

**EMPLOYMENT AGREEMENT  
ROBERT E. SMITH,  
CITY MANAGER, CITY OF BISBEE**

THIS AGREEMENT is made and entered into on this 30<sup>th</sup> day of October, 2017, by and between the City of Bisbee, a municipal corporation of the State of Arizona, hereinafter designated as “the City,” and Robert E. Smith, hereinafter designated as “the Manager.”

WHEREAS, the Mayor and Council are authorized by the Article III of the Bisbee City Charter to appoint a City Manager of the City of Bisbee; and

WHEREAS, the Manager has demonstrated to the satisfaction of the Mayor and Council that he has the administrative and executive abilities and the qualifications to fulfill the responsibilities of this position and is willing and able to accept this appointment as the City Manager of the City of Bisbee,

NOW THEREFORE, the City and the Manager hereby agree, in consideration of the mutual covenants stated below, to the following terms and conditions:

**1. Appointment and Duties.**

The Mayor and Council of the City of Bisbee hereby appoint Robert E. Smith as the City Manager of the City of Bisbee, for a term commencing on October 24, 2017. The Manager shall serve as the administrative head of the government of this City with all of the authority, duties and responsibilities that are specified in the City Charter and in the ordinances, resolutions, and other actions of this City, as these may be amended from time to time. The Manager hereby agrees to accept this appointment and to perform these duties and responsibilities faithfully and to the best of his ability, in a manner that is consistent with the requirements of the City Charter and the laws of this State.

The City Manager cannot be reassigned from the position of City Manager to another position, or suffer reduction of authority, duties and/or responsibilities without the City Manager’s express written consent.

**2. Term.**

The intent is for the Manager to serve for at least a two year term, commencing on October 24, 2017, reflecting the desire of the Mayor and Council for continuity in this critical position, and the desire of the Manager to have sufficient time to implement policies, procedures, personnel, etc. to improve City government; provided, however, that pursuant to the Charter, the

Manager shall serve at the pleasure of the Mayor and Council; and provided further, pursuant to the provisions of the City Charter, the Manager may be removed by a majority vote of the Mayor and Council with or without cause.

### **3. Compensation.**

The City shall pay the Manager for his services an annual salary of One Hundred and Twelve Thousand Dollars (\$112,000.00) per year, to be paid in installments at the same time and same manner as other City employees are paid.

This salary from time to time may be subject to subsequent adjustments, based upon annual performance-based evaluations, in such amounts as the Mayor and Council may determine to be appropriate. The Manager's salary may also be subject to periodic salary increases that may be awarded to other City employees, as may be determined by the Mayor and Council. In no event shall the City Manager's salary be reduced below the starting amount (\$112,000) set forth in this section, except by mutual, written agreement between the City Council and City Manager.

### **4. Health, Retirement and Other Benefits.**

The Manager shall also receive the same health, life, disability, vision and dental insurance benefits that are made available to other unclassified employees of the City, but specifically including both short and long term disability insurance. The Manager shall also be a participant in the Arizona State Retirement System, as a City employee. In addition, the Manager shall be entitled to receive all other fringe benefits that are available to other unclassified City employees, on the same basis as those employees. Provided further that, beginning with the first complete pay period in January, 2018, the Manager shall receive a contribution to a 457 retirement plan of his choosing in the amount of \$1,000 per month, increasing to \$2,000/month beginning with the first full pay period in July, 2018.

### **5. Vacation and Compensated Time Off.**

The Manager shall begin his employment with two weeks paid time off, and thereafter be entitled to paid time off for vacation, holidays and sick leave as is made available to other unclassified, exempt employees of the City with five years experience, i.e., 8 hours/pay period. Upon leaving City service, as with other employees, the Manager shall be entitled to receive 100% pay out of all unused paid time off.

It is recognized that the Manager must devote a certain amount of time outside of normal office hours to business of the City and to that end the Manager will be allowed to take compensatory time off as he shall deem appropriate during said normal business hours, provided that the Manager provides not less than forty hours of service, on average, per week, excluding compensated time off.

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**6. Moving Expenses.**

The Manager shall be entitled to payment for his reasonable moving expenses from 883 Talia Place, Chino Valley, AZ, to the City of Bisbee. The City shall provide this reimbursement upon the presentation of the documentation for these expenses.

**7. Vehicle and Equipment.**

The Manager shall provide his own vehicle for City business, at his own cost, except that if and when he is required to drive on terrain unsuitable for a normal passenger vehicle the City shall provide him with a suitable vehicle.

**8. Other Expenses.**

The Manager shall be provided with, or reimbursed for, other expenses, such as cell phone, laptop, professional dues and training, as funds are available according to the City Manger's budget.

**9. Resignation.**

The Manager shall provide the City with not less than sixty (60) days written notice of his intent to resign from this position.

**10. Termination and Severance Pay.**

Pursuant to the City Charter, if the Manager is removed for "cause," the Manager shall be paid upon his removal the salary that has accrued to him upon the date of removal, together with the value of all accrued, unused paid time off. The term "cause" is defined as malfeasance or misfeasance by the Manager in the performance of his duties or a conviction of a felony or any offense in violation of the Manager's official duties. If the Manager is terminated at the discretion of the Mayor and Council without Cause, the Manager shall be entitled to his accrued salary and accrued, unused paid time off to that date and his salary for the next three months following the adoption of the preliminary resolution for removal, as required by the City Charter.

**11. Outside Employment.**

The primary obligation of the Manager shall be to City and to the successful performance of this Agreement. The Manager shall not assume any additional employment that would be inconsistent with or interfere with the performance of this Agreement. The Manager shall be allowed to assume occasional teaching, writing, speaking, consulting and similar work on his own time, provided that this does not conflict with the performance of this Agreement. The Manager shall obtain specific approval from the Mayor and Council prior to accepting any additional employment responsibility, other than the occasional, part-time tasks listed above.

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**12. Residency.**

The Manager shall be required to establish residency within the City of Bisbee within ninety (90) days of the beginning of the term of this Agreement, as required by the City Charter, unless the Mayor and Council approve any extension or amendment to this requirement.

**13. Indemnification, Bond and Ethical Commitments.**

The City shall defend, hold harmless and indemnify the Manager against any claims, demands, legal actions and judgments that may arise out of any alleged act or omission occurring within the scope of the performance of the Manager's duties under this Agreement. The City shall provide liability insurance at the City's own expense, which may be through the City's overall coverage, for such claims, demands and actions. The City's responsibility to defend, hold harmless and indemnify shall not extend to unlawful actions or to willful or wanton actions that are outside of the scope of the Manager's duties under this Agreement. The City shall provide the surety bond associated with this position through its own fidelity insurance policy for such purposes.

The City Manager will at all times uphold the tenets of the ICMA Code of Ethics, a copy of which is attached hereto and incorporated herein. Specifically, the City Manager shall not endorse candidates, make financial contributions, sign or circulate petitions, or participate in fund raising activities for individuals seeking or holding elected office, nor seek or accept any personal enrichment or profit derived from confidential information or misuse of public time.

Employer shall support the City Manager in keeping these commitments by refraining from any order, direction or request that would require the City Manager to violate the ICMA Code of Ethics. Specifically, neither the governing body nor any individual member thereof shall request the City Manager to endorse any candidate, make any financial contribution, sign or circulate any petition, or participate in any fund-raising activity for individuals seeking or holding elected office, nor to handle any matter of personnel on a basis other than fairness, impartiality and merit.

**14. Performance Evaluations.**

The City and the Manager agree that periodically they shall meet to discuss and evaluate their mutual working relationship, rapport, goals and objectives. The Manager's performance shall be evaluated as often as the Mayor and Council deem to be necessary, but not less than annually. If the City Manager is an ICMA Credentialed Manager, the multi-rater (360 Evaluation) tool will be used at a minimum of once every five years, as part of the evaluation process. Following any such evaluation, the parties may also discuss the terms and conditions of this Agreement and any amendments that they may deem to be appropriate.

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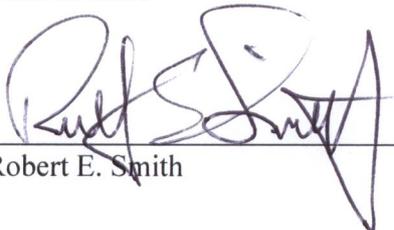
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**15. General Provisions.**

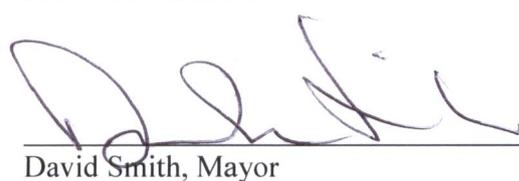
- a. This Agreement constitutes the entire Agreement between the parties and fully incorporates any prior oral or written understandings between them. This Agreement may only be amended by a written instrument signed and approved by both parties in the same manner as this Agreement.
- b. Pursuant to A.R.S. § 38-511, as applicable, the provisions which are incorporated herein by reference, all parties are hereby put on notice that this Agreement is subject to cancellation by the City if any person significantly involved in initiating, negotiating, securing, drafting or creating the Agreement on behalf of the City is, at any time while the Agreement is in effect, an employee or agent of any other party to the Agreement in any capacity or a consultant to any other party of the Agreement with respect to the subject matter of the Agreement.
- c. The provisions of this Agreement are severable. In the event that any term of this Agreement may be held to be in violation of any federal, state or local law, the remaining terms and conditions shall remain in effect.
- d. This Agreement shall be governed by the law of the State of Arizona, and suits pertaining to this Agreement may be brought only in courts in the State of Arizona. Venue for any such action shall be in the Cochise County Superior Court.
- e. No right or interest in this Agreement shall be assigned by the Manager without prior written permission of the City, and no delegation of any duty of the Manager shall be made without prior written permission of the City.

**IN WITNESS WHEREOF**, the parties have executed this Agreement as indicated below:

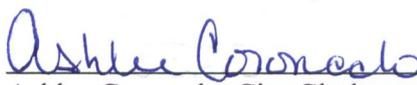
**MANAGER**

  
\_\_\_\_\_  
Robert E. Smith

**CITY OF BISBEE**

  
\_\_\_\_\_  
David Smith, Mayor

**ATTEST:**

  
\_\_\_\_\_  
Ashlee Coronado, City Clerk

**APPROVED AS TO FORM:**

  
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Britt W. Hanson, City Attorney