

Fourth Amendment to the Employment Agreement

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

This Fourth Amendment to the Employment Agreement ("Fourth 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; a First Amendment to the Employment Agreement dated November 9, 2016; a Second Amendment to the Employment Agreement dated October 2, 2017; and a Third Amendment to the Employment Agreement dated August 27, 2018 (collectively, the "Employment Agreement").
- (B) The Parties, through this Fourth Amendment, hereby desire to modify the Employee's annual salary, provide for additional deferred compensation, and provide for an additional sick leave payout upon Employee's retirement from the Employer.

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 the Employment Agreement, is hereby increased to \$215,000 annually, and such increase shall be effective as of July 1, 2019.
- 2. Deferred Compensation. In addition to the deferred compensation provided to the Employee under the Employee Agreement, Employer will pay an additional \$3,000 per year on Employee's behalf into a qualified defined contribution plan (or plans) established by the Employer. Payments will be made in equal proportionate amounts each pay period. Employee will designate the qualified defined contribution plan (or plans) to which the payments shall be applied.
- 3. Sick Leave Payout.
 - (A) Employee, consistent with the benefits offered to all City Employees, is entitled, at retirement from the City of Mesa or death while employed, to be compensated for all accumulated sick leave time, up to a maximum of 520 hours for full time employees, at the rate of fifty percent (50%) of the accumulated sick leave time hours at the employee's effective hourly rate of pay.
 - (B) In addition to the compensation in paragraph (A) above, and as to the fifty percent of hours that would not be eligible for compensation under paragraph (A) above, the Parties agree that Employee shall also be entitled to be compensated for additional sick leave hours accrued, up to an additional maximum of 520 hours as follows: At retirement from the City of Mesa or death while employed, for each full month employed as City Attorney, whether in an interim or permanent role, Employee shall be compensated for accumulated sick leave hours that

would not be eligible for compensation under paragraph (A) above on a percentage basis based on the number of full months employed as City Attorney, up to a maximum of 100% payment of additional sick leave hours after 120 full months of employment.

4. Effect of Fourth Amendment. This Fourth Amendment shall be deemed to amend the Employment Agreement with respect to all terms, provisions and changes set forth in this Fourth Amendment. Except as amended by this Fourth 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 Fourth Amendment to be duly executed on or as of November 4, 2019.

EMPLOYEE

EMPLOYER
CITY OF MESA, an
Arizona municipal corporation

James N. Smith

John C. Giles
Mayor

Approved as to Form

Alfred J. Smith
Deputy City Attorney