

### **Third Amendment to the Employment Agreement**

**James N. Smith  
And  
City of Mesa**

This Third Amendment to the Employment Agreement ("Third Amendment") is entered into between the City of Mesa an Arizona municipal corporation ("Employer") and James N. Smith ("Employee"). Employer and Employee may be referred to individually as "Party" and collectively as the "Parties."

#### **RECITALS**

- A. Employer and Employee are parties to that certain Employment Agreement entered into as of July 1, 2015; and a First Amendment to the Employment Agreement dated November 9, 2016; and a Second Amendment to the Employment Agreement dated October 2, 2017 (collectively, the "Employment Agreement").
- B. The Parties, through this Third Amendment, hereby desire to modify the City Attorney's compensation by increasing the Employee's current annual base salary by 4%, and, due to Arizona State Retirement System ("ASRS") rule changes this year, to further clarify that any annual vacation payout is considered a mandatory amount paid under an employer policy to reduce the employee's accrued vacation leave balance to a prescribed maximum.

#### **AGREEMENT**

NOW, THEREFORE, for and in consideration of the foregoing, and the promises and agreements set forth herein, the Parties agree as follows:

- 1. Base Salary. The Parties agree that Employee's annual base salary, as set forth in Section III, Paragraph A of the "Compensation and Benefits" section of the Employment Agreement (as amended in the amendments), is hereby increased by 4%, and such increase shall be effective as of July 1, 2018.
- 2. Vacation Payout. As clarification for ASRS, the Parties agree that any annual vacation payout is considered a mandatory amount paid under an employer policy to reduce the employee's accrued vacation leave balance to a prescribed maximum. Accordingly, the Parties agree (as further clarification to the existing Employment Agreement) that the following City of Mesa Personnel Rules provision applies to Employee: the "maximum accumulation of vacation time is two hundred forty (240) hours" and if there is "excess of [the 240 hours maximum] on December 31<sup>st</sup> of each year [Employee] will be paid for the excess amount of time after December 31<sup>st</sup>." [City of Mesa Personnel Rules Section 422(C)] Except as clarified and provided in this section, all other terms of Employee's vacation leave as provided in the Employment Agreement remain unchanged and in full force and effect.
- 3. Effect of Third Amendment. This Third Amendment shall be deemed to amend the Employment Agreement with respect to all terms, provisions and changes set forth in this Third Amendment. Except as amended by this Third Amendment, all terms, provisions and conditions of the Employment Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed on or as of August \_\_\_\_, 2018.

**EMPLOYEE**

\_\_\_\_\_  
James N. Smith

**EMPLOYER  
CITY OF MESA, an  
Arizona municipal corporation**

\_\_\_\_\_  
John C. Giles  
Mayor