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MEMORANDUM **Law Department - Council Memo**

DATE: October 29, 2014

TO: Mayor Tibshraeny & City Council Members

CC: Michael Traynor, Chandler Municipal Court Presiding Judge

FROM: Kay Bigelow, City Attorney (*kb*)

SUBJECT: Employment Contract for City Magistrate Michael Morales

Attached please find the contract for employment of Michael Morales as City Magistrate with an annual base salary of $148,000.00 from October 17, 2014 through June 30, 2017.

EMPLOYMENT AGREEMENT

THIS AGREEMENT, made and entered into this __ day of November, 2014 by and between the City of Chandler, State of Arizona, a municipal corporation, hereinafter called "City", as party of the first part, and Michael Morales hereinafter called "Employee", as party of the second part, both of whom understand as follows:

WITNESSETH:

WHEREAS, the City desires to employ the services of Employee as City Magistrate of the City of Chandler, Arizona; and

WHEREAS, it is the desire of the City Council to provide certain benefits, establish certain conditions of employment, and to set working conditions of said Employee; and

WHEREAS, it is the desire of the City Council to (1) secure and retain 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 act as deterrent 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 to otherwise terminate Employee's employ; and

WHEREAS, Employee desires to accept employment as City Magistrate of said City.

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

SECTION 1. <u>Duties</u>

City hereby agrees to employ Michael Morales as City Magistrate of said City to perform the functions and duties specified in the City Charter, and to perform such other legally permissible and proper duties and functions as the City Council and Presiding City Magistrate shall from time to time assign.

SECTION 2. <u>Term</u>

A. The term of this Agreement shall be from October 17, 2014 until June 30, 2017.

B. Nothing in this agreement shall prevent, limit or otherwise interfere with the right of the City Council 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 with the City, subject only to the provisions set forth in Section 3 of this agreement.

D. Outside employment of Employee shall not be permitted except with written permission of the Presiding City Magistrate. Such permission will not be given if it is determined that such employment is likely to:

1. Physically or mentally hamper the Employee in ability to do the job required by the City;

2. Reflect discredit on the City service or the Employee;

3. Be in conflict with the Employee's duties as a City Employee.

SECTION 3. <u>Resignation</u>

In the event Employee voluntarily resigns employment with the City before expiration of the aforesaid term of employment, the Employee shall give the City two months notice in advance, or such advance notice may be as otherwise mutually agreed upon.

SECTION 4. <u>Disciplinary Actions</u>

Employee works at the direction of the Presiding Judge and shall be held to high standards of conduct that would be expected of a Chandler Municipal Judge. Employee shall be subject to disciplinary action up to and including dismissal for any action that would result in disciplinary action if committed by other City employees. The Presiding Judge may provide verbal or written reprimands or take other disciplinary action of less than 30 calendar day suspensions without pay against Employee. For any suspension without pay, the Presiding Judge shall provide Employee, in writing, reasons for suspension. Employee may appeal the suspension to the City Council within five (5) work days of receiving the Presiding Judge's notice of suspension without pay.

If the Presiding Judge determines that Employee's conduct may warrant a suspension without pay in excess of 30 calendar days or termination, the Presiding Judge shall refer disciplinary action to the City Council unless both Employee and the Presiding Judge stipulate that the Presiding Judge can issue disciplinary action in excess of a 30 day calendar day suspension without pay.

The Presiding Judge may suspend Employee with pay whenever the Presiding Judge feels that such a suspension would be in the best interest of the Court. Suspension with pay shall not be considered a disciplinary action and Employee shall have no appeal rights.

SECTION 5. Salary

City agrees to pay Employee for his services rendered pursuant hereto at an annual base of $148,000.00 from October 17, 2014 to June 30, 2017 payable in installments at the same time as other employees of the City are paid. During the term of this Agreement, if the City provides for an increase to the annual base salaries of the non-represented employees in the City of Chandler, using the total compensation methodology, then the City agrees to increase the Employee's annual base by the same percentage or amount as provided for the non-represented employees, payable in installments at the same time as other employees of the City are paid. If no such increase is made to the base salary, Employee's annual base salary of $148,000.00 for the period of October 17, 2014 to June 30, 2015, July 1, 2015 to June 30, 2016, and for the period of July 1, 2016 to June 30, 2017 shall be continued. During the term of this Agreement, if the City agrees to provide any payment to all non-represented employees that is not added to base salaries, the City agrees to pay Employee the same amount paid to each Employee or percentage paid to each Employee.

SECTION 6. Hours of Work

A. Employee shall work not less than 40 hours per week except when a City holiday occurs or when a leave is approved by the Presiding City Magistrate.

B. In the event Employee is required to work more than 40 hours in a week, Employee shall not be compensated for the additional time.

SECTION 7. Dues and Subscriptions

City agrees to budget and to pay the professional dues and subscriptions of Employee necessary for continuation and full participation in national, regional, state and local associations and organizations necessary and desirable for continued professional participation, growth, and advancement, and for the good of the City subject to City's determination as to what is necessary.

SECTION 8. Professional Development

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 professional development of Employee and to adequately pursue necessary official and other national, regional, state and local governmental groups and committees thereof which Employee serves as a member, subject to City's determination as to what is necessary.

SECTION 9. Other Terms and Conditions of Employment

A. The City Council shall fix any such other terms and conditions of employment as it may determine from time to time, relating to performance of Employee,

provided such terms and conditions are not inconsistent with or in conflict with the provisions of this agreement, the City Charter, or any other law.

B. All provisions of the City Charter and Code, and Personnel Rules of the City relating to vacation and sick leave, retirement and pension system contributions, holidays, and other fringe benefits and working conditions as they now exist or hereafter may be amended, also shall apply to Employee as they would to other employees of City, in addition to said benefits enumerated specifically for the benefit of Employee.

C. Employee shall be entitled to receive the same vacation and sick leave benefits as are accorded other exempt employees reporting directly to the Department Head. Payment of Employee's vacation and sick hours shall be treated as set forth in Paragraphs D and E of this Section.

D. The accumulation of Employee's vacation hours shall be treated as follows:

1. As of the last full pay period in every calendar year, Employee's vacation credits shall not be allowed to accumulate in excess of 240 hours.

2. Any carry over of vacation credits in excess of 240 hours shall become void on the first day of the pay period with a pay day in January.

3. In exceptional cases, the Presiding City Magistrate may allow Employee to carry over more than 240 hours. The Presiding City Magistrate shall notify the Personnel Director in writing with an attached copy of the notice to the Mayor and Council if Employee is allowed to carry over excess vacation accrual. The excess accrual must be used prior to the first of July of the same year. Carry over of excess vacation accrual shall not be allowed for more than two successive years.

4. Excess vacation accrual not used as required by this rule shall be deleted from the Employee's record by the Personnel Director and the Employee shall be notified in writing to that effect.

E. Payment of sick leave upon leaving City service or death:

1. Upon leaving City service, Employee shall be entitled to compensation for up to 240 hours of sick leave.

2. If Employee dies prior to leaving City service, his beneficiaries shall be entitled to compensation for up to 240 hours of sick leave.

F. Employee shall be covered by the City's insurance for malpractice and errors and omissions. City shall provide Employee a term life insurance plan in an amount equal to 1.5 times Employee's annual salary. Employee shall pay the same amount of employee and dependent premiums for the City health and dental plans as other employees of the City pay.

G. In addition, Employee shall be provided an additional amount of $750.00 per year to be deposited in the City's Deferred Compensation Plan. Employee may contribute an additional amount, up to the maximum allowed, to be deposited in said plan. Deposits are to be made each bi-weekly pay period.

H. Employee shall be entitled to the same monthly benefit allowance as other exempt employees reporting to the Department Head.

SECTION 10. General Provisions

A. The text herein shall constitute the entire agreement between 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 thereof, 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 11. Reappointment

Nothing in this agreement shall give Employee an employment right beyond the term set forth herein and pursuant to Chandler Charter Section 2.09(c) reappointment of Employee shall be at the pleasure of the City Council.

CITY OF CHANDLER:

By: _____ Date: _____
Jay Tibshraeny, Mayor

EMPLOYEE:

By: _____ Date: _____
Michael Morales