the International Municipal Lawyers Association (IMLA), State Bar of Arizona, and other dues and subscriptions which are necessary for the continuation and full participation in national, regional, state, and local associations and organizations which advance City Attorney's professional growth, and which further the various goals and objectives of City.

4.9. Subject to budget restrictions, City agrees to pay for the reasonable travel and subsistence expenses of City Attorney for professional and official travel, meetings, and occasions adequate to continue the professional development of City Attorney. It is anticipated by the Parties that these expenses may include the annual conference of the League of Arizona Cities and Towns, the annual and/or semi-annual conferences of the IMLA, and other national, regional, state, and local government conferences.

4.10. City agrees to budget and pay for travel, subsistence, and registration expenses of City Attorney for continuing legal educational courses, institutes, and seminars that are necessary for professional development and arise out of or are

related to duties performed on behalf of City. These expenses should be approved in advance by the City Council if not approved in this Contract or the annual budget.

4.11. All payments of salary due to City Attorney are subject to federal and state withholding taxes and such other sums as City is required by law to withhold or deduct from City Attorney's salary.

5. Suspension of Duties: The City Council, by a majority vote of all seven (7) members, may suspend City Attorney with full pay and benefits at any time during the term of this Contract. The City Council may suspend City Attorney without pay or benefits, with or without cause, by the affirmative vote of a minimum of five (5) members out of all seven (7) members of the City Council.

6. Termination: It is expressly understood by the Parties to this Contract that the City Attorney holds office and continues employment at the pleasure of City Council. The City Council may terminate this Contract without cause at any time by a majority vote of all seven (7) Councilmembers. Regardless of whether the City Council terminates this Contract with or without cause, City agrees to provide City Attorney with a minimum of fourteen (14) days advance written notice.

6.1 If the City Council terminates this Contract, it shall cause a written notice of such termination to be delivered to City Attorney, in which event:

- A. The City Council may terminate City Attorney without cause. In that event, City agrees to pay City Attorney six (6) months of salary and benefits in effect at the time of such termination; except if within six (6) months after a City Council election then City agrees to pay City Attorney twelve (12) months of salary and benefits in effect at the time of such termination. Said payment shall be payable in a lump sum. City Attorney may also be compensated for accrued paid time off through the date of termination as defined by City's operating policies and procedures in effect at the time of termination.
- B. The City Council may terminate City Attorney for cause. City shall give a written notice to the City Attorney that termination is for cause setting forth the reasons for termination for cause. The term "for cause" as used herein shall include: (1) actions that result in or could lead to the charge of or conviction of a felony, or the charge of or conviction of a misdemeanor involving moral turpitude; (2) abuse of illicit drugs or alcohol that materially affects performance of City Attorney's duties; (3) repeated and protracted unexcused absences from the City Attorney's office and duties; (4) any formal complaint filed by the State Bar of Arizona which results in the issuance of public discipline- "public discipline" as used herein refers to any discipline above the level of an informal reprimand, including a formal reprimand, suspension or disbarment or removal from the judicial office; or (5) any action that

results in exposure of City to substantial damages, claims, or other liability not otherwise covered by the City's insurance.

- C. If City Attorney is terminated for cause, then paragraph "A" above does not apply and City Attorney shall not be entitled to any severance pay and/or benefits.

7. Resignation/Retirement: If City Attorney decides to resign or retire and voluntarily terminates this Contract as a result, she must give the City Council a minimum of forty-five (45) days advance written notice. City Attorney shall cease to be entitled to any further salary or benefits on/after the effective date of resignation.

8. Notices: Written notices shall be effectively given when either served personally, on the day it is delivered and signed for by either party to this Contract; or forwarded by overnight, registered mail on the day the postal receipt is acknowledged by the receiving party.

9. Liability Insurance: City agrees to insure City Attorney through its comprehensive insurance coverage presently in effect, against any tort or professional liability claim, demand, or other legal action, whether groundless or otherwise, arising out of the performance of City Attorney's duties for City, with the exception of actions brought on behalf of City or criminal actions taken against City Attorney. Any attorney's fees, court costs, or other litigation related expenses incurred in connection with the defense of the claim, demand, or lawsuit shall be paid for by City.

10. Bonding: City agrees to bear the full cost of any fidelity or other bonds required of City Attorney under any law or ordinance.

11. Severability Clause: If any provision, or any portion, contained in this Contract is held unconstitutional, invalid, or unenforceable, the remainder of this Contract, or portion thereof, shall be deemed severable, shall not be affected, and shall remain in full force and effect.

12. Final and Entire Agreement of the Parties: This Contract represents the final and entire agreement and understanding between the Parties, and any representations, negotiations, offers, proposals, promises or agreement intended by the Parties to be integrated and merged herein and to be superseded by the Contract. This Contract may only be modified or amended through a written agreement signed by City Attorney and the City Council and approved at a public meeting by the City Council.

13. Attorney's Fees: If any legal proceeding is brought for the enforcement of this Contract, or because of an alleged breach, default, or misrepresentation in connection with any provision of this Contract, or other dispute concerning this Contract, the successful or prevailing party shall be entitled to recover reasonable attorney's fees and other costs incurred in that proceeding, in addition to any relief to which it may be entitled.

14. Governing Law: This Contract is intended to be governed by and construed in accordance with Arizona law.

15. Jurisdiction and Venue: The Parties agree that any action brought by one party against the other arising out of an alleged breach, default, or misrepresentation in connection with any provision of this Contract, or any other dispute concerning this Contract, shall be brought in Mohave County Superior Court.

16. Conflicting City Code and/or Administrative Regulation: This Contract is not intended to conflict with any city code or administrative regulations currently in force with the City. Should a conflict arise between existing city codes and/or administrative regulations and the provisions and language of this Contract, the Contract provisions will prevail.

17. Signatures:

“City”

“City Attorney”

Lake Havasu City
A Municipal Corporation

By: _____
Mark S. Nexsen, Mayor Date

Kelly C. Garry Date

ATTEST:

By: _____
Kelly Williams, City Clerk Date