

EMPLOYMENT AGREEMENT WITH CITY ATTORNEY

THIS AGREEMENT is made and entered into this ____ day of _____, 2017 by and between the CITY OF APACHE JUNCTION, an Arizona municipal corporation ("City") and RICHARD JOEL STERN ("Employee") both of whom understand the following:

RECITALS

- A. Employee was appointed City Attorney in August 1997.**
- B. Employee serves at the pleasure of the City Council of the City of Apache Junction, Arizona ("Council").**
- C. Employee desires to continue to serve as the City Attorney and as the Apache Junction Water Utilities Community Facilities ("WUCFD") District Counsel.**
- D. It is the desire of the Parties to amend the terms and conditions by which the City shall receive and retain the services of Employee effective July 1, 2017, and to provide for him to remain in such employment; to make possible full work productivity by assuring his peace of mind with respect to future security; and to provide for terminating his services at such time as he may be unable to fully discharge his duties and when Council may otherwise desire to terminate his employ.**

AGREEMENT

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

SECTION 1. DUTIES

Council hereby agrees to employ Employee as City Attorney to assume the powers of and perform the functions and duties specified in the City Attorney job description on file with the Human Resources Division, as well as the WUCFD Counsel (hereinafter combined as the "City Attorney" function).

SECTION 2. AT-WILL STATUS

- A. Employee shall fulfill the powers, functions and duties of City Attorney and shall serve at will in this capacity subject to the Termination provisions pursuant to Section 3, below.**
- B. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of City Council to terminate the services of Employee at any time subject only to the provisions set forth in Section 3 below.**

- C. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of Employee to resign at any time from his position as City Attorney, subject only to the provisions set forth in Section 3 below.
- D. Employee agrees to remain in the exclusive employ of City and further agrees neither to accept other employment nor to become employed by any other employer without Council approval, or until this Agreement is terminated.

SECTION 3. TERMINATION / RESIGNATION

- A. In the event the City Council desires to terminate this Agreement with Employee, an affirmative vote of four (4) or more members of the Council at any regular meeting or special meeting is required. A lump sum payment equal to six (6) months of Employee's then current aggregate salary, the value of City paid dental and life insurance premiums for six (6) months, and also six (6) months' equivalent of City's 401A Profit Sharing contribution will be paid to Employee, in addition to all accrued vacation and sick leave at 100% value, plus the actual cost of full COBRA health benefits for the period of six (6) months. These amounts are deemed as fully earned at the time any termination decision is made official. Employee shall sign a Waiver and Release of all claims and causes of action against the City in order to process this pay out provision.
- B. In the event Employee resigns on his own volition, Employee shall be paid all of his accrued salary, vacation and sick leave, all at 100% value, but will not be paid any other payments as referenced in subsection (A). However, if he resigns, he shall give Council ninety (90) calendar days' written notice of such resignation. Council may choose to accept and effectuate his resignation before the end of the ninety (90) calendar day period, in which case it shall pay Employee a lump sum cash payment equal to his unpaid accrued salary, vacation and sick leave, all at 100% value, through and to Employee's initially announced last day.
- C. In the event Employee is terminated because of a conviction relating to any felony or loss of license to practice law in the State of Arizona, Council shall have no obligation to make any extra payment referenced in subsection (A) except for all of Employee's accrued salary, vacation and sick leave at 100% value. Council reserves the right to suspend any payment referenced in subsection (A) while felony charges are pending, or during any proceedings which involve a felony conviction or which would result in the loss of the license to practice law in the State of Arizona.

SECTION 4. SALARY

- A. City agrees to pay Employee One Hundred Forty One Thousand Ninety Nine Dollars and Ninety Cents (\$141,099.90) per annum for services, payable in installments at the same time as other employees of the City are paid. Employee and City may negotiate additional compensation and benefit terms as they deem fit at any time this Agreement is in effect, except that: 1) Employee agrees not to seek any contract modifications until after January 1, 2021; and 2) the Council shall conduct an evaluation of Employee starting in April of each year this Agreement is in effect.
- B. City shall also pay Employee any cost of living, base wage adjustment, step adjustment, step increase, or however else coded in the City's payroll system, any other general city-wide increase which is passed and adopted by the City Council, or the value of any non-merit based automatic step increase that non-contract, career status classified city employees receive under the then-current fiscal year classification and compensation plan adopted by the mayor and city council, applicable any time when this Agreement is in effect.

SECTION 5. AUTOMOBILE

City will provide Employee with a late model automobile for all City-related business on a twenty-four (24) hour basis. The automobile may be used to drive to and from work, but not for personal use other than transportation to and from work. Due to the confidential nature of Employee's position, the Mayor and City Council hereby exempt this vehicle pursuant to A.R.S. § 38-538.03(B) from the marking requirements of A.R.S. § 38-538(B). The City will also provide, at no cost to Employee, insurance, registration, repairs and maintenance, and gasoline.

SECTION 6. OTHER SUPPLEMENTAL BENEFITS

- A. Vacation Leave. Employee shall on a fiscal year basis, accrue thirty two (32) days of vacation (260 hours). On September 1st each year this Agreement is in effect, City shall pay Employee the equivalent cash value of Employee's then current hourly rate of any accrued vacation in excess of one hundred (100) hours.
- B. Sick Leave. Employee shall on an annual basis accrue fourteen (14) days of sick leave (112 hours). In addition, on September 1st each year this Agreement is in effect, City shall convert two hundred fifty (250) hours of Employee's accrued sick leave into a lump sum cash payment and provide such payment to Employee at Employee's then current hourly rate.

- C. Notification. Employee shall notify Mayor and Council of any planned or unplanned absences from the office which exceed five (5) consecutive work days.
- D. Other Benefits. All action taken by Council 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 but are not limited to vacation, sick leave, holidays, retirement, health, dental, vision, long-term disability and life insurance. City shall also pay Employee's annual state and federal active bar memberships.
- E. Professional Dues and Seminar Costs. Within the departmental budget, City will pay for all seminars and educational programs which relate to municipal issues and those which assist the City Attorney in the performance of his duties.
- F. Deferred Compensation. Employee may contribute to City's approved Deferred Compensation 457 Plan the maximum amount allowable under I.R.S. rules and regulations during each calendar year this Agreement is in effect. Per each Fiscal Year this Agreement is in effect, City shall contribute on behalf of Employee an amount equal to the then current maximum allowable 457 Plan amount (under I.R.S. rules and regulations) into the City's approved 401(A) Profit Sharing Plan identified below. This City-paid contribution shall be in addition to any 401(A) Profit Sharing Plan contribution the City has agreed to pay to Employee as otherwise set forth in subsection (G) below.
- G. ICMA 401(A) Profit Sharing Plan. During each Fiscal Year this Agreement is in effect, City shall contribute on behalf of Employee Thirteen Thousand Dollars (\$13,000.00) into the ICMA 401(A) Profit Sharing Plan. Employee shall be vested in all contributions at the time the City deposits its first contribution into the Plan on behalf of the Employee. Nothing in this paragraph restricts additional Employee contributions into the ICMA 401(A) Profit Sharing Plan.
- H. Life Insurance Supplement. In addition to standard City-provided life insurance, City shall on August 15th of every year this Agreement is in effect reimburse Employee a supplemental life insurance annual premium not to exceed Four Thousand Five Hundred Dollars (\$4,500.00).

SECTION 7. INDEMNIFICATION

City shall defend, save harmless and indemnify Employee against any tort, professional liability claim or demand or any other legal action, whether groundless or otherwise, arising out of any alleged act or omission occurring in the course and scope of performance of Employee's functions and duties. City

will compromise and settle any such claim or suit and pay the amount of all settlements or judgments rendered against Employee and/or City.

SECTION 8. OTHER TERMS AND CONDITIONS

Council, in consultation with Employee, 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, or any other statute, ordinance or regulation.

SECTION 9. NOTICES

Notices pursuant to this Agreement shall be in writing and be given by: 1) personal delivery by the party or their agent; or 2) deposit in the custody of the United States Postal Service, postage prepaid, return receipt requested, or private sector overnight or one-day service and addressed as follows or as such address may be changed from time to time upon notice to the other:

City: Mayor Jeff Serdy
 City of Apache Junction
 300 East Superstition Boulevard
 Apache Junction, AZ 85119

Employee: Richard Joel Stern
 [REDACTED]
 Apache Junction, AZ 85119

SECTION 10. ATTORNEY FEES

In the event it becomes necessary for either party to bring legal action to enforce any provision of this Agreement, the parties agree that the prevailing party shall be entitled to attorney fees.

SECTION 11. 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 12. ASSIGNMENT

This Agreement is not assignable by either City or Employee.

SECTION 13. 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 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 City and Employee as if such severance and reformation were not required. Unless prohibited by applicable laws, the 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.

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

6.7.17
Date

EMPLOYEE

By: 
Richard J. Stern

CITY OF APACHE JUNCTION,
an Arizona municipal corporation

Date

By: _____
Jeff Serdy, Mayor

ATTEST:

Kathleen Connelly, City Clerk