

EMPLOYMENT AGREEMENT

This Employment Agreement is made and entered into this 12th day of December, 2023 by and between the City of Maricopa, an Arizona municipal corporation, (hereinafter called either the “City” or “Employer”) and Benjamin Bitter (hereinafter called the “Manager” or “Employee”).

RECITALS

WHEREAS, the Maricopa City Council (the “Council”) and the Employee believe that an employment agreement negotiated between the Council, as Employer, and the Manager can be mutually beneficial to the City, the Employee and the City they serve;

WHEREAS, when appropriately structured, the Council and the Manager believe an employment agreement can strengthen the Council-Manager relationship by enhancing the excellence and the continuity of the management of the City for the benefits of its citizens;

WHEREAS, the City desires to employ the services of the Manager as the City Manager of the City pursuant to the terms, conditions and provisions of this Agreement;

WHEREAS, the Employee has agreed to accept employment as the City Manager, subject to the terms, conditions and provisions of this Agreement.

NOW, THEREFORE, the City and the Manager, for and in consideration of the terms, conditions and provisions hereinafter established have agreed, and do hereby agree as follows:

Section 1: Term

The term of this Agreement shall be for an initial period of three (3) years from July 1, 2024 (“Commencement Date”) to June 30, 2027. Thereafter, until terminated by either party as provided herein, this Agreement shall automatically renew on its anniversary date for terms of one (1) year unless either party gives written notice of its intention not to renew ninety (90) days before the expiration of the current term.

Section 2: Duties and Authority

Employer agrees to employ the Employee as City Manager to perform the functions and duties specified in The Code of the City of Maricopa, Arizona (“Maricopa City Code”), and to perform other legally permissible and proper duties and functions. As the Chief Executive Officer of the City, the Manager shall comply with Federal and State laws, the

Maricopa City Code, all City Policies, rules, regulations, contracts and Ordinances as they exist or may hereinafter be amended; and, all lawful Council directives. All duties assigned to the Manager shall be appropriate to and consistent with the professional role and responsibility of the City Manager position.

Section 3: Compensation

The Employer agrees to pay Employee an annual base salary of Two Hundred Forty-Two Thousand and No/100 Dollars (\$242,000.00) for the first year of this Agreement. The Employer agrees to pay the Employee in equal installments on a bi-weekly basis during the term of this Agreement. After the first year of this Agreement, Employee shall receive an increase equal to that which is approved by the City Council for all other full-time Executive Managers, as identified in the City salary plan, of the Employer as the budgeted merit increase during the City's annual budget process.

Section 4: Health, Disability and Life Insurance Benefits

Effective on the Commencement Date, the Employer agrees to provide insurance for the Employee and his dependents equal to that which is provided to all other full-time employees of the Employer and to pay for such coverage in full.

Similarly, the Employer agrees to put in force and to make required premium payments for short term and long term disability insurance coverage for the Employee while this Agreement is in force and consistent with the benefits provided to all other full-time employees of the Employer. The Employer shall also pay the amount due for term life insurance in an amount of \$25,000.00 as provided to all other full-time employees of the Employer. The Employee shall have the right to choose the beneficiary on such policies, and purchase additional life insurance from the City provider at the employee's expense.

Section 5: Vacation, and Sick Leave

Effective on the Commencement Date, the Employee shall accrue vacation time at the rate provided to all other full-time employees of the Employer. The Employee shall be entitled to a total of One Hundred Ninety-Two (192) hours of vacation annually, exclusive of holidays recognized by the Employer, which the Employee shall also be entitled to. Employee shall maintain the vacation leave he has accrued as of the Commencement Date, which shall be immediately available for use by Employee. Employee shall be allowed to carry forward a maximum of Two Hundred Eighty (280) hours of vacation each calendar year. If Employee has an excess of the maximum hours to be carried forward from one calendar year to the next on December 31 of each year, Employee will be paid for the excess amount of leave.

Additionally, effective on the Commencement Date, the Employee shall accrue sick leave at the rate provided to all other full-time employees of the Employer. Employee shall maintain the sick leave he has accrued as of the Commencement Date, which shall be immediately available for use by Employee.

Effective on the Commencement Date, Employee shall also be allowed forty (40) hours of paid executive leave annually. Any executive leave time remaining at the end of each year will not roll over to any subsequent year and shall be lost.

In the event of termination, either voluntarily or involuntarily, the Employee shall be compensated for all accrued and unused vacation time as of the date of termination. Employee, however, shall not be compensated for any accrued and unused sick pay or executive leave.

Section 6: Automobile and Cell Phone Allowance

Employee's duties will require that he use his personally owned vehicle for Employer business. Employer has recognized this by agreeing to pay to Employee \$400.00 per month to reimburse Employee for the business use of his vehicle. Employee shall be responsible for paying for liability, property damage, and comprehensive insurance, and for the purchase, operation, maintenance, repair, and regular replacement of said automobile. If Employee must travel outside of a twenty five (25) mile radius from the City, Employee shall be allowed to use a City owned vehicle, if one is available.

Employee's duties will require that he use his personally owned cell phone for Employer business. Employer has recognized this by agreeing to pay to Employee \$100.00 per month to reimburse Employee for the business use of his cell phone. Employee shall be responsible for paying for the purchase, operation, maintenance, repair and regular replacement of said cell phone.

Section 7: Retirement

Employee shall continue to be enrolled in the Arizona State Retirement System (ASRS) and, during the term of this Agreement, Employer will make all matching contributions required by Arizona State Law. Additionally, the Employer agrees to execute all necessary agreements for the Employee to continue to participate in the City sponsored Section 457 Plan.

Section 8: Termination

For the purpose of this Agreement, termination shall occur when one of the following occurs:

1. The majority of the governing body votes to terminate the Employee pursuant to Article 3.10.020 of the Maricopa City Code, as amended from time to time;
2. Retirement, disability or Death of the Employee;
3. Mutual agreement of the Council and Employee in writing signed by the Employee and the City;
4. Expiration of the term of the Agreement;
5. If the Employer, citizens or legislature acts to amend any provisions of the Maricopa City Code, ordinances or appropriate enabling legislation pertaining to the role, powers, duties, authority, responsibilities of the Employee's position that substantially changes the form of government from a Manager-Council form of government to a strong Mayor form of government, the Employee shall have the right to declare that such amendments constitute termination;
6. Breach of contract declared by either party after providing the other party with a thirty (30) day cure period for either Employee or Employer. Written notice of a breach of contract shall be provided in accordance with the provisions of Section 19;
7. In the event that Employer at any time during the term of this Agreement reduces the salary, compensation or other financial benefits to Employee in a greater percentage than an applicable across-the-board reduction of all Employees, unless such reduction is done with the specific consent of Employee; or
8. Employee resigns following a suggestion, whether formal or informal, by a majority of the Council that he resign; then, in that event, Employee may, at his option, be deemed to be "terminated."

Section 9: Severance

Severance shall be paid to the Employee when employment is terminated as defined in Section 8 unless this Agreement is terminated because of the expiration of the Agreement, Employee's retirement, disability or death wherein no severance will be paid. If the Employee is terminated during the first year after the Commencement Date, the Employer shall provide a severance of six (6) months' salary at the current rate of pay. If the Employee is terminated during the second year after the Commencement Date, the Employer shall provide a severance of seven (7) months' salary at the current rate of pay. If the Employee is terminated during the third year after the Commencement Date, the Employer shall provide a severance of eight (8) months' salary at the current rate of pay. If the Employee is terminated at any time after the third year after the Commencement Date, the Employer shall provide a severance of nine (9) months' salary at the current

rate of pay. This severance shall be paid pursuant to this Section in equal installments on a bi-weekly basis.

The Employee shall also be compensated for all accrued vacation time.

During the time that severance is paid pursuant to this Section, the Employer shall pay its portion of the cost to continue the following benefits as part of the City's regular benefit program:

1. Health insurance for the employee and all dependents (if any); and
2. Life insurance.

During the time that severance is paid pursuant to this Section, if Employee is employed in a substantially similar position or for substantially similar pay, then Employee's right to severance pay shall terminate within thirty (30) days of the Employee obtaining the new employment. "Substantially similar position" shall mean any position as a director of a department or higher within a municipality or other governmental agency, and "substantially similar pay" shall mean a salary no less than 80% of Employee's current salary.

If the Employee is terminated for cause, then the Employer is not obligated to pay severance under this Section. "Cause" means a cause that bears any reasonable relationship to Employee's unfitness to discharge his duties assigned or is in a reasonably objective sense detrimental to the City. Cause includes, but is not limited to, the following:

1. Commission of a felony or serious misdemeanor;
2. Conduct constituting moral turpitude, which shall be conduct where Employee acts with fraudulent intent, or acts intentionally dishonest for personal gain or other corrupt purpose;
3. Material breach of any provision of this Agreement;
4. Fraud, misrepresentation, or active concealment of material facts;
5. Commission of an act of gross insubordination by refusing to take a legal, valid action that is clearly within the scope of his employment when specifically directed to do so by a majority of the Council at a duly posted public meeting;
6. Severely damaging the reputation of the City or the Council or otherwise substantially impairing the City's ability to maintain or attract business.

As a condition precedent to receiving any severance pay, Employee and the City shall execute a severance agreement containing a mutual release acceptable to both parties, which shall include the parties' (i) full release of each other and all of their respective agents, employees, and elected officials from any and all claims, including but not limited to, demands, damages, causes of action or liability arising out of Employee's

employment or termination of employment with the City, and (ii) an agreement not to initiate or cause to be initiated under any lawsuit, claim, grievance proceeding or investigation of any kind, under any contract, law or regulation, pertaining to his employment with the City. If the parties cannot agree on terms for a severance agreement, City shall be relieved of any and all obligation to pay any severance under this Agreement.

Section 10: Resignation

In the event that the Employee voluntarily resigns his position with the Employer, the Employee shall provide a minimum of thirty (30) days written notice unless the parties agree otherwise. If the Employee resigns under this Section, Employee shall not be entitled to Severance pay under Section 9.

Section 11: Performance Evaluation

Employee's job performance shall be evaluated both formally and informally throughout the year. If any Council Member has an issue with Employee's job performance during the term of the Agreement, the Council Member will first bring their concerns to Employee. If not satisfactorily resolved with Employee directly, the Council Member may convene a meeting of the City Council to discuss concerns regarding Employee's job performance. The City Council may convene performance evaluations meetings as needed at any time during the term of the Agreement.

Section 12: Hours of Work

It is recognized that the Employee must devote a great deal of time outside the normal office hours on business for the Employer, and to that end Employee shall be allowed to establish an appropriate work schedule, which may occasionally include time out of the office during normal business hours for personal matters. The Employee, however, acknowledges the proper performance of the City Manager's duties require the Manager to generally observe normal business hours and will also often require the performance of necessary services outside of normal business hours. The Employee agrees to devote such additional time as is necessary for the full and proper performance of the City Manager's duties and that the compensation herein provided includes compensation for the performance of such services. Employee shall devote full time and effort to the performance of the City Manager's duties.

Section 13: Outside Activities

The employment provided for by this Agreement shall be the Employee's sole employment. Recognizing that certain outside consulting or teaching opportunities provide indirect benefits to the Employer and the community, the Employee, with the

prior consent of the Council, may elect to accept limited teaching, consulting or other business opportunities with the understanding that such arrangements shall not constitute interference with nor a conflict of interest with his responsibilities under this Agreement.

Section 14: Moving and Relocation Expenses

Employee agrees to establish residence within the corporate boundaries of the City of Maricopa within twelve (12) months of Commencement Date, and thereafter to maintain residence within the corporate boundaries of the City of Maricopa.

A. In accordance with I.R.C. §132(a)(6), Employer shall pay for the reasonable relocation expenses of moving Employee and personal property from Queen Creek, Arizona to the City of Maricopa. Employee shall obtain three quotes for such relocation expenses. In no event shall this amount exceed Five Thousand and 00/100 Dollars (\$5,000.00).

B. In recognition of the difference between Employee's current mortgage rate and the current market mortgage rate, Employer and Employee agree that, once Employee finds a home within the City of Maricopa, they negotiate an agreement to assist Employee with recovering this difference. Such negotiations may include, but will not be limited to, the City financing a loan, buying down the interest rate or other options mutually agreeable to Employer and Employee.

Section 15: Dues, Subscriptions and Professional Development

A. Employer agrees to budget and to pay for professional dues and subscriptions of Employee necessary for the continuation and full participation in national, regional, state, and local associations and organizations necessary and desirable for his continued professional participation, growth, and advancement, and for the good of the Employer. Said dues and subscriptions shall include, but not be limited to, Arizona City/County Management Association, International City/County Management Association, International Economic Development Council, Arizona Economic Development Council and their regional and local affiliate organizations, the Maricopa Chamber of Commerce, and a local civic club.

B. Employer hereby agrees to budget for and to pay for travel and subsistence expenses of Employee for professional and official travel, meetings, and occasions adequate to continue professional development of Employee and to adequately pursue necessary official functions for Employer. Employer also agrees to budget for and to pay for travel and subsistence expenses of Employee for short courses, institutes and seminars that are necessary for his professional development and for the good of the Employer. Employee must receive approval of Council prior to enrolling in such a professional development course, institute, seminars, or other professional development that will result in travel and subsistence expenses to the City.

Section 16: Indemnification

Beyond that required under Federal, State or Local Law, Employer shall defend, save, 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 performance of Employee's duties as City Manager or resulting from the exercise of judgment or discretion in connection with the performance of program duties or responsibilities, unless the act or omission involved willful or wanton conduct. The Employer shall indemnify Employee against any and all losses, damages, judgments, interest, settlements, fines, court costs and other reasonable costs and expenses of legal proceedings including attorney's fees, and any other liabilities incurred by, imposed upon, or suffered by such Employee in connection with or resulting from any claim, action, suit, or proceeding, actual or threatened, arising out of or in connection with the performance of his duties. Any settlement of any claim must be made with prior approval of the Employer in order for indemnification, as provided in this Section, to be available. Employee recognizes that Employer shall have the right to compromise and settle any claim or suit.

Section 17: Bonding

Employer shall bear the full cost of any fidelity or other bonds required of the Employee under any law or ordinance.

Section 18: Other Terms and Conditions of Employment

The Employer shall fix any such other terms and conditions of employment, as it may determine from time to time, relating to the performance of the Employee, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this Agreement, the City of Maricopa City Code or any other law.

Section 19: Notices

Notice pursuant to this Agreement shall be given by depositing in the custody of the United States Postal Service, postage prepaid, addressed as follows or to such other address provided by the parties:

- (1) EMPLOYER: City of Maricopa, Attn: Mayor, 39700 W Civic Center Plaza, Maricopa, AZ 85138
- (2) EMPLOYEE: Mr. Benjamin Bitter, 39700 W Civic Center Plaza, Maricopa, AZ 85138

Alternatively, notice required pursuant to this Agreement may be personally served on Employer by hand-delivering the notice to the City Clerk or on the Employee by hand-delivering the notice to the Employee. Notice shall be deemed given as of the date of personal service or as the date of deposit of such written notice in the course of transmission in the United States Postal Service.

Section 20: General Provisions

A. Integration. This Agreement and any attachments represent the entire agreement between Employer and Employee relating to the employment of Employee by the Employer and supersede all prior negotiations, representations or agreements, either expressed or implied, written or oral. It is mutually understood and agreed that no alteration or variation of the terms and conditions of this Agreement shall be valid unless made in writing and signed by the parties hereto. Written and signed amendments shall automatically become part of this Agreement, and shall supersede any inconsistent provision therein; provided, however, that any apparent inconsistency shall be resolved, if possible, by construing the provisions as mutually complementary and supplementary.

B. Binding Effect. This Agreement shall be binding on the Employer and the Employee as well as their heirs, assigns, executors, personal representatives and successors in interest.

C. Severability. If any part, term or provision of this Agreement shall be held illegal, unenforceable or in conflict with any law, the validity of the remaining portions and provisions hereof shall not be affected.

D. Arbitration. In the event that there is a dispute hereunder which the parties cannot resolve between themselves, the parties agree to attempt to settle the dispute by nonbinding arbitration before commencement of litigation. The arbitration shall be held under the rules of the American Arbitration Association. The matter in dispute shall be submitted to an arbitrator mutually selected by Employer and Employee. In the event that the parties cannot agree upon the selection of an arbitrator within seven (7) days, then within three (3) days thereafter, the Employer and Employee shall request the presiding judge of the Superior Court in and for the County of Pinal, State of Arizona, to appoint an independent arbitrator. The cost of any such arbitration shall be divided equally between the Employer and Employee. The results of the arbitration shall be nonbinding on the parties, and any party shall be free to initiate litigation subsequent to the final decision of the arbitrator.

E. Governing Law and Venue. The terms and conditions of this Agreement shall be governed by and interpreted in accordance with the laws of the State of Arizona. Any action at law or in equity brought by either party for the purpose of enforcing a right or

rights provided for in this Agreement shall be tried in a court of competent jurisdiction in Pinal County, State of Arizona.

F. Attorney's Fees and Costs. In the event either party shall bring suit to enforce any term of this Agreement or to recover any damages for and on account of the breach of any term or condition in this Agreement, it is mutually agreed that the prevailing party in such action shall recover all costs including: all litigation and appeal expenses, collection expenses, reasonable attorney's fees, necessary witness fees and court costs to be determined by the court in such action.

G. Conflict of Interest. The provisions of A.R.S. §38-511 relating to cancellation of contracts due to conflicts of interest shall apply to this Agreement.

CITY OF MARICOPA, an Arizona
municipal corporation


By Nancy Smith
Mayor

Benjamin Bitter

By Benjamin Bitter
Benjamin Bitter

ATTEST:

Vanessa Bueras
Vanessa Bueras, City Clerk



APPROVED AS TO FORM:

D. M. Fitzgibbons
Denis M. Fitzgibbons, City Attorney