

EMPLOYMENT AGREEMENT WITH CITY ATTORNEY

This Employment Agreement (“Agreement”) , is made and entered into this _____ day of _____, 2017 by and between the City of Surprise Arizona, a municipal corporation (hereinafter called “City”) and Robert Wingo (hereinafter called “Attorney”), both of whom understand and agree as follows:

1. **Term.** The City does hereby agree to employ Attorney as its City Attorney, effective as of February 2, 2017, and this Agreement will remain in full force and effect until terminated by the City or Attorney as provided for in this Agreement.
2. **Duties.**
 - a. Attorney will perform all duties of the position of City Attorney for the City as set forth in the Surprise Municipal Code as is reasonable and necessary to provide legal advice and guidance to the City and to fulfill such other professional responsibilities as are reasonably required in the role of general counsel for the City.
 - b. City recognizes and agrees that Attorney must devote considerable time beyond the normal office hours to business of the City and, to that end, Attorney will be allowed, at Attorney’s discretion, to take reasonable time off during normal office hours as compensation.
 - c. Attorney may also expend reasonable time and resources for civic and community activities, or for participation in training, conferences, professional organizations, and other similar activities related to the profession of City Attorney.
3. **Salary.** For services rendered by Attorney under this Agreement, the City shall pay Attorney One Hundred Seventy Eight Thousand Five Hundred and 14/100 Dollars (\$178,500.14) per annum, payable in accordance with the normal and usual procedure for payment of employees of the City in bi-weekly installments of Six Thousand Eight Hundred Sixty Five and 39/100 Dollars (\$6,865.39). Salary will be adjusted annually on the same basis as non-represented employees, consistent with City’s compensation policies (e.g. performance pay, market adjustments, cost of living adjustments, etc...) as approved by the City Council as part of the annual budget process. This Agreement will be automatically amended to reflect any such salary adjustments.

4. Benefits. Attorney will receive all benefits provided to full-time non-represented City employees in accordance with the City's ordinances, policies, procedures, and practices, except that Attorney will receive and be compensated for paid time off (PTO) consistent with this Agreement. Any and all benefits, including PTO which Attorney is receiving or has accrued at the time of the effective date of this Agreement will continue and be credited to Attorney.

5. Paid Time Off

- a. Attorney will accrue paid time off (PTO) at a rate of 10.77 hours per pay period, up to a maximum accrual of 560 hours. Upon termination of this Agreement for any reason whatsoever, including with or without Cause by City or Attorney resignation, the above described accrued PTO balance will be paid to Attorney.
- b. Attorney will receive a one-time advancement of 400 hours of PTO which is distinct and in addition to the 560 hours referenced above. This distinct 400 hours of PTO is subject to the following:
 1. The 400 hours will vest with Attorney on December 11, 2018 and thereafter be available for use by Attorney and or pay-out upon termination of this Agreement for any reason whatsoever, including with or without Cause by City or Attorney resignation.
 2. In the event City terminates this Agreement without Cause prior to December 11, 2018, the 400 hours will immediately vest and Attorney will be paid for the 400 hours of PTO in addition to the balance of the 560 hours referenced in 5a. above.
- c. The maximum amount of PTO Attorney may accrue is 960 hours (560+400), unless the 560 hour maximum is increased for all full-time non-represented employees, at which time Attorney's maximum will also increase.
- d. For the purposes of this Agreement the term "Cause" is defined as:
 1. Malfeasance in the performance of the Attorney's duties under this Agreement;
 2. Misconduct involving moral turpitude;
 3. Loss of license to practice law.

6. Professional Dues, Fees and Development.

- a. City will pay Attorney's professional association and licensing dues.
- b. City will also pay the costs of continuing legal education as required by the State Bar of Arizona, including any continuing legal education required to maintain a specialization designation that reflects Attorney's duties and responsibilities for the City. In addition, the City will pay the costs of such other education as is in the best interests of the City and the Attorney as reasonably determined by the City and the Attorney in order to allow Attorney to continue to provide a high-level of legal services and leadership to the City.
- c. City will continue to maintain Attorney's membership in the International Municipal Lawyer's Association (IMLA), and will provide for the fees and costs associated with Attorney's attendance at one or more meetings of IMLA per year.

7. Performance Review.

- a. Evaluation Process. The City Council shall formally evaluate the performance of the Attorney on an annual basis. The City Council and the Attorney shall define such goals and performance objectives as they deem necessary for the proper operation of the City, and in the attainment of the City Council's policy objectives, and shall further establish a relative priority among those various goals and objectives.
- b. Confidentiality. Unless the Attorney expressly requests otherwise in writing, and except as otherwise prohibited by law, the evaluation of the Attorney shall be conducted in executive session of the City Council and shall be considered confidential to the maximum and full extent permitted by law. Nothing herein shall prohibit the City Council or the Attorney from sharing the content of the Attorney's evaluation with their respective legal counsel.

8. Termination of the Agreement. Either party may terminate this Agreement at any time. Upon termination, Attorney will be paid any and all salary, benefits, and PTO accruals due to Attorney up to and including the date of termination.

- a. Attorney Resignation. Attorney will provide written notice of intent to terminate at least thirty (30) days prior to the actual date of termination. City Council may, by the affirmative vote of at least four members, at a regular or special City Council meeting, agree to allow Attorney to terminate the Agreement on less than thirty (30) day written notice or to relieve Attorney of further duties at any time during the thirty (30) day

period provided, however, that full compensation will be paid to Attorney up to and including the date of termination as noticed by Attorney.

- b. Termination by City. City may terminate this Agreement by any of the following:
 1. City Council may, by an affirmative vote of at least four members at any regular or special meeting, terminate this Agreement at any time, and will establish at that meeting a date of termination.
 2. If the City acts to amend any provisions of the Surprise Municipal Code pertaining to the role, reporting, powers, duties, authority, or responsibilities of the Attorney's position that substantially changes the form of government or the duties of the Attorney, the Attorney shall have the right to declare that such amendments constitute a termination without Cause by City.
 3. If the City reduces the base salary, compensation or any other financial benefit of the Attorney, unless it is applied in no greater percentage than the average reduction of all department heads, the Attorney shall have the right to declare that such amendments constitute termination without Cause by City.
 4. If Attorney resigns at the request of the City Council at a duly called meeting, then the Attorney may declare that said request, as of the date of the request, constitutes termination without Cause by City.
- 9. Indemnification.** To the extent permitted by law, City will defend, hold harmless and indemnify Attorney from any and all claims (even if the allegations are without merit) or judgments for damages or injunctive relief arising from, related to, or connected with any tort, professional liability claim or demand or any other claim, whether civil, criminal, administrative, arbitral or investigative, arising out of any alleged act or omission by Attorney occurring in the performance of Attorney's duties or resulting from the exercise of judgment or discretion by Attorney in connection with performance of his duties or responsibilities under this Agreement (collectively a "Claim"). In the event that the provision of legal representation of Attorney by City in connection with a Claim may reasonably present a legal conflict of interest, Attorney may request independent legal representation at City's expense, and City may not unreasonably withhold approval of such request. Legal representation provided by City for Attorney will extend until final unappealable determination of legal action unless the Claim is settled, which settlement the City may make in its sole discretion. In the event independent legal representation is provided to Attorney, any settlement of any

claim against Attorney may not be made without prior approval of the City. Attorney recognizes that City will have the right to compromise any claim against Attorney for which City is providing the defense.

10. General Provisions.

- a. This Agreement constitutes the entire agreement between parties, and both parties acknowledge that there are no other agreements, oral or otherwise.
- b. The parties hereby further agree that this Agreement cannot be amended or modified without the written concurrence of both parties, except as specifically set forth herein.
- c. If any provision or portion of this Agreement is held to be unconstitutional, invalid or unenforceable, the remaining portion will remain unaffected and City and Attorney will negotiate to correct the Agreement's defect in order to assure the intent of the Agreement is carried out to the fullest extent possible.
- d. This Agreement will be interpreted in accordance with the law of the State of Arizona. This Agreement is subject to termination pursuant to A.R.S. § 38-511, and the parties agree that they are not currently engaged in, and agree that for the duration of the Agreement they will not engage in, a boycott of Israel, as that term is defined in A.R.S. §35- 393.
- e. City and Attorney have each had opportunity to consult legal counsel for advice regarding the drafting of this Agreement and the provisions of this Agreement shall not be construed against or in favor of either party.
- f. In the event suit is brought (or arbitration instituted) to enforce the terms of this Agreement, the prevailing party shall be entitled to recover from the non-prevailing party, in addition to any other remedy, reimbursement for reasonably attorneys' fees, court costs, and litigation expenses incurred in connection therewith.
- g. Failure of any party to exercise any right or option arising out of a breach of this Agreement shall not be deemed a waiver of any right or option with respect to any subsequent or different breach, or the continuance of any existing breach.

IN WITNESS WHEREOF, the parties have caused this Agreement to be signed and executed as of this ____ day of _____, 2017.

City of Surprise

Attorney

Mayor Sharon Wolcott

Robert Wingo

Approved as to Form:

Special Counsel for City of Surprise