Staff Report

Agenda Item: **Contract** – Discussion and consideration of the restated employment agreement between the Town of Clarkdale and Town Manager Mabery.

Sponsored By: Mayor Von Gausig

Submitted By: Walt Good, Deputy Town Clerk

Meeting Date: November 27, 2007

Background: The annual evaluation process for the Town Manager began with a Council discussion of the process to be used for the evaluation on October 23, 2007. Following that meeting, the Town Manager completed and transmitted a self-evaluation to the Council on October 30th, in preparation for the Council's Executive Session evaluation on November 13, 2007. Council members individually completed evaluations of the Manager and then met as a group with the Manager in Executive Session to discuss the individual evaluations. Based on that meeting, Mayor Von Gausig will draft a consolidated evaluation that represented a consensus opinion of the Council regarding the Manager's performance. The Restated Employment Contract on the agenda tonight is based on the direction given at that November 13, 2007, meeting regarding the terms to be negotiated in that contract.

Staff Recommendation: Staff recommends that the Council approve the Restated Employment Agreement between the Town of Clarkdale and Town Manager Mabery.

RESTATED EMPLOYMENT AGREEMENT

THIS AGREEMENT, made this 27th day of November, 2007, by and between the Common Council of the Town of Clarkdale, Arizona, hereinafter called "The Council"; and Gayle Mabery, hereinafter called "Mabery", witnesseth:

WHEREAS, the Council and Mabery have previously executed an Employment Agreement on March 24, 1998, which has been amended on previous occasions; and,

WHEREAS, this Restated Employment Agreement supersedes and replaces in its entirety the original Employment Agreement and its amendments; and,

WHEREAS, the Council desires to continue to employ Mabery as Town Manager of Clarkdale, Arizona and provide for conditions of Mabery's employment; and,

WHEREAS, Mabery desires to continue to be employed as Town Manager of Clarkdale, Arizona, under the terms and conditions outlined herein,

NOW, THEREFORE, in consideration of the mutual covenants, promises and payments hereinafter set forth, it is agreed between the parties as follows:

1. The Council hereby appoints Mabery as Town Manager to perform the functions and duties specified in Section 3-2-1 of the Code of the Town of Clarkdale, Arizona, and such other reasonable functions and duties as the Council may direct.

2. Mabery hereby agrees to perform said duties to the best of her ability.

3. Pursuant to A.R.S. 9-303, the Town Manager shall serve at the pleasure of the Council and may be removed without cause by a majority vote thereof. Nothing in this agreement shall prevent, limit or otherwise interfere with the right of the Council to terminate the services of Mabery at any time, subject only to the provisions set forth in section seven (7) of this agreement.

4. Nothing in this agreement shall prevent, limit, or otherwise interfere with the right of Mabery to resign at any time from her position with the Council, subject only to the provisions set forth in section eight (8) of this agreement.

5. Mabery agrees to remain in the exclusive employ of the Council until March 30, 2009 and neither to accept other employment nor to become employed by any other employer until said termination date, unless said termination date is affected as hereinafter provided. The term "employed" shall not be construed to include occasional teaching, writing, consulting and related activities performed outside Mabery's normal work hours.

6. In the event written notice is not given by either party to this agreement to the other 60 days prior to the termination date as hereinabove provided, this agreement shall be extended on the same terms and conditions herein provided, all for an additional period of two years, provided that Mabery shall first advise the Council in writing of the

termination date of this agreement, at least 120 days prior to said termination date. Said agreement shall continue thereafter for two-year periods unless either party hereto gives 60 days written notice to the other party that the party does not wish to extend this agreement for an additional two-year term.

7. In the event of the termination of Mabery by the Council before the expiration of the term of this agreement or any extension thereof, the Council shall pay to Mabery, in addition to regular pay, any expenses owing to Mabery as of the date of termination, a lump sum cash payment equal to 60 days aggregate salary to include: a) the monthly amount paid for group health insurance, life insurance, dental and vision insurance, if any, b) the monthly amount of deferred compensation plan contributions, if any; c) the monthly amount of Arizona State Retirement System contributions, d) payment for any accrued paid time off (P.T.O.) and illness bank (I.B.) in accordance with the Personnel Policy and Procedures of the Town. In exchange for payment, the Town Manager shall make herself available as needed by the Town for consulting purposes for 60 days after the last day of employment. Termination as used herein shall mean her discharge or dismissal by the Council or her resignation following a written request by a majority that she resign. Payment of termination pay as described herein will be full and final settlement for any and all monies owed to Mabery by the Town. In the event Mabery shall be discharged for criminal acts or a violation of the stipulations of this agreement, she shall not be entitled to any 60 day lump sum cash payment.

8. In the event Mabery voluntarily resigns her position with the Town before expiration of the aforesaid term of her employment, Mabery shall give the Council sixty (60) days notice in advance, unless the parties otherwise agree.

9. Mabery's compensation for her services rendered pursuant hereto shall be an annual base salary of $82,000 payable bi-weekly. In addition, effective February 3, 2004, each year the Town shall pay Mabery an amount equal to 2/3 ($4,763.89) of the cost to purchase back one year of service through an Arizona State Retirement System (ASRS) Service Purchase Agreement. The payments will be made on a bi-weekly basis, provided that Mabery contributes an amount equal to 1/3 ($2,381.95) of the cost to purchase back that year of service. Mabery agrees that the combined total of $7,145.84 will be remitted by Mabery to the ASRS to satisfy the terms of said Service Purchase Agreement.

   In addition to the Town's payment to the state retirement system referenced above, Town agrees to match Mabery's contributions to the ICMA Retirement Corporation [ICMA-RC] or other Section 457 deferred compensation plan, up to a maximum of 5% of Mabery's annual base salary, for Mabery's participation in said supplementary retirement plan. Such contributions will be made in equal proportionate amounts each pay period, and shall be made directly to said deferred compensation plan.

10. The Council agrees to increase said annual base salary at the same rate and effective date as any cost-of-living increase provided for Town employees generally during the term of this agreement. In addition, the Council agrees to increase said base salary and/or other

benefits of Mabery in such amounts and to such extent as the Council may determine appropriate.

11. The Council shall review and evaluate the performance of Mabery at least once annually in advance of the adoption of the annual operating budget. Further, the Mayor shall provide Mabery with a statement of the findings of the Council and provide an adequate opportunity for Mabery to discuss her evaluation with the Council.

12. The Council agrees to provide Mabery reasonable access to a Town owned vehicle to provide transportation necessary for the performance of Town business. If a Town vehicle is not available to Mabery, the Town will pay mileage in accordance with the Town's policy for other employees.

13. The Council recognizes the desirability of allowing Mabery to transact Town business from her residence and other off-site locations when necessary. In support of that desire, the council agrees to provide Mabery with a computer with high speed internet capability to be located at her residence. Said computer will be the property of the Town of Clarkdale and will remain so at the termination of this agreement, and the high speed internet connection will be established through the Town's State Contract for such services.

14. The Council agrees to budget and to pay for the professional dues and subscriptions of Mabery as the Council deems necessary or desirable for her continuation and participation in national, regional, state and local associations and organizations necessary for her continued professional participation, growth and advancement, and for the good of the Town.

15. The Council agrees to budget and to pay for the travel and subsistence expenses for Mabery for short courses, institutes, seminars, conferences, professional and official travel, meetings, and occasions to adequately continue the professional development of Mabery and to pursue necessary official functions for the Town, including but not limited to, the ICMA Annual Conference, the ACMA Summer and Winter Conferences, and such other national, regional, state, and local governmental groups and committees in which Employee serves as a member and that are necessary for her professional development and for the good of the Town.

16. The Council recognizes the desirability of representation in and before local civic and other organizations, and Mabery is authorized to become a member of a civic organization, for which the Town shall pay all expenses.

17. Mabery shall be entitled to all other employment benefits provided for employees of the Town which are not specifically mentioned herein, including, but not limited to Paid Time Off (P.T.O.), Illness Bank (I.B.) health insurance benefits, and retirement benefits.

18. Pursuant to Ordinance 202 of the Town of Clarkdale, Arizona, the Council determines that it is in the best interest of the Town of Clarkdale that residency within the

incorporated limits of the Town of Clarkdale is not required in order for Mabery to perform her duties to the Town of Clarkdale as Town Manager, the loyalty and commitment of Mabery to the Town of Clarkdale having been noted.

19. The Town shall defend, save harmless and indemnify Mabery against any tort, professional liability claim or demand or other legal action, whether meritorious or not, whether groundless or otherwise, arising out of any alleged act or omission occurring in the performance of Mabery's duties as Town Manager. The Town shall defend, compromise and settle any such claim or suit and pay the amount of any settlement or judgment.

    It is understood and agreed that the obligation of the Town to save Mabery harmless and to indemnify her does not extend to acts of Mabery which constitute gross and wanton negligence, are criminal in nature or were not related to the performance of Mabery's duties.

    The Town shall also bear the full cost of any fidelity or other bonds required of Mabery under any federal, state or local law or ordinance.

20. The text herein shall constitute the entire agreement between the parties. This agreement shall be binding on the parties.

IN WITNESS WHEREOF, the Town of Clarkdale, Arizona, has caused this agreement to be signed and executed in its behalf by its Mayor, and duly attested by its Town Clerk, and Mabery has signed and executed this agreement, both in duplicate, the day and year first above written.

APPROVED:

_____
Doug Von Gausig, Mayor

APPROVED AS TO FORM:

_____
Robert S. Pecharich
Boyle, Pecharich, Cline, Whittington & Stallings
Town Attorney

ATTEST:

_____
Kathy Bainbridge, Town Clerk

ACCEPTED:

_____
Gayle Mabery