AMENDED EMPLOYMENT AGREEMENT

This Employment Agreement ("**Agreement**") is made and entered into this 22nd day of October, 2015 ("**Effective Date**") by and between thethe Town of Tusayan, an Arizona municipal corporation, (hereinafter called either the "**Town**" or "**Employer**") and Eric A. Duthie (hereinafter called the "**Manager**" or "**Employee**").

RECITALS

WHEREAS, the Tusayan Town Council (the "**Council**") and the Employee believe that an employment agreement negotiated between the Council on behalf of the Employer, and the Manager can be mutually beneficial to the Town, the Employee and the Town 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 Town for the benefits of its citizens;

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

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

NOW, THEREFORE, the Town 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 the Effective Date to October 22, 2018 ("**Term**"). 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 Town Manager to perform the functions and duties specified in the ordinances, resolutions, policies, rules and codes of the Town of Tusayan as they may exist from time to time (collectively, the "**Town Code**"), and to

perform other legally permissible and proper duties and functions. The Manager shall comply with Federal and State laws, the Town Code, and all lawful Council directives. All duties assigned to the Manager shall be discharged consistent with the professional role and responsibility of the Town Manager position.

Section 3: Compensation

The Employer agrees to pay Employee an annual base salary of One Hundred and Sixteen Thousand and No/100 Dollars ($116,000.00) 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 six months of this Agreement, the Employer may determine Employee's salary as part of the Town's annual budget process. The Town Council may in the exercise of its sole discretion, adjust the Manager's salary based on an annual cost of living adjustment applicable to the Flagstaff area.

Section 4: Health, Disability and Life Insurance Benefits

Upon commencing employment, the Employer agrees to pay a portion of the premiums (the "**Town Health Insurance Contribution**")for health, hospitalization, surgical, vision, dental, disability, death and comprehensive medical insurance (collectively, "**Health Insurance**") for the Employee and his spouse. At the beginning of each year of the Term, Employee shall provide Employer a copy of the invoices for the Employee's Health Insurance. The Town shall pay the Town Health Insurance Contribution monthly, and payment shall not be more than One Thousand Dollars ($1000.00) a month.

Section 5: Vacation, and Sick Leave

The Employee shall be entitled to a total of ten (10) days of vacation during the first year of the Term and shall be entitled to a total of fifteen (15) days of vacation each year thereafter, exclusive of holidays recognized by the Employer, which the Employee shall also be entitled to. The Employee may accrue unused vacation time of up to one hundred and sixty hours (160) hours. .

Additionally, upon commencing employment, the Employee shall accrue sick leave at the rate of 3.67 hours per pay period. Employee shall be entitled to accrue a total of ninety-five (95) hours of sick leave.

In the event of termination, either voluntarily or involuntarily, the Employee shall be compensated for all accrued vacation time as of the date of termination.

Section 6: Automobile and Monthly Expense Allowance

Employee's duties will require the use of an automobile ("**Town Automobile**") to be provided by the Employer at the Employer's cost. The Employer shall pay for insurance for the Town Automobile as provided by the Arizona Municipal Risk Retention Pool, the Town's insurer. The Town shall pay for all maintenance, repair and operations costs of the Town Automobile. When needed by other Town officials and officers, the Town shall notify the Employee so that the Town Automobile may be used by such officials and officers. The Employer and the Employee will work to avoid scheduling conflicts for the use of the Town Automobile. Until the Town Automobile is provided, and thereafter during such times that the Town Automobile is being used by other Town officials and officers, Employee agrees to use his privately operated vehicle for Town business. In such cases, the Town shall reimburse Employee for the use of such vehicle at the maximum rate authorized by the Internal Revenue Service, except that without the prior permission of the Town Council, Employee shall not be entitled to more than one reimbursed trip to the Phoenix area each month.

Section 7: Retirement

The Employer agrees to enroll the Employee into the Arizona State Retirement System (ASRS) and during the life of this Agreement to make all matching contributions required by Arizona State Law.

Section 8: Housing

The Town shall provide the Manager and his family housing (the "**Town Manager Residence**") pursuant to the Town Housing Lease Agreement **("Lease").** Under the Lease, the Manager shall pay all utilities (including, without limitation, gas, electricity, water, sold waste and wastewater), telephone, cable television and internet costs for services provided at the Town Manager Residence.

Section 9: Termination

9.1 Termination Events. For the purpose of this Agreement, termination shall occur when one of the following occurs:

a) The majority of the Town Council votes to terminate the Employee without cause

b) The majority of the Town Council votes to terminate the Employee with cause.;

c) Retirement or death of the Employee;

d) Mutual agreement of the Council and Employee in writing signed by the Employee and the Town;

e) Expiration of the term of the Agreement;

f) The Employee resigns pursuant to Section 11 of this Agreement; and

g) Breach of any term of this Agreement 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 18

9.2 For Cause. For the purposes of Section 9.1.b, the term "cause" shall mean 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 Town. Cause includes, but is not limited to, the following:

a. Commission of a felony or serious misdemeanor;
b. 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;
c. Material breach of any provision of this Agreement;
d. Fraud, misrepresentation, or active concealment of material facts;
e. 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;
f. Severely damaging the reputation of the Town or the Council or otherwise substantially impairing the Town's ability to maintain or attract business.

Section 10: Severance

10.1 Severance shall be paid to the Employee when employment is terminated pursuant to Sections 9.1.(a) If such termination occurs on or before November 1, 2016, the amount to paid (the "**Three Month Severance Obligation**) shall be three (3) months' salary at the then current rate of pay and shall be paid in one lump sum payment within thirty (30) days following the Employee's termination. If such termination occurs after November 1, 2016, the amount paid (the "**Six Month Severance Obligation**") shall be six (6) months' salary at the then current rate of pay and shall be paid in one lump sum payment within thirty (30) days following the Employee's termination The Three Month Severance Obligation and the Six Month Severance Obligation shall be referred to collectively as the "**Severance Obligation.**" The Employee shall also be compensated for all accrued vacation time.

10.2 As a condition precedent to receiving the severance payment, Employee and the Town 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 Town, and (ii) an agreement not to initiate or cause to be initiated any lawsuit, claim, grievance proceeding or investigation of any kind, under any contract, law or regulation, pertaining (a) to his employment with the Town or (b) related to any Town acts or omissions. If the parties cannot agree on terms for a severance agreement, Town shall be relieved of any and all obligation to pay any severance under this Agreement.

Section 11: 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 10.

Section 12: Performance Evaluation

Employee shall prepare and present to Council for their approval a performance plan that specifies benchmark areas of accomplishment annually and for any renewal years. Such plan, which shall be subject to annual review and change as deemed necessary by Council, shall be the basis for annual performance reviews. Employer may review Employee's job performance at least once annually during each employment year. The reviews shall be conducted during the month of July of each year of the employment thereafter. If Employer fails to conduct an annual review by the end of July, Employee has the right to request Employer to conduct a review. If Employee fails to request a review by the end of July, the parties, by their action, will be deemed to have waived the review for that year of the Agreement.

Section 13: Hours of Work

The Employee acknowledges that the proper performance of the Town 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. As of the Employment Date, the Town's normal business hours are Monday through Friday, 9:00 am to 5:00 pm, which business hours may be adjusted by the Town Council. The Employee agrees to devote such additional time as is necessary for the full and proper performance of the Town 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 Town Manager's duties. The employment provided for by this Agreement shall be the Employee's sole employment.

Section 14: Dues, Subscriptions and Professional Development

The Town will budget and pay for travel and subsistence expenses of Employee for professional and official travel, meetings, and occasions to adequately continue the professional development of Employee and to pursue necessary official functions for the Town including, but not limited to, the ICMA Annual Conference, functions of the Arizona League of Cities and Towns, Arizona City Management Association and such other national, regional, state, and local groups and committees in which Employee serves as a member. The Town acknowledges the value of having Employee participate and be directly involved in local civic clubs or organizations. Accordingly, the Town will pay for the reasonable membership fees and/or dues to enable the Employee to become an active member in local civic clubs or organizations.

Section 15: Indemnification

Employer shall defend, save 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 Town 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 or gross negligence (collectively "**Claims**"). 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 reasonable attorney's fees, and any other liabilities incurred by, imposed upon, or suffered by such Employee in connection with or resulting from any Claims, actual or threatened. 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 16: Employee Work Product

All memoranda, notes, records, other documents made or composed by Employee, or made available to him during his employment, or any products, methods, or procedures concerning or in any way relating to the business or affairs of the Town will be the Town's property and will be delivered to the Town upon the termination of employment or at any other time upon request and if maintained on Town computers will be preserved in a manner that is accessible by the Town following the Employee's term of employment. The Town shall have no obligation to make any severance payment pursuant to Section10 of this Agreement if the Employee is in breach of any obligation under this Section 16.

Section 18: 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: Town Clerk, Town of Tusayan, PO Box 709, Tusayan, AZ 86023

(2) EMPLOYEE: Eric. A. Duthie, 246 West McLellan Road, Mesa, AZ 85201

Alternatively, notice required pursuant to this Agreement may be personally served on Employer by hand-delivering the notice to the Town 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 19: General Business Expenses

Employer recognizes that certain expenses of a non-personal but job related nature are incurred by Employee, and agrees to reimburse or to pay said general expenses. Such expenses may include meals where Employer business is being discussed or conducted and participation in social events of various organizations when representing the Employer. Such expenditures are subject to annual budget constraints as well as state and Employer ethics and purchasing policies.

Section 20: Technology

Employer shall provide Employee, for business and personal use, a laptop computer, software, mobile phone/personal digital assistant and/or tablet computer for business use required for the Employee to perform the Employee's duties and to maintain communication with Employer's staff and officials as well as other individuals who are doing business with Employer.

Section 21

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 22: Moving Expenses

The Town Manager shall become a resident of the Town of Tusayan. The Employer will pay normal and usual moving expenses not to exceed Two Thousand ($2000.00) for the relocation of the Employee's belongings and household items to a residence in the Town of Tusayan.

Section 23: General Provisions

23.1. 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.

23.2. 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.

23.3 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.

23.4 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 Coconino County of , State of Arizona, to appoint an independent arbitrator. If Coconino County Superior Court is unable to appoint such arbitrator, the parties will request the Coconino County Superior Court to appoint an arbitrator pursuant to the Employment Arbitration Rules, of the American Arbitration Association. 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.

23.5 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 Gila County, State of Arizona.

23.6 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.

23.7 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.

23.8 Costs and Expenses. Each party will bear its own costs, including counsel fees and accounting fees, incurred in connection with the negotiation, drafting, and consummation of this Agreement and all matters incident to this Agreement.

23.9 Headings. The captions or headings in this Agreement are for convenience of reference only and will not control or affect the meaning or construction of any provision hereof.

TOWN OF Tusayan, an Arizona Municipal Corporation

By_____
Mayor

Eric A. Duthie

By_____

ATTEST:

Melissa M. Drake
, Town Clerk

APPROVED AS TO FORM:

Bill Sims, Town Attorney