

EMPLOYMENT AGREEMENT WITH PRESIDING MAGISTRATE

THIS AGREEMENT is made and entered into this ____ day of December, 2024 by and between the CITY OF APACHE JUNCTION, an Arizona municipal corporation (hereinafter "City") and THOMAS C. MCDERMOTT (hereinafter "Employee" or "McDermott"), sometimes collectively referred to as the "Parties" and individually as a "Party", each of whom understand as follows:

RECITALS

A. In October 2024, City conducted an open recruitment to fill the vacancy for City's presiding magistrate.

B. In November 2024, City interviewed numerous highly qualified candidates (one of which was McDermott) and in December 2024, City selected McDermott for the position in accordance with Apache Junction City Code ("A.J.C.C."), Vol. I, Chapter 5: Municipal Court, Article 5-1: Municipal Court, § 5-1-4, Qualifications of City Magistrates.

C. It is the desire of the City to: (1) hire McDermott as the Presiding Magistrate and provide inducement for him to remain in such employment for a specified term set forth herein; (2) make possible full work productivity by assuring his morale and peace of mind with respect to future security; (3) guard against any malfeasance or dishonesty; and (4) provide a just means for terminating employment by either Party.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the Parties hereto agree as follows:

SECTION 1. DUTIES

City hereby agrees to employ Employee as the Presiding Magistrate to perform the functions and duties specified in the Apache Junction City Code ("A.J.C.C."), Volume I, Chapter 5: Municipal Court, Article 5-1: Municipal Court, § 5-1-7, Powers and Duties of Presiding Magistrate, and as required by law of the State of Arizona, including state statutes and/or rules and administrative orders of the Arizona Supreme Court, as well as the Apache Junction personnel rules and administrative policies.

SECTION 2. TERM/EMPLOYMENT STATUS

A. This Agreement shall be effective from January 2, 2025 through January 2, 2027 (the "Term"), during which time Employee may only be removed for cause, but Employee shall be full-time, Fair Labor Standards Act ("FLSA") exempt and non-merit.

- B. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of City to terminate the services of Employee as provided by state law.
- C. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of Employee to resign at any time from employment of City, subject only to the provisions set forth in Section 3 of this Agreement.
- D. Employee agrees to remain in the exclusive employ of the City during the Term and neither accept nor become employed by any other employer or private client until contract term expires or termination as set forth below.

SECTION 3. TERMINATION

- A. Employee may terminate this Agreement for any reason but shall provide City at least ninety (90) calendar days advance written notice, or such advance notice as may otherwise be mutually agreed upon by the Parties.
- B. City may terminate this Agreement in any of the following situations:
 - 1. If Employee pleads guilty or no contest, or is found guilty, of a crime punishable as a felony or misdemeanor under any laws of this state, another state, or a federal law, or of any other crime that involves moral turpitude under the laws of this state; or
 - 2. If Employee has a disability that prevents him from performing the essential functions of the position; or
 - 3. If Employee engages in actions constituting willful misconduct in office, willful and persistent failure to perform his duties, or conduct prejudicial to the administration of justice that brings the judiciary or City into disrepute; or
 - 4. If Employee is subjected to reprimand, public censure, suspension or other disciplinary action by the Arizona Supreme Court or State Bar of Arizona or other state where Employee is licensed as an attorney.

SECTION 4. SALARY AND ANNUAL PERFORMANCE EVALUATION

- A. City agrees to pay Employee for his services rendered pursuant hereto at an annual salary of One Hundred Sixty Thousand Dollars and No Cents (\$160,000.00). Payment of said salary shall be made at the same time and manner as other employees are paid and shall be paid out of the City's

general fund allocated for the municipal court. Employee agrees not to seek a salary change or other changes to this Agreement during the Term.

- B. Employee may be evaluated annually by the City Council. The evaluations shall be conducted in accordance with the performance standards as determined by City for said purposes, considering among other items standard for trial judges as established by the Commission on Judicial Performance Review of the Arizona Supreme Court. Nothing in this Agreement is to be construed as creating either a promise or expectation of reappointment or contract renewal, and it is understood by Employee that any reappointment or renewal is a matter left to the unconditional discretion of the City Council.

SECTION 5. WORK WEEK HOURS; FRIDAYS AND WEEKEND HOURS; HOLIDAYS; VACATION; SICK LEAVE

- A. **Work Week Hours.** The City observes a Monday through Thursday 40 hour work week (10 hours per day) schedule. Employee shall not work less than an average of forty (40) hours per week except when a court holiday occurs. In the event Employee is required to work more than forty (40) hours in a week, Employee shall not be compensated for any additional time and is considered FLSA exempt.
- B. **Fridays and Weekend Hours.** To provide full due process to civil and criminal defendants, Employee will also provide magistrate services every Friday and weekend during each year this Agreement is in effect and may on these days provide such services through telephonic or online means for initial appearances, warrants and other critical or emergency public safety needs. Employee may utilize associate magistrates for coverage for these hours in his discretion. City shall provide and/or pay for a laptop computer or other technology for work away from the court site, especially to handle initial appearances and/or warrants and/or other work.
- C. **Holidays.** Employee shall be entitled to such City holidays or State holidays for which regular city employees and/or professional employees who work for the City receive for days off which shall include all declared holidays by the City as per Apache Junction Personnel Rule 8.
- D. **Vacation.** Vacation hours shall accrue as per Apache Junction Personnel Rule 8. Employee shall also receive one (1) day of Birthday leave per contract year and such leave shall be taken as all other employees are allowed the same privilege.
- E. **Sick Leave.** Employee shall on an annual basis accrue sick leave each year this Agreement is in effect as allowed based on tenure with the City pursuant to Apache Junction Personnel Rules, Rule 8.

SECTION 6. PROFESSIONAL DEVELOPMENT

- A. City agrees to budget and to pay the travel and subsistence expenses of Employee for professional and official City/Court travel, meetings and conferences.
- B. City agrees to pay professional and association dues, which are necessary for participation in national, regional, state and local professional associations, or are reasonably related for the maintenance of professional credentials, or for reasonable professional development, subject to the mayor's determination as to what is necessary.

SECTION 7. OTHER TERMS AND CONDITIONS

- A. City shall fix any such other terms and conditions of employment, as it may determine from time to time, relating to the performance of Employee, provided such terms and conditions are not inconsistent with or conflict with the provisions of this Agreement, the Apache Junction City Code, Arizona Revised Statutes, or any other statute, ordinance or regulation.
- B. All action taken by City relating to fringe benefits for employees in the executive ranges shall be considered actions granting the same benefits to Employee. The term "fringe benefits" include vacation and sick leave, holidays, medical/vision/dental/life insurance, equivalent percentage as a step adjustment or equivalent percent increase as a base wage adjustment or cost of living or other general citywide increases adopted by the City or city manager however coded in the City's payroll system under the same terms and conditions as are available to all other City employees, but not public safety sworn officers.
- C. City shall provide on behalf of Employee a family membership to the multi-Generation Center of Apache Junction.

SECTION 8. BINDING EFFECT

This Agreement shall be binding upon and inure to the benefit of the heirs at law and executors of Employee.

SECTION 9. ENTIRE AGREEMENT

This Agreement contains the entire agreement between the Parties. No other promises, representations, warranties, or covenants have been relied on by either Party in executing this Agreement.

SECTION 10. SEVERABILITY

City and Employee each believe that the execution, delivery and performance of this Agreement are in compliance with all applicable laws. However, in the event that any provision of this Agreement is declared void or unenforceable (or is construed as requiring City to do any act in violation of any applicable laws, including any constitutional provision, statute, regulation, or city code), such provision shall be deemed severed from this Agreement and this Agreement shall otherwise remain in full force and effect; provided that this Agreement shall retroactively be deemed reformed to the extent reasonably possible in such a manner so that the reformed agreement (and any related agreements effective as of the same date) provide essentially the same rights and benefits (economic and otherwise) to City and Employee as if such severance and reformation were not required. Unless prohibited by applicable laws, City and Employee further shall perform all acts and execute, acknowledge and/or deliver all amendments, instruments and consents necessary to accomplish and to give effect to the purposes of this Agreement, as reformed.

SECTION 11. ASSIGNMENT

This Agreement is not assignable by either City or Employee.

SECTION 12. NOTICES

Notices pursuant to this Agreement shall be given by deposit in the custody of the United States Postal Service, postage prepaid, or through overnight carrier service, addressed as follows or as such address may be changed from time to time upon notice to the other:

City: Mayor Walter "Chip" Wilson
City of Apache Junction
300 East Superstition Boulevard
Apache Junction, AZ 85119

Employee: Thomas C. McDermott
(contact information on file with
Human Resources Department)

SIGNATURES ON FOLLOWING PAGE

IN WITNESS WHEREOF, City and Employee have caused this Agreement to be executed the day and year first above written.

EMPLOYEE:

12/11/24
Date

Thomas C. McDermott
Thomas C. McDermott

CITY OF APACHE JUNCTION,
an Arizona municipal corporation:

Date

Walter "Chip" Wilson

ATTEST:

Evie McKinney
Acting City Clerk

APPROVED AS TO FORM:

12.11.24
Richard J. Stern
City Attorney