

**Employment Agreement  
Between James Smith  
And  
City of Mesa**

This Employment Agreement (the "Agreement"), is made and entered into this   1   day of July, 2015 by and between the City of Mesa, an Arizona municipal corporation, (hereinafter called "Employer") and James Smith, (hereinafter called "Employee").

In consideration of the mutual covenants and undertakings set forth below, the parties agree as follows:

**I. Term**

This Agreement shall become effective on July 24, 2015 and shall remain in full force and effect until terminated by the Employer or Employee as provided for in this Agreement.

**II. Duties and Authority**

Employee agrees to perform the functions and duties of City Attorney, as specified in the Mesa City Charter, the Mesa City Code, and as directed by the Mesa City Council.

Employee understands and acknowledges that the Mesa City Attorney is an at-will position and serves at the pleasure of the Mesa City Council, pursuant to Section 401(B) of the Mesa City Charter.

**III. Compensation and Benefits**

- a. Base Pay: Employee will be paid an annual base salary of \$185,000, effective July 24, 2015 and payable in installments at the same time and manner that the other City employees are paid.

Employee will be eligible for additional salary increases based upon merit and performance, as determined by the City Council. Employee will be eligible for cost of living increases as provided in the budget for other City Executive level employees.

- b. Deferred Compensation: Employer will pay \$10,000 per year into a qualified defined contribution plan (or plans), established by the City, on the Employee's behalf. Payments will be made in equal proportionate amounts each pay period. Employee will designate the qualified defined contribution plan (or plans).
- c. Arizona Retirement System: The Employer will be responsible for the employer's contribution and the Employee will be responsible for the employee contribution to the Arizona State Retirement System.

- d. Benefits and Life Insurance: Employee is entitled to the same benefits, including but not limited to vacation leave, sick leave, medical, dental, vision, and life insurance benefits provided to other City Executive level employees.
- e. Automobile Allowance: Employer will pay Employee \$4,800 per year, payable monthly (\$400 per month), as a vehicle allowance to be used to purchase, lease, or own, operate and maintain a vehicle. The Employee shall be responsible for paying for liability, property damage, and comprehensive insurance coverage upon such vehicle and said insurance shall be primary and the City's insurance shall be secondary. Employee shall also be responsible for all expenses attendant to the purchase, operation, maintenance, repair, and regular replacement of the vehicle.

The Employee's automobile allowance shall be adjusted consistent with other City Executive level employees. The Employer shall reimburse the Employee at the City's standard mileage rate for any business use of the vehicle beyond the corporate boundaries of Maricopa County.

- f. Communication Allowance: Employer will pay Employee \$960 per year, payable monthly (\$80 per month), as a communication allowance.
- g. Except as otherwise provided in this Agreement, the Employee shall be entitled to the highest level of benefits that are enjoyed by other department managers of the Employer as provided in the Charter, Code, Personnel Rules and Regulations.
- h. Vacation Leave: The Employee may elect to be paid for any or all accrued vacation leave as of December 31 of each year. Employee is not required to use 80 hours of vacation leave to be entitled to this payment (as set forth in the Personnel Rules). Payment of the accrued vacation leave will be made on or before January 31<sup>st</sup> of the following year.

#### **IV. Liquidated Damages Provision**

Employee understands and agrees that, pursuant to Section 401 (B) of the Mesa City Charter, the City Attorney serves at the pleasure of the Mesa City Council.

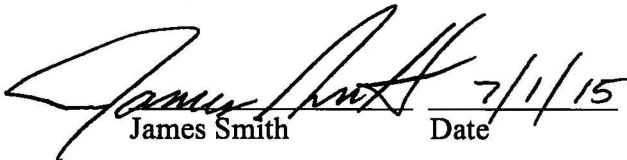
If the Employee is terminated, and in consideration for a full and complete release of all claims and causes of action against the Employer, the Employer agrees to pay the Employee an amount equal to six (6) months salary, calculated using the salary at the time of termination. Additionally, Employer will pay the cost of Employee's (including family) health care premiums (i.e. COBRA) for six (6) months. If, however, the Employee is terminated because of a felony conviction or any criminal offense involving moral turpitude or because of his willful breach or habitual neglect of her duties under the Agreement, the Employer shall have no obligation to pay this amount.

In the event that the Employee voluntarily resigns his position with the Employer, the Employee shall provide the Mayor and City Council of Mesa a minimum of 30 days written notice unless the parties agree otherwise. If the Employee voluntarily resigns, Employer will have no obligation to pay the sum set forth in this provision, unless otherwise agreed to as part of a resignation in lieu of termination.

**V. Other Terms and Conditions of Employment**

- a. Applicability of Mesa Personnel Rules: Employer and Employee understand and agree that all terms and provisions in the Mesa Personnel Rules are applicable to Employee, unless inconsistent with the terms of this agreement.
- b. Severability. The invalidity or partial invalidity of any portion of this Agreement will not affect the validity of any other provision. In the event that any provision of this Agreement is held to be invalid, the remaining provisions shall be deemed to be in full force and effect as if they have been executed by both parties subsequent to the expungement or judicial modification of the invalid provision.
- c. Governing Law: This Agreement will be governed by and construed in accordance with laws of the State of Arizona. The parties agree that venue will be Maricopa County, Arizona.
- d. Complete Agreement: This Agreement supersedes any and all prior written or oral agreements, including the Severance Agreement, dated October, 2005. Any amendments to this Agreement must be in writing and signed by the parties.

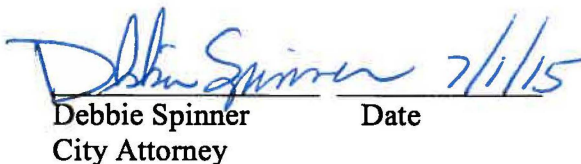
EMPLOYEE

  
James Smith      Date 7/1/15

CITY OF MESA

  
John Giles      Date  
Mayor

Approved as to form:

  
Debbie Spinner      Date 7/1/15  
City Attorney

## **First Amendment to the Employment Agreement**

James N. Smith  
And  
City of Mesa

This First Amendment to the Employment Agreement ("First Amendment") is by and 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 the certain Employment Agreement dated effective as of July 1, 2015 (the "Employment Agreement").
- B. The Parties desire to amend the Employment Agreement to increase the vacation accrual to 20 hours per month.


### **AGREEMENT**

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

- 1. Vacation Leave. The Parties agree that Employee shall accrue 20 hours of vacation leave per month. Accordingly, Section III(d) of the Employment Agreement shall be amended to read as follows: "Benefits and Life Insurance: Employee is entitled to the same benefits, including but not limited to discretionary leave, sick leave, medical, dental, vision and life insurance benefits provided to other City Executive level employees. In addition, effective as of July 1, 2016, the Employee shall accrue 20 hours of vacation leave per month."
- 2. Effect of First Amendment. This First Amendment shall be deemed to amend the Employment Agreement with respect to all terms, provisions and changes set forth in this First Amendment. Except as amended by this First 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 November 17, 2016.

#### **EMPLOYEE**

  
James N. Smith  
City Attorney

#### **EMPLOYER**

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

  
John C. Giles  
Mayor

Approved as to form:

  
Alfred J. Smith  
Deputy City Attorney

## Second Amendment to the Employment Agreement

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

This Second Amendment to the Employment Agreement ("Second 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 (the "Employment Agreement");
- B. The Parties thereafter, on November 17, 2016, entered into a First Amendment to the Employment Agreement to provide Employee with certain benefit increases (the "First Amendment"); and
- C. The Parties, through this Second Amendment, hereby desire to modify the City Attorney's compensation by increasing the Employee's current annual base salary by 3%.

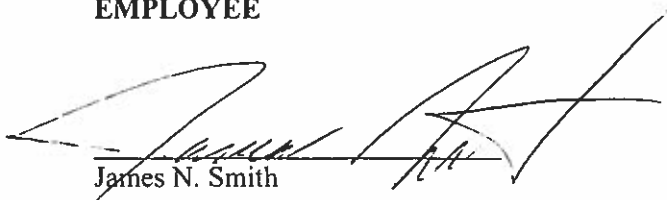
### AGREEMENT

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

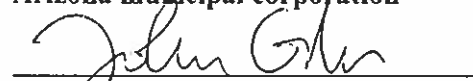
- 1. Base Salary. The Parties agree that Employee's annual base salary, as set forth in Section III, Paragraph A of the "Compensation and Benefits" section of the Employment Agreement, is hereby increased by 3%, and such increase shall be effective as of July 1, 2017.
- 2. Effect of Second Amendment. This Second Amendment shall be deemed to amend the Employment Agreement and First Amendment with respect to all terms, provisions and changes set forth in this Second Amendment. Except as amended by this Second Amendment, all terms, provisions and conditions of the Employment Agreement and First Amendment shall remain in full force and effect.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed on or as of October 2, 2017.

**EMPLOYEE**

  
James N. Smith

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

  
John C. Giles  
Mayor

### 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.

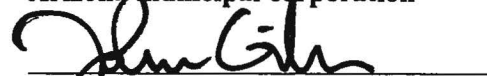
IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed on or as of August 27, 2018.

**EMPLOYEE**

  
James N. Smith

**EMPLOYER**

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

  
John C. Giles  
Mayor



## **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:

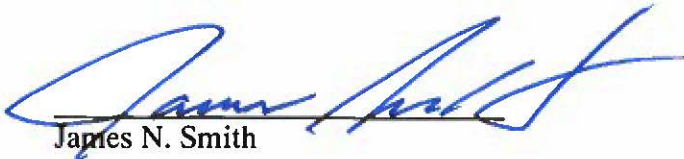
1. Base Salary. The Parties agree that Employee's annual base salary, as set forth in the Employment Agreement, is hereby increased to \$215,000 annually, and such increase shall be effective as of July 1, 2019.
2. Deferred Compensation. In addition to the deferred compensation provided to the Employee 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.

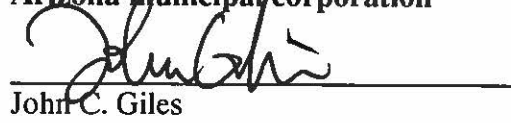
IN WITNESS WHEREOF, the Parties have caused this Fourth Amendment to be duly executed on or as of November 4, 2019.

**EMPLOYEE**


  
James N. Smith

**EMPLOYER**

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

  
John C. Giles  
Mayor

Approved as to Form

  
Alfred J. Smith  
Deputy City Attorney



## **Fifth Amendment to the Employment Agreement**

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

This Fifth Amendment to the Employment Agreement ("Fifth 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 "Parties."

### **RECITALS**

- A. Employer and Employee are parties to that certain Employment Agreement entered into and made effective as of July 1, 2015; a First Amendment to the Employment Agreement dated November 17, 2016; a Second Amendment to the Employment Agreement dated October 2, 2017; a Third Amendment to the Employment Agreement dated August 27, 2018; and a Fourth Amendment to the Employment Agreement dated November 4, 2019 (collectively, the "Employment Agreement").
- B. The Parties, through this Fifth Amendment, hereby desire to provide for a one-time payment to Employee.

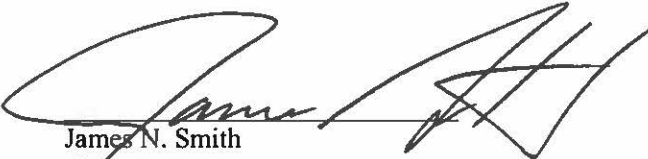
### **AGREEMENT**

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

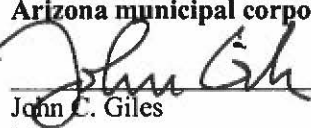
1. **One-Time Payment:** Consistent with the one-time payment made to eligible City of Mesa employees, Employer will pay to Employee a one-time gross payment of \$2,000, applicable taxes and withholdings to be deducted, to be direct deposited on January 15, 2021 into Employee's account on file with the City of Mesa payroll system.
2. **Effect of Fifth Amendment:** This Fifth Amendment shall be deemed to amend the Employment Agreement with respect to all terms, provisions, and changes set forth in this Fifth Amendment. Except as amended by this Fifth 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 Fifth Amendment to be duly executed on or as of February 25<sup>th</sup>, 2021.

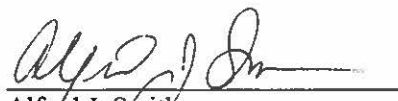
#### **EMPLOYEE**

  
James N. Smith  
City Attorney

#### **EMPLOYER**

**CITY OF MESA, an  
Arizona municipal corporation**  
  
John C. Giles  
Mayor

Approved as to Form

  
Alfred J. Smith  
Deputy City Attorney