

## **EMPLOYMENT AGREEMENT WITH PRESIDING MAGISTRATE**

THIS AGREEMENT is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2017 by and between the CITY OF APACHE JUNCTION, an Arizona municipal corporation (hereinafter "City") and JAMES W. HAZEL, JR., Presiding Magistrate (hereinafter "Employee"), sometimes collectively referred to as the "Parties" and individually as a "Party", each of whom understand as follows:

### **RECITALS**

A. On December 15, 2008, Employee was hired as the Presiding Magistrate and has held such appointed position since that time.

B. City desires to continue the employment relationship with Employee and Employee desires to continue providing Presiding Magistrate services to City. Employee has indicated his desire to retire in July 2019.

C. It is the continuing desire of the City to: (1) maintain the services of Employee and to provide inducement for Employee to remain in such employment; (2) to make possible full work productivity by assuring Employee's morale and peace of mind with respect to future security; (3) to guard against malfeasance or dishonesty for personal gain on the part of the Employee; and (4) to provide a just means for terminating Employee's services at such time as Employee may be unable fully to discharge Employee's duties or when City may desire otherwise to terminate Employee's employ.

### **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, Volume I, Section 5-1-4 and as required by law of the State of Arizona, including state statutes and/or rules and administrative orders of the Arizona Supreme Court.

#### **SECTION 2. TERM**

A. This Agreement shall be effective from July 1, 2017 through June 30, 2019 (the "Term").

- 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 contract period and neither accept nor become employed by any other employer until contract termination, except that Employee may engage in part-time teaching at a college or university level.

**SECTION 3.        TERMINATION**

- A. In the event Employee voluntarily resigns his position before expiration of the aforesaid Term, Employee shall provide City written thirty (30) calendar day advance notice, or such advance notice as may otherwise be mutually agreed upon by the Parties.
- B. In the event Employee is terminated by council action or should City choose not to renew Employee's contract upon said contract's expiration, City will pay as partial contractual compensation severance pay to Employee in an amount equal to three (3) months salary.
- C. Employee shall not receive any severance award if Employee:
  - 1. voluntarily resigns from his position or requests that he not be considered for reappointment, or
  - 2. is removed by City for specific allegations of malfeasance or misfeasance, which may include, but not be limited to:
    - (a) willful and wanton misconduct in office;
    - (b) performance of an illegal act.
  - 3. is terminated by City action before the expiration of the contract term for only the following reasons:
    - (a) willful and wanton misconduct in office;
    - (b) performance of an illegal act;
    - (c) death or incapacitation.

#### **SECTION 4.            SALARY AND ANNUAL PERFORMANCE EVALUATION**

A.     City agrees to pay Employee for his services rendered pursuant hereto at an annual base salary of One Hundred Thirty-One Thousand Dollars and Zero Cents (\$131,000.00) and any cost of living increases or base wage adjustments received by other career employees over the Term hereafter. 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. City agrees to pay as additional compensation the severance pay provided for by Section 3 of this Agreement subject to the conditions contained in said section. Employee agrees not to seek a salary change or other changes to this Agreement during the Term.

B.     Employee shall be evaluated annually, to be completed no later than June 1 of each year this Agreement is in effect. 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 provision 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 would be a matter left to the unconditional discretion of the City.

#### **SECTION 5.            HOURS OF WORK; VACATION; SICK LEAVE; PERSONAL DAYS**

A.     Hours Monday - Friday. Employee shall not work less than an average of forty (40) hours per week except when a court holiday occurs or when on leave approved by the Mayor. 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.

B.     Weekend Hours. Employee will provide magistrate services every other weekend and may utilize pro-tem magistrates on alternative weekends to provide for magistrate services. Employee shall establish the schedule for weekend coverage within thirty (30) calendar days of the start of this agreement.

C.     Holidays. Employee shall be entitled to such City holidays or State holidays as required by law. If need dictates that Employee work a City holiday, Employee is entitled to exchange a normal workday for the purpose of having a day off.

D.     Vacation. Employee shall on an annual basis accrue Two Hundred (200) hours of vacation leave which shall be credited on December 15<sup>th</sup> each year this Agreement is in effect. Employee shall be allowed to accrue vacation leave beyond the limits of the personnel rules.

Vacation leave in excess of 125 hours will be paid out on January 15<sup>th</sup> of each year the Agreement is in effect, at the salary rate in effect at time of payment.

- E. Sick Leave. During the Term, City shall pay Employee from the City general fund for allocated salaries other employees are paid from a total of Forty-Eight Thousand Dollars and Zero Cents (\$48,000.00) for the equivalent value of accrued and unused sick leave on file in payroll records in the finance department from December 15, 2008 through June 30, 2019. The Parties agree this is the total that shall be paid during the Term of this Agreement and that Employee shall not accrue any other sick leave during the Term. The sick leave equivalent value payout shall be paid over the Term in as near as equal amounts per pay period as mathematically possible.
- F. Personal Days. For each calendar year this Agreement is in effect, Employee may use Sixty Four (64) hours for personal business, none of which shall accrue nor shall be reported to City's Human Resources Division or Finance Department as "time-off".
- G. Hours of Work. It is recognized that Employee must devote a large amount of time outside traditional business hours to the business of the City. Employee shall be permitted to adjust his work schedule as he deems appropriate, so long as he is available and the judicial administration of the City is not harmed.

#### SECTION 6. PROFESSIONAL DEVELOPMENT

- A. City hereby agrees to budget and to pay the travel and subsistence expenses of Employee for professional and official travel, meetings and occasions adequate to continue the State Supreme Court required or recommended professional development of Employee.
- B. City also agrees to budget and to pay for travel and subsistence expenses of Employee for short courses, institutes and seminars which are necessary for professional development and for the good of City, subject to the Mayor's determination as to what is necessary.
- C. City agrees to pay professional dues 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.     Unless otherwise negotiated within this Agreement, 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, sick leave, holidays, retirement, life and long-term disability insurance, except however, in the case of life and long-term disability insurance, City shall pay such premiums at no cost to Employee. Employee shall be covered by the City's insurance for errors and omissions.**

## **SECTION 8.        GENERAL PROVISIONS**

- A.     The text herein shall constitute the entire Agreement between the Parties.**
- B.     This Agreement shall be binding upon and inure to the benefit of the heirs at law and executors of Employee.**
- C.     If any provisions or any portion hereof contained in this Agreement is held to be unconstitutional, invalid or unenforceable, the remainder of this Agreement, or portion thereof, shall be deemed severable, shall not be affected, and shall remain in full force and effect.**

## **SECTION 9. 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:

<b>City:</b>	<b>Mayor Jeff Serdy City of Apache Junction 300 East Superstition Boulevard Apache Junction, AZ 85119</b>
<b>Employee:</b>	<b>James W. Hazel, Jr. P.O. Box 9060 Apache Junction, Arizona 85178</b>

**SECTION 10.      ASSIGNMENT**

This Agreement is not assignable by either City or Employee.

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

4/12/17  
Date

EMPLOYEE:

By: 

James W. Hazel, Jr.

CITY OF APACHE JUNCTION,  
an Arizona municipal corporation:

By: \_\_\_\_\_

Jeff Serdy, Mayor

\_\_\_\_\_  
Date

ATTEST:

\_\_\_\_\_  
Kathleen Connelly, City Clerk

APPROVED AS TO FORM:

 4.12.17  
Richard J. Stern, City Attorney