JOINT SPECIAL MEETING/WORK SESSION AGENDA

JOINT SPECIAL MEETING/WORK SESSION
TUESDAY
OCTOBER 30, 2012

COUNCIL CHAMBERS
211 WEST ASPEN AVENUE
6:00 P.M.

SPECIAL MEETING

1. CALL TO ORDER

NOTICE OF OPTION TO RECESS INTO EXECUTIVE SESSION

Pursuant to A.R.S. §38-431.02, notice is hereby given to the members of the City Council and to the general public that, at this regular meeting, the City Council may vote to go into executive session, which will not be open to the public, for legal advice and discussion with the City's attorneys for legal advice on any item listed on the following agenda, pursuant to A.R.S. §38-431.03(A)(3).

2. ROLL CALL

NOTE: One or more Councilmembers may be in attendance telephonically or by other technological means.

MAYOR NABOURS
VICE MAYOR EVANS
COUNCILMEMBER BAROTZ
COUNCILMEMBER BREWSTER
COUNCILMEMBER ORAVITS
COUNCILMEMBER OVERTON
COUNCILMEMBER WOODSON

As a reminder, if you are carrying a cell phone, electronic pager, computer, two-way radio, or other sound device, we ask that you turn it off at this time to minimize disruption to tonight's meeting.

3. Consideration of Appointments: City Attorney

RECOMMENDED ACTION:

Reappoint Rosemary Rosales as the City Attorney for the City of Flagstaff for an employment period commencing on November 1, 2012 and ending on October 31, 2013.

4. ADJOURNMENT

CITY OF FLAGSTAFF

STAFF SUMMARY REPORT

To: The Honorable Mayor and Council

From: Shannon Anderson, Human Resources Manager

Date: 10/03/2012

Meeting Date: 10/30/2012

TITLE:

Consideration of Appointments: City Attorney

RECOMMENDED ACTION:

Reappoint Rosemary Rosales as the City Attorney for the City of Flagstaff for an employment period commencing on November 1, 2012 and ending on October 31, 2013.

Policy Decision or Reason for Action:

The City Attorney serves at the pleasure of the City Council per City Charter Article IV Section 4. The Employment Agreement provides for clarification and understanding between the City Council and the City Attorney regarding mutual expectations and terms of employment.

Financial Impact:

The salary and benefits for this position are currently budgeted.

Connection to Council Goal:

The City Attorney provides guidance and legal advice to the Mayor and City Council. This position is an important part to most Council goals such as address core services maintenance facility; complete Rio de Flag; retain, expand and diversify economic base; complete water policy; review financial viability of pensions; review Commissions; and Zoning Code.

Has There Been Previous Council Decision on This:

No.

Options and Alternatives

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

Community Involvement:

Inform

Date of Council Approval:

Attachments: Employment Agreement

EMPLOYMENT AGREEMENT

This Agreement for Services is made and entered into this 1st day of November, 2012, 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") and Rosemary Rosales (herein 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;

NOW, THEREFORE, in consideration of the premises, the 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 a term commencing on November 1, 2012 and ending on October 31, 2013. 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 Attorney of the City of Flagstaff. Employee shall perform the functions and duties set forth in Article IV, Section 4 of the Charter of the City of Flagstaff (Exhibit A), 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 her 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 she is entering into this Agreement voluntarily and that, to the best of her knowledge, her employment hereunder and compliance by her with the terms and conditions of this Agreement will not conflict with or result in the breach of any agreement to which she is a party or by which she 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 One Hundred Fifty-five Thousand and no/100 dollars ($155,000.00). 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 One Hundred Fifty-five Thousand and no/100 dollars ($155,000.00). The Employee will also receive increases in pay associated with employee benefit off-sets as provided to other management 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 of the City available to employees. 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"). The City may amend its welfare benefit 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 her own vehicle in accordance with the City of Flagstaff Travel Policy.

(c) Business Travel, Lodging, etc. The City, subject to budget constraints, shall reimburse the Employee for reasonable travel, lodging and meal expenses incurred by her in condition with her 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 Dues. The City agrees, subject to budgeting constraints, to budget for and to pay the professional licensing fees, dues and subscriptions of Employee.

(e) Vacation. Employee shall accrue twenty-one (21) days per year of vacation reflecting ten to fourteen (10-14) years of public service.

(f) Sick Leave. Employee shall be awarded twelve (12) days per year of sick leave and shall have six (6) days credited and available for immediate use.

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 IV of the City

Charter. Upon the Employee's Date of Termination 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 three (3) days after the Employee's Date of Termination; and

(ii) All vested, nonforfeitable amounts owing and accrued at the Date of Termination under any and all compensation and benefit plans, programs, and arrangements in which the Employee theretofore participated (including, without limitation, vacation, deferred compensation and fringe benefits) will be paid under the terms and conditions of the plans, programs, and arrangements pursuant to which such compensation and benefits were granted.

(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 her 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 her 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 three (3) days after the Employee's Date of Termination; and

(ii) If termination is due to disability, an amount equal to six (6) months of Base Salary shall be paid within three (3) days after the Employee's Date of Termination; and

(iii) All vested, nonforfeitable amounts owing and accrued at the Date of Termination under any and all compensation and benefit plans, programs, and arrangements in which the Employee theretofore participated (including, without limitation, vacation, deferred compensation and fringe benefits) will be paid under the terms and conditions of the plans, programs, and arrangements pursuant to which such compensation and benefits were granted.

(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 four (4) members of the City Council that she resign, Employee

may at her option deem herself 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, the following:

(i) Any accrued, unpaid portion of Base Salary through the Date of Termination shall be paid within three (3) days after the Employee's Date of Termination; and

(ii) An amount equal to six (6) months of Base Salary shall be paid within three (3) days after the Employee's Date of Termination; and

(iii) All vested, nonforfeitable amounts owing and accrued at the Date of Termination under any and all compensation and benefit plans, programs, and arrangements in which the Employee theretofore participated (including, without limitation, vacation, deferred compensation and fringe benefits) will be paid under the terms and conditions of the plans, programs, and arrangements pursuant to which such compensation and benefits were granted; 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 her 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 pay period after the Employee's Date of Termination; and

(ii) All vested, nonforfeitable amounts owing and accrued at the Date of Termination under any and all compensation and benefit plans, programs, and arrangements in which the Employee theretofore participated (including, without limitation, vacation, deferred compensation and fringe benefits) will be paid under the terms and conditions of the plans, programs, and arrangements pursuant to which such compensation and benefits were granted.

(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 her death , the date of her 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 her disability, the date of the Notice of Termination.

7. Performance Evaluation. The City Council shall review and evaluate Employee' performance at least annually. The City shall provide adequate opportunity for Employee to discuss her evaluation with the City Council. The City Council shall conclude Employee' review and evaluation no later than October 31st of each year. Employee' 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' duties as City Attorney. 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 in so far 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 (1) in writing, (2) delivered personally, by courier service or by certified or registered mail, first-class postage prepaid and return receipt requested, (3) deemed to have been received on the date of delivery or on the third business day after the mailing thereof, and (4) addressed as follows (or to such other address as the party entitled to notice shall hereafter designate:

(A) if to the City, to it at:

Human Resources Director

211 West Aspen Avenue

Flagstaff, Arizona 86001

(B) if to the Employee, to her at

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 them 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.

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

ROSEMARY ROSALES

_____

CITY OF FLAGSTAFF

By_____

Jerry Nabours, Mayor

ATTEST:

By_____

City Clerk

APPROVED AS TO FORM:

By_____

Gordon Lewis, Attorney