

**PROFESSIONAL SERVICES AGREEMENT BETWEEN CITY OF
APACHE JUNCTION AND WILLIAM PEARLMAN FOR
REPRESENTATION OF DEFENDANTS WHO COMMIT
MISDEMEANORS FILED IN APACHE JUNCTION MUNICIPAL COURT**

THIS AGREEMENT is made and entered into this 25 day of MAY, 2016, by and between the CITY OF APACHE JUNCTION, ARIZONA, an Arizona municipal corporation ("City"), and William J. Pearlman, Attorney at Law ("Attorney"), sometimes collectively referred to as the "Parties" or individually as a "Party".

RECITALS

A. The Presiding Magistrate of City's Municipal Court (hereinafter the "Court") appoints defense attorneys to provide legal representation services to defendants on an as-needed basis.

B. These types of professional services are exempt from the requirements of the open market procedures set forth in Apache Junction City Code, Vol. I, Article 3-7.

C. This Agreement is intended to set forth the rights and obligations of the Parties.

AGREEMENT

NOW, THEREFORE, City agrees to retain and does hereby retain Attorney and Attorney agrees to provide the services required according to the terms and conditions set forth below:

1. **ATTORNEY'S DUTIES:** Attorney agrees to perform the following professional services:

- A. Provide legal defense for indigent defendants assigned to Attorney after execution date of this contract by Court. Court schedule will not be changed arbitrarily and without prior consideration of Attorney's schedule. Such services shall be on an "as needed" basis and City does not guarantee any minimum compensation or salary.
- B. Represent indigent defendants assigned to Attorney by the City Magistrate from the date of assignment through final disposition of assigned cases, whether the cases are completed during the agreement period or afterwards, and be responsible for completing all cases that are active through the Term of the Agreement.

- C. Prepare for and appear at all Court proceedings pertaining to assigned defendants including, but not limited to: pretrial conferences, motions, jury and non-jury trials, evidentiary hearings, restitution hearings, sentence reviews, bond reduction or release motions, revocation of probation hearings, oral arguments, sentencings, order to show cause hearings, appellate proceedings and special actions, as well as appeals to higher courts. Attorney will not be required to be present at arraignments except where defendants request appointment of counsel and qualify for legal defense facilitated by City. In these instances, the arraignment will be continued until the time of a pretrial hearing, when Attorney shall be present. Once appointed, Attorney shall represent each defendant throughout all stages of the proceedings, including appeals and other appropriate post-conviction reliefs, until Attorney is relieved from the case by court.
- D. Provide personal consultation with clients prior to pretrial disposition conferences when requested or otherwise appropriate. Attorney shall maintain personal contact with all clients until assigned cases are terminated and shall use reasonable diligence in notifying such clients of official Court action resulting from their clients' nonappearance at scheduled court sessions (proof of such notice must be supplied upon request).
- E. Conduct the defense of indigent defendants in conformance with the minimum standards and requirements set forth in *Strickland v. Washington*, 466 U.S. 668, 104 S. Ct. 2052, 80 L.Ed.2d 674 (1984); and in *State v. Smith*, 140 Ariz. 355, 681 P.2d 1374 (1984); and in *State v. Lee*, 142 Ariz. 210, 689 P.2d 153 (1984). In the event that a case involves two or more defendants or Attorney declares a conflict of interest, Court may assign one or more defendants to another Attorney.
- F. Provide substitute counsel when unable for any reason to appear in Court or at events described in subsection B above. Substitute counsel shall not be used routinely. In general, substitute counsel should be used only when Attorney cannot serve as defense counsel because of illness or scheduled vacation, or prior legal commitment of precedence in another court. Within ten (10) calendar days of the execution of this agreement, Attorney shall provide the Presiding Magistrate with the names, addresses and telephone numbers of substitute counsel who will be responsible for providing defense services. No counsel shall be offered as a substitute in performance of

defense services without the prior written consent of Court. Such consent shall not be arbitrarily or unreasonably withheld or withdrawn.

- G. Pay for interpreters for all out-of-court matters. Court will provide and will pay for interpreters for non-English speaking defendants for all in-court and pretrial proceedings.
- H. Pay all costs incurred in the representation of indigent defendants assigned by Court pursuant to this agreement including, but not limited to, office space, telephones, transportation, photographs, photocopies, office supplies, office overhead, reports, and secretarial services.
- I. Obtain Court approval of all expert witnesses. City will be responsible for fees for expert witnesses up to a maximum of \$500.00 per case, with the \$500.00 figure exceeded only where appointment of such witness is ordered by Court.
- J. Advise Court when indigence of any given defendant is questionable. Attorney shall not be asked to advise clients until the Court has determined that they are indigent and are entitled to court-appointed Attorney representation. Attorney may request a review of the indigence of any defendant assigned to him/her. If Court makes a determination of non-indigence of such a defendant and allows Attorney to withdraw, Attorney shall not represent that defendant in that case for a fee.
- K. Give precedence to settings in the Court over civil cases and all other criminal cases in other courts which do not have precedence as provided by the Arizona Rules of Criminal Procedure.
- L. Serve as advisory counsel to in-custody defendants being seen by Court on the attorney regularly scheduled appearance day as permitted pursuant to Arizona Criminal Rules of Procedure, Rule 6.1(c).

2. ALLOWABLE CASELOAD: No more than 165 defendants annually will be assigned to Attorney during the Term of this Agreement by the Court. Attorney will be credited with one appointment for each defendant assigned. If Attorney is appointed to represent a defendant who has more than one municipal court case pending, Attorney shall be credited with one-half of one appointment for each additional municipal court case associated with each assigned defendant.

3. OFFICE: Attorney shall have an office or make arrangements to use office that is located within forty-five (45) mile radius of the corporate limits of City for personal consultation with clients when requested and otherwise appropriate. Such office must receive clients in person and by telephone from 7:00 a.m. to 6:00 p.m., Mondays through Thursdays, but not Fridays, Saturdays, Sundays and legal holidays.

4. COMPENSATION: In accordance with the terms and conditions of this Agreement, City shall compensate Attorney for its professional services as follows:

Regardless of number of hours worked or number of defendants represented, Attorney shall receive compensation in the amount of \$20,700.00 annually, payable at a monthly rate of \$1,725.00 per month, billable at the end of each month of service. Should any case be appealed to Superior Court, to include any special action, Attorney shall receive an additional \$500.00 as the sole compensation for conducting such appeal. Any additional cases assigned above this annual amount shall be compensated at \$160.00 per case. Attorney shall submit monthly invoices for payment no later than the tenth day of the calendar month for which Attorney is billing. City will make payment to Attorney within thirty (30) calendar days from date of receipt of invoice from Attorney. All fees will be monitored for reasonableness and for case management. Unreasonable fees will not be paid. If Attorney is present for pretrial for multiple defendants, the time charged to Court is to be divided by the number of defendants.

5. TERM: This Agreement shall be effective beginning July 1, 2016 and shall continue through June 30, 2018, subject to the Termination provisions set forth in Section 9 of this Agreement.

6. CITY'S STANDARD OF PERFORMANCE: City shall furnish the Attorney with all data, information and other supporting services necessary and reasonable for Attorney to perform the services set forth within this Agreement.

7. ATTORNEY'S STANDARD OF PERFORMANCE: While performing the services, Attorney shall exercise the reasonable professional care and skill customarily exercised by reputable attorneys practicing in the Phoenix Metropolitan Area, and shall use reasonable diligence and best judgment while exercising his/her professional skill and expertise. Attorney shall be responsible for all errors and omissions Attorney commits in the performance of this Agreement. Attorney shall notify Court after being arrested for any violation of any law within twenty-four (24) hours of such arrest. Attorney shall also advise Court no later than twenty-four (24) hours after being notified of any bar complaint being filed with any State Bar, or any arrest, and any self-reporting of unethical conduct. Any arrest, bar complaint or self-reporting may be considered a breach of good faith under this agreement, especially in situations

where such circumstances place the City in a bad light or otherwise is a public embarrassment as determined by the Court in his or her sole discretion.

8. **NOTICES**: All notices to the other Party required under this Agreement shall be in writing and sent by first class certified mail, postage prepaid, return receipt requested, addressed to the following personnel:

If to City: James Hazel
 Presiding Magistrate
 City of Apache Junction
 300 E. Superstition Blvd.
 Apache Junction, AZ 85119

If to Attorney: William J. Pearlman
 1237 S Val Vista Suite 209
 Mesa, AZ 85204

9. **TERMINATION**: Either Party may terminate this Agreement by providing thirty (30) days' written notice for any reason.

10. **INDEPENDENT CONTRACTOR**: The relationship created under this Agreement between Attorney and City/Court shall be solely that of an independent contractor, and nothing contained herein shall be construed to create a relationship of attorney-client, principal-agent, employer-employee, partnership, joint venture, or any relationship of any kind other than independent contractor. Because Attorney is an independent contractor, the Fair Labor Standards Act minimum wage and overtime payments, Federal Insurance Contribution Act, the Social Security Act, Older Workers' Benefit Protection Act, the Federal Unemployment Tax Act, the provisions of the Internal Revenue Code, Arizona revenue and taxation laws, Arizona worker's compensation law, and Arizona unemployment insurance law are not applicable. Attorney will retain sole and absolute discretion and judgment in the manner and means of carrying out Attorney's activities and responsibility hereunder. As an independent contractor, Attorney is not required to perform work exclusively for City during the term of this Agreement.

In the event of Termination, early or by non-renewal of this Agreement, Attorney shall, complete all assigned cases and within fifteen (15) calendar days after such notice is received by either Party, or within fifteen (15) calendar days of the anniversary date if the Agreement is not renewed, provide all client files to the Court and shall provide a final bill for services.

11. **RECORDS**: Records of Attorney's labor, payroll, and other costs pertaining to this Agreement shall be kept on a generally recognized accounting basis and made available to City for inspection on request. Attorney shall maintain records for a period of at least two (2) years after termination or non-renewal of this Agreement or for such time as is required applicable ethical

rules and/or opinions, and shall make such records available during that retention period for examination or audit by City personnel during regular business hours. City shall have no obligation to pay or withhold state or federal taxes or provide workers' compensation or unemployment insurance for or on behalf of Attorney.

12. **INSURANCE**: Attorney shall purchase and maintain minimum professional liability/malpractice insurance with companies duly licensed, in an amount satisfactory to City/Court.

All insurance required herein shall be maintained in full force and effect until all work or service required to be performed under the terms of the Agreement is satisfactorily completed and formally accepted; failure to do so may, at the sole discretion of City/Court, constitute a material breach of this Agreement.

Any failure to comply with the claim reporting provisions of the insurance policies or any breach of an insurance policy warranty shall not affect coverage afforded under the insurance policies to protect City/Court.

City/Court reserves the right to request and to receive, within ten (10) working days, certified copies of any or all of the herein required insurance policies and/or endorsements. City/Court shall not be obligated, however, to review same or to advise Attorney of any deficiencies in such policies and endorsements, and such receipt shall not relieve Attorney from, or be deemed a waiver of, City's or Court's right to insist on strict fulfillment of Attorney's obligations under this Agreement.

Insurance required herein shall not expire, be canceled, or materially changed without thirty (30) calendar days' prior written notice to City from Attorney.

13. **RIGHT OF CITY TO CONTRACT WITH OTHERS**: Nothing in this Agreement shall imply City is obligated to obtain the services described herein with only this particular Attorney.

14. **FORCE MAJEURE**: Neither City nor Attorney, as the case may be, shall be considered not to have performed its obligations under this Agreement in the event of enforced delay (an "Enforced Delay") due to causes beyond their control and without their fault or negligence or failure to comply with any applicable laws, including, but not restricted to, acts of God, fires, floods, epidemics, pandemics, quarantine, restrictions, embargoes, labor disputes, and unusually severe weather, acts of a public enemy, war, terrorism or act of terror (including but not limited to bio-terrorism or eco-terrorism), nuclear radiation, blockade, insurrection, riot, labor strike or interruption, extortion, sabotage, or similar occurrence or any exercise of the power of eminent domain of any governmental body on behalf of any public entity, or a declaration of moratorium or similar hiatus (whether permanent or temporary) by any public entity directly

affecting the services under this Agreement. In no event will Enforced Delay include any delay resulting from unavailability for any reason of labor shortages, or the unavailability for any reason of particular consultants, desired by Attorney in connection with the services. Attorney agrees that Attorney alone will bear all risks of delay which are not Enforced Delay.

15. INDEMNIFICATION: To the fullest extent permitted by law, Attorney shall defend, indemnify and hold harmless City, its elected and appointed officers, officials, agents, employees and Court from and against any and all liability including but not limited to demands, claims, actions, fees, costs and expenses, including attorney and expert witness fees, arising from or connected with or alleged to have arisen from or connected with, relating to, arising out of, or alleged to have resulted from the acts, errors, mistakes, omissions, work or services of Attorney, its agents, or employees in the performance of this Agreement. Attorney's duty to defend, hold harmless and indemnify City, its elected and appointed officers, officials, agents, employees and Court shall arise in connection with any tortious claim, damage, loss or expense that is attributable to bodily injury, sickness, disease, death, or injury to, impairment, or destruction of property including loss of use resulting therefrom, caused by an Attorney's acts, errors, mistakes, omissions, work or services in the performance of this Agreement including any employee of Attorney, or any other person for whose acts, errors, mistakes, omissions, work or services Attorney may be legally liable. The provisions of this paragraph shall survive termination of this Agreement.

16. WAIVER OF TERMS AND CONDITIONS: The failure of City or Attorney to insist in any one or more instances on performance of any of the terms or conditions of this Agreement or to exercise any right or privilege contained herein shall not be considered as thereafter waiving such terms, conditions, rights or privileges, and they shall remain in full force and effect.

17. 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. The Parties hereby waive all provisions of law providing for a change of venue or removal in such proceeding to any other county or other jurisdiction. 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 attorneys' fees, necessary witness fees and court costs to be determined by the court in such action.

18. **MODIFICATION OF CONTRACT:** This contract shall be automatically modified to comply and conform to any subsequent change (regarding indigent representation) imposed by case law or rules promulgated by the Arizona Supreme Court.

19. **LICENSE:** Attorney represents and warrants that any license necessary to perform the work under this Agreement is current and valid; such license includes but is not limited to an Arizona license to practice law and a City of Apache Junction business license. Attorney understands that the activity described herein constitutes "doing business in the City of Apache Junction" and Attorney agrees to obtain a business license pursuant to Chapter 8 of the Apache Junction City Code and keep such licenses current during the term of this Agreement. Attorney also represents and warrants that there are no pending bar complaints in any state Attorney is licensed to practice, and that Attorney is not on suspended, revoked, or disbarred status in any jurisdiction where so licensed.

20. **MISCELLANEOUS:**

- A. All agreements shall be interpreted to avoid questions of unethical conduct by Attorney or City.
- B. Attorney shall not collect or receive any payment or remuneration from defendants assigned to Attorney under this Agreement for services provided on the assigned cases.
- C. Attorney shall maintain current case logs and disposition records.
- D. Attorney shall not discriminate against any employee, or applicant for employment because of race, religion, color, gender, handicap, or national origin.
- E. Attorney shall permit the authorized representatives of City to inspect and audit records of Attorney relating to his/her performance under this contract within the confines of confidentiality.

21. **NONASSIGNMENT:** This is a personal service contract based on the personal reputation, expertise, and qualifications of Attorney and Attorney's duties under this Agreement are therefore not assignable.

22. **ENTIRE AGREEMENT:** This Agreement and any attachments represent the entire agreement between City and Attorney and supersede all prior negotiations, representations or agreements, express 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 be considered enforceable contract provisions, and shall supersede any inconsistent provisions of any previously negotiated agreement and any applicable amendments thereto; provided, however, that any apparent inconsistency shall be resolved, if possible, by construing the provisions as mutually complementary and supplementary.

23. SEVERABILITY: City and Attorney each believe that the execution, delivery and performance of this Agreement are in compliance with all applicable laws. However, in the unlikely 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, law, 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 the Parties as if such severance and reformation were not required. Unless prohibited by applicable law, the Parties 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.

24. CONFLICTS OF INTEREST: This Agreement is subject to, and may be terminated by City in accordance with, the provisions of A.R.S. § 38-511.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be signed by their duly authorized representatives as of the day and year first above written.

ATTORNEY:


By: _____

CITY OF APACHE JUNCTION,
an Arizona municipal corporation:

By: James W. Hazel
Presiding Magistrate

APPROVED AS TO FORM:

Handwritten signature of Richard J. Stern and the date 6-8-16 in blue ink.

RICHARD J. STERN
City Attorney