

**CITY OF CHANDLER CITY ATTORNEY
EMPLOYMENT AGREEMENT**

THIS AGREEMENT ("Agreement") is entered into by and between the CITY OF CHANDLER (the "City"), an Arizona municipal corporation, by its Mayor, and KELLY Y. SCHWAB ("Employee"), (City and Employee may individually be referred to as "Party" and collectively referred to as "Parties") and made this ____ day of _____, 2022 (Effective Date).

WITNESSETH:

WHEREAS, the City desires to employ the services of Employee as City Attorney of the City of Chandler, Arizona 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 act as deterrent against malfeasance or dishonesty for personal gain on the part of the Employee, and (3) to set forth the terms for terminating Employee's services at such time as Employee may be unable fully to discharge Employee's duties or when the City may desire to otherwise terminate Employee's employ; and

WHEREAS, Employee desires to accept employment as City Attorney of the City;

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

SECTION 1. Duties

The City hereby agrees to engage Employee as City Attorney of the 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 shall from time-to-time assign.

SECTION 2. Term

A. The term of this Agreement shall be for two years from July 1, 2022, through June 30, 2024, unless sooner terminated as provided herein.

B. Employee agrees to remain in the exclusive employ of the City until termination of this Agreement and neither to accept nor to become employed by any other employer until after the Agreement is terminated.

SECTION 3. Termination and Severance

A. Employee serves at the pleasure of the City Council as provided in the Chandler City Charter and nothing herein shall be taken to prevent, limit or otherwise

interfere with the right of the City to terminate the services of Employee with or without good cause at any time. There is no express or implied promise made to Employee for any form of continued employment. This Agreement is the sole and exclusive basis for an employment relationship between the Employee and the City.

B. For purposes of this Agreement, involuntary termination shall occur when:

1. The majority of the City Council votes to terminate Employee at a properly posted and duly authorized meeting of the City Council.
2. Employee resigns at the request of the City Council, whether formal or informal. Employee may declare an involuntary termination as of the date of the request.
3. The City Council gives Employee notice at least 60 days before the end of the Agreement that it will not offer a follow-on Agreement upon expiration of the current contract term. Employee's termination shall be effective as of the end of the contract term unless an earlier terminate date is mutually agreed upon by the parties.

C. If Employee is involuntarily terminated for other than good cause by the City Council, including when the Agreement is allowed to expire without a follow-on Agreement, while Employee is still willing and able to perform the duties required under this Agreement, the City agrees to provide one of the following severance packages, which must be elected by Employee no later than five business days after Employee's receipt of the notice of termination or decision not to renew the Agreement, or Employee's involuntary resignation. Once selected, Employee's severance package may not be changed.

Option 1:

- A single lump sum severance payment in an amount equivalent to four months' aggregate salary at the then-current rate of pay, deferred compensation thereon, and the value of 100% of Employee's accrued vacation leave and 50% of accrued sick leave.
- The City's share of life insurance coverage and City-paid medical, dental, and vision COBRA continuation coverage for four months.

Option 2:

- Continuing pay and benefits for up to six months or until Employee commences retirement or obtains other full-time employment and benefits coverage through a group health insurance plan from Employee's new employer, whichever occurs sooner, as follows:

- Pay and deposits of deferred compensation based on Employee's then-current salary paid every two weeks concurrently with the regular City payroll.
 - The continuation of City benefits based on Employee's elections at the time of termination.
- A lump sum payment of the value of 100% of Employee's accrued vacation leave and 50% of accrued sick leave to be made at the time of Employee's final check.

D. Payments made by the City under either severance package will release the City from any further obligations under this Agreement. Before the delivery of any severance payment under either option set out above, Employee agrees to execute and deliver to the City a waiver and release releasing the City from all claims that Employee may have against City, in a form mutually acceptable to the Parties.

E. The City shall not be obligated to pay, and shall not pay, any severance payments under the provisions of paragraph 3.C, if the Employee is terminated for good cause as defined in paragraph 3.F. below. Further, the City shall not be obligated to pay, and shall not pay, any severance amount under the provisions of paragraph 3.C., in the event Employee voluntarily resigns without affirmative action by City to terminate, initiate termination proceedings, or request Employee's resignation.

F. *Good Cause.* For purposes of this Agreement, the term "good cause" is defined as, but not limited to, the following:

1. Any willful, knowing, grossly negligent, or negligent breach, disregard, or habitual neglect of any provision of this Agreement, or any willful, knowing, grossly negligent, or negligent breach, disregard, or habitual neglect of any duty or obligation required to be performed by Employee under this Agreement or under the Charter and ordinances of the City and/or the laws of the United States or the State of Arizona.
2. Incompetence in the performance of the Employee's duties as documented by evaluations, memoranda, or other written communication from the City; provided, however, the terms and conditions of this paragraph shall not justify good cause unless the City has provided Employee notice and a reasonable opportunity to remediate any incompetency.
3. Any misconduct of the Employee involving an act of moral turpitude, criminal illegality (excepting minor traffic violations), or habitual violations of the traffic laws, whether or not related to the Employee's official duties hereunder.

4. Any violation by the Employee of a statute or law constituting misconduct in office.
5. Any conduct by employee that violates any law, rule, or policy prohibiting discrimination, harassment, or retaliation.
6. Any conduct that would constitute a material violation of City rules, regulations, or policies.
7. Any willful, knowing, grossly negligent, or negligent misapplication or misuse, direct or indirect, by Employee of public or other funds or other property, real, personal, or mixed, owned by, or entrusted to the City, or Employee in his/her official capacity.
8. Knowingly falsifying records or documents related to the City's activities.
9. Knowing misrepresentation of material facts to the City Council or other City officials in the conduct of the City's business
10. Insubordination or failure to comply with lawful directives of the City Council unless compliance with such directive would violate the law or any ethical code or rules applicable to the Employee.
11. The unlawful use or abuse of drugs, hallucinogens, alcohol, or other substances regulated by federal or state law.
12. The suspension or loss of any professional license required to perform the duties of the position.
13. Any other reason constituting "good cause" under Arizona law.

G. *Resignation.* Nothing in this Agreement shall prevent, limit, or otherwise interfere with the right of Employee to resign at any time from his/her position or to retire from public service. In the event that Employee voluntarily resigns his/her position or retires prior to the expiration of the term of this Agreement, Employee shall give the City at least sixty (60) days' advance notice, or such advance notice as may be otherwise mutually agreed upon. In the case of a voluntary resignation or retirement, no severance package will be provided to Employee.

SECTION 4. Salary

A. The City agrees to pay Employee for services rendered under this Agreement at an annual base of \$232,356, payable in installments at the same time as other employees of the City are paid.

B. The City Council shall conduct an evaluation of Employee's performance annually and shall review and adjust the compensation of Employee each year based on the results of the annual performance evaluation and market survey data.

SECTION 5. Hours of Work

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

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.

C. Employee will be allowed to adjust her office hours as she shall deem appropriate so long as she is present each workday and the management of the City is not harmed.

SECTION 6. Dues and Subscriptions

The 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 7. Professional Development

A. The 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 the City's determination as to what is necessary.

B. The City also agrees to budget and to pay for the travel and subsistence expenses of Employee for short courses, institutes, and seminars that are necessary for professional development and for the good of the City, subject to the City's determination as to what is necessary.

C. The Mayor and Council shall be given prior notice of estimated time and expenditures under this Section.

SECTION 8. 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 the 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 the City, in addition to said benefits enumerated specifically for the benefit of Employee, except as otherwise provided under this Agreement.

C. Employee shall be covered under the City Code provisions on defense and indemnification of City employees for acts within the scope of his employment.

D. Employee shall be entitled to annual deferred compensation in an amount equal to seven percent (7%) of Employee's base salary. This amount shall be paid in equal biweekly amounts and deposited in Employee's City-designated deferred compensation account.

E. The City shall provide Employee a term life insurance plan in an amount equal to 1.5 times Employee's annual salary, payable to Employee's designated beneficiaries.

F. The City shall provide Employee a \$40 per month allowance for the use of Employee's own personal cell phone for City business. This allowance will be paid in biweekly amounts.

G. Employee will accrue vacation and sick leave in accordance with the City's Personnel Rules. Payment of Employee's unused sick hours shall be treated as set forth in paragraph H of this section.

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

1. Upon leaving City service, Employee shall be entitled to compensation for accumulated sick leave under the provisions governing payment of sick leave for regular employees upon retirement.
2. If Employee dies prior to leaving City service, her beneficiaries shall be entitled to compensation pursuant to the City Personnel Rules.

SECTION 9. Tax Compliance

Employee shall be responsible for compliance with all Internal Revenue Service and State Revenue Service requirements for taxes on any salary or benefits.

SECTION 10. General Provisions

A. The text herein constitutes the entire agreement between the Parties.

B. This Agreement shall be binding upon and inure to the benefit of the heirs at law and executors of Employee.

C. If the Parties mutually desire to extend Employee's employment beyond the term of this Agreement, Employee and the City Council will engage in discussions during the period between June 1, 2024, and July 15, 2024, concerning possible changes to the terms and conditions for any employment after June 30, 2024.

D. If any provisions, or any portion thereof, contained in this agreement are held to be unconstitutional, invalid, or unenforceable, the remainder of the Agreement, or portion thereof, shall be deemed severable, shall not be affected, and shall remain in full force and effect.

IN WITNESS WHEREOF the Parties hereto have executed this Agreement.

FOR THE CITY:

By: _____
MAYOR

FOR EMPLOYEE:

By:  _____
KELLY Y. SCHWAB

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney 