

**CITY OF PEORIA, ARIZONA  
COUNCIL COMMUNICATIONS**

CC: 12C  
Amend No. \_\_\_\_\_

**Date prepared:** March 30, 2009    **Council Meeting Date:** April 7, 2009

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**TO:** Honorable Mayor and Council  
**FROM:** Steve Kemp, City Attorney  
**SUBJECT:** Amendment to City Manager Terms and Conditions of  
Employment Agreement

**RECOMMENDATION:**

That the Mayor and Council approve the amendment to the terms and conditions of employment with the City Manager

**SUMMARY:**

In reviewing the terms and conditions of employment agreement with the City Manager it was determined that some of the language in the agreement is not consistent with the current provisions of the Internal Revenue Code and the ICMA 401(a) plan for the City Manager. The purpose of the amendment is to bring the agreement into conformance with these two other requirements.

The agreement is also amended to be consistent with the council direction during the most recent city manager evaluation pertaining to release and damages provisions in the event the agreement is terminated.

There is no fiscal impact and no change is made to compensation or benefits paid to the City Manager under his agreement governing terms and conditions of employment.

Therefore it is my recommendation that the Mayor and Council approve the proposed second amendment to the terms and conditions of employment agreement with the City Manager.

**ATTACHMENT:**

## AMENDMENT TO TERMS AND CONDITIONS OF EMPLOYMENT AGREEMENT

This Contract Amendment is made on this 7<sup>th</sup> day of April, 2009, between the City of Peoria ("City") and Carl Swenson ("City Manager").

### RECITALS

WHEREAS, the Mayor and Council of the City have entered into a Terms and Conditions of Employment Agreement with the City Manager dated July 1, 2008, (hereinafter "Agreement") for the provision of those duties and functions of the City Manager, as provided under the Peoria City Charter and Code and in accordance with A.R.S. §9-271, and

WHEREAS, the City and City Manager desire to amend the Agreement.

Therefore, the parties in consideration of the covenants and conditions to be performed by City Manager set forth in the Agreement dated, July 1, 2008, the Parties agree to amend the Agreement as follows:

#### Section 2. Amendment to Paragraph 3

Paragraph 3 shall be amended to read as follows:

#### SECTION 3. Termination and Severance Pay.

A. In the event the City Manager is terminated by the City Council during time that Employee is willing and able to perform the duties of City Manager, then in that event the City Council agrees to pay Employee a lump sum cash payment in full settlement of any causes of action, claims, damages, attorneys fees and costs arising out of the termination in the amount of One Hundred Eight Thousand, Nine Hundred Seven-teen dollars (\$108,917.00). On the first anniversary date of City Manager's appointment as City Manager, this lump sum payment shall be adjusted to (\$123,333.00). On the second and each subsequent anniversary, the lump sum settlement amount shall be calculated as follows: Base salary of the City Manager divided by 12, then multiplied by the respective anniversary date of City Manager's appointment + the number 6 up to a maximum of 12, at which point there shall be no further adjustments. Employee shall also be compensated for all earned sick leave, vacation, holidays and other accrued benefits to date, calculated at the rate of pay in effect upon termination and in accordance with city policies. City Council and Employee acknowledge that this settlement does not constitute a waiver of any claims arising out of intentional acts of misconduct committed by City Council members or claims arising under Arizona or Federal law pertaining to equal employment opportunity, age discrimination, or discrimination on basis of disability. Employer and Employee agree that the severance amount under this section shall be paid within seven days after the termination of the City Manager. However, in the event Employee is terminated because of his conviction of any illegal act, City shall have no obligation to pay the settlement amount in this paragraph.

B. For purposes of complying with this Section, appropriations held as unencumbered fund balances in any fund or account of the City shall be deemed to be available and

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authorized for transfer to the appropriate salary and benefit expenditure accounts to insure fulfillment of this provision of the Agreement.

C. Contemporaneously with the delivery of the severance pay herein above set out, Employee agrees to execute and deliver to City a release, releasing City, its City Council, officers and employees of all claims that Employee may have against City, its City Council, officers and employees.

D. The parties agree that from time to time after a facilitated goal setting such amount provided in this paragraph may be adjusted by a written agreement signed by both parties.

Section 2. Amendment to Paragraph 5

Paragraph 5 shall be amended to read as follows:

SECTION 5. Deferred Compensation.

Employer agrees to pay the City Manager deferred compensation in the amount based on Twelve Percent (12%) of Base Salary. Said deferred compensation shall be paid as follows: First, such amounts shall be paid up to the maximum amount permitted under the Internal Revenue Code of 1986 as amended, into the City's Section 401(a) savings plan with the ICMA Retirement Corporation (ICMA RC), or any other retirement fund or funds designated by the City Manager, in the same manner as that with other employees. City agrees to transfer ownership of said plan or retirement fund to succeeding employers upon Employee's resignation or discharge in accordance with the provisions of the Internal Revenue Code of 1986. The City may adjust these amounts with the agreement of the City Manager in order to comply with the provisions of the Internal Revenue Code of 1986 as amended.

Any remaining amounts shall be paid into the City's Section 457 Deferred Compensation Plan for the City Manager. The City Manager may elect to contribute additional amounts to the Section 457 Deferred Compensation plan, pursuant to provisions of such plan and in conformance with the provisions of the Internal Revenue Code of 1986..

Section 3. Full Force and Effect Provision.

City and City Manager agree that except solely as modified above, changed and amended, the terms, conditions, and provisions of the agreement dated July 1, 2008, and subsequent amendments thereto, shall continue in full force and effect and shall apply to, and shall govern, this amendment of the Agreement.

In Witness Whereof, the parties execute this agreement on the date set forth above.

CITY MANAGER

CITY OF PEORIA

\_\_\_\_\_  
By: Carl Swenson

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Bob Barrett, Mayor

ATTEST:

APPROVED AS TO FORM:

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Mary Jo Kief, City Clerk

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Stephen M. Kemp, City Attorney