

## **CITY OF LITTLETON EMPLOYMENT AGREEMENT**

**THIS EMPLOYMENT AGREEMENT** (“Agreement”) is entered into on February 1, 2019 by and between Ethan Feldman whose business address is 6673 S. Sycamore Street, Littleton, Colorado 80120 (the “Employee” or “Judge”) and the **CITY OF LITTLETON, COLORADO** (“City”), a Home Rule municipality of the State of Colorado. The City and the Employee may be individually referred to as a “Party” or collectively referred to as the “Parties.”

### **RECITALS AND REPRESENTATIONS**

**WHEREAS**, the City needs for certain services to be performed for the position of Presiding Municipal Judge as described in this Agreement; and

**WHEREAS**, the Employee has the skill, ability, and expertise to perform the services described in this Agreement; and

**WHEREAS**, the Employee is duly qualified to perform the services described in this Agreement within the deadlines provided in this Agreement; and

**WHEREAS**, this Agreement is made pursuant to the authority granted to the City by, and the mandate of, C.R.S. § 13-10-101, *et seq.*, and Littleton City Code Section 1-6-20; and

**WHEREAS**, the Parties desire to enter into this Agreement.

**NOW, THEREFORE**, in consideration of the benefits and obligations of this Agreement, the Parties mutually agree as follows:

**1.0 SERVICES AND PERFORMANCE.** The Employee shall provide the services described in Section 1 of Exhibit A (the “Services”). Exhibit A is incorporated herein in its entirety.

**2.0 SALARIED EMPLOYEE.** The Employee in the position of Presiding Municipal Judge shall be compensated at the fixed amount of \$81,984.00 payable in the same manner as other city employees. The fixed amount is based on Employee working 67 hours per month. In any month where Employee is working more than 67 hours per month, Employee shall provide the City with a monthly billing statement itemizing the additional hours worked. Additional hours will be billed at \$102 per hour.

2.1 The Additional hours may include hours spent on Court administration, written findings and other duties outside case adjudication up to a maximum of 12 hours per month. For purposes of calculating hour, each morning or afternoon docket appearance on a Monday, Wednesday, or Thursday shall be deemed to be a three hour session. Video arraignment/advisement session on non-docket/non-jury days shall be deemed to be a one hour session. Review and issuance of probable cause warrants or review of

probable cause statements on non-docket, non-trial days shall be deemed to be one hour sessions. The Judge shall be compensated for actual time spent for jury trials and video arraignments on Fridays.

2.2 Employee shall use the full range of judicial discretion in conducting the session over which it presides;

2.3 Employee does provide services to other cities and clients and is free to provide services to others and is not required to work exclusively for the City;

2.4 As Presiding Municipal Judge the Employee's expertise oversees the day to day operations of the Municipal Court as a separate branch of government and City and will not oversee the actual work or instruct the Employee as to how the work will be performed. City will pay the costs of training as required by the Colorado Supreme Court for municipal judges. Additional training is the responsibility of Employee.

**3.0 COMPENSATION.** Following execution of this Agreement by the City, the City shall compensate the Employee in accordance with Section 2 of Exhibit A.

**4.0 TERM AND TERMINATION.** The term of service shall be for a period of two years from the effective date of appointment as presiding judge, February 1, 2019. Termination of appointment shall be pursuant to Section 58 of the Littleton City Charter.

**5.0 INSURANCE.** Pursuant to the Colorado Governmental Immunity Act, C.R.S. 24-1-101 et seq., the Judge is entitled to any and all benefits of law pertaining to judicial or sovereign immunity and to coverage of the City's insurance applicable to persons holding such position.

## **6.0 MISCELLANEOUS PROVISIONS**

6.1 **No Waiver of Rights.** A waiver by any Party to this Agreement of the breach of any term or provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by either Party. The City's approval or acceptance of, or payment for, Services shall not be construed to operate as a waiver of any rights or benefits to be provided under this Agreement. No covenant or term of this Agreement shall be deemed to be waived by the City except in writing signed by the City Council or by a person expressly authorized to sign such waiver by resolution of the City Council, and any written waiver of a right shall not be construed to be a waiver of any other right or to be a continuing waiver unless specifically stated.

6.2 **No Waiver of Governmental Immunity.** Nothing in this Agreement shall be construed to waive, limit, or otherwise modify any governmental immunity that may be available by law to the City, its elected and appointed officials, employees, contractors, or agents, or any other person acting on behalf of the City

and, in particular, governmental immunity afforded or available pursuant to the Colorado Governmental Immunity Act, Title 24, Article 10, Part 1 of the Colorado Revised Statutes.

- 6.3 **Binding Effect.** The Parties agree that this Agreement, by its terms, shall be binding upon the successors, heirs, legal representatives, and assigns; provided that this Section shall not authorize assignment.
- 6.4 **No Third Party Beneficiaries.** Nothing contained in this Agreement is intended to or shall create a contractual relationship with, cause of action in favor of, or claim for relief for, any third party, including any agent, sub-consultant or sub-contractor of the Employee. Absolutely no third party beneficiaries are intended by this Agreement. Any third-party receiving a benefit from this Agreement is an incidental and unintended beneficiary only.
- 6.5 **Article X, Section 20/TABOR.** The Parties understand and acknowledge that the City is subject to Article X, § 20 of the Colorado Constitution (“TABOR”). The Parties do not intend to violate the terms and requirements of TABOR by the execution of this Agreement. It is understood and agreed that this Agreement does not create a multi-fiscal year direct or indirect debt or obligation within the meaning of TABOR and, therefore, notwithstanding anything in this Agreement to the contrary, all payment obligations of the City are expressly dependent and conditioned upon the continuing availability of funds beyond the term of the City's current fiscal period ending upon the next succeeding December 31. Financial obligations of the City payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available in accordance with the rules, regulations, and resolutions of the City, and other applicable law. Upon the failure to appropriate such funds, this Agreement shall be terminated.
- 6.6 **Governing Law, Venue, and Enforcement.** This Agreement shall be governed by and interpreted according to the law of the State of Colorado. Venue for any action arising under this Agreement shall be in the appropriate court for Arapahoe County, Colorado. To reduce the cost of dispute resolution and to expedite the resolution of disputes under this Agreement, the Parties hereby waive any and all right either may have to request a jury trial in any civil action relating primarily to the enforcement of this Agreement. The Parties agree that the rule that ambiguities in a contract are to be construed against the drafting party shall not apply to the interpretation of this Agreement.
- 6.7 **Survival of Terms and Conditions.** The Parties understand and agree that all terms and conditions of the Agreement that require continued performance, compliance, or effect beyond the termination date of the Agreement shall survive such termination date and shall be enforceable in the event of a failure to perform or comply.

- 6.8 **Assignment and Release.** All or part of the rights, duties, obligations, responsibilities, or benefits set forth in this Agreement shall not be assigned by the Employee without the express written consent of the City Council for the City. Any written assignment shall expressly refer to this Agreement, specify the particular rights, duties, obligations, responsibilities, or benefits so assigned, and shall not be effective unless approved by resolution or motion of the City Council for the City. No assignment shall release the Employee from performance of any duty, obligation, or responsibility unless such release is clearly expressed in such written document of assignment.
- 6.9 **Headings.** The captions in this Agreement are for the convenience and reference of the Parties and are not intended in any way to define, limit or describe the scope or intent of this Agreement.
- 6.10 **Integration and Amendment.** This Agreement represents the entire and integrated agreement between the City and the Employee and supersedes all prior negotiations, representations, or agreements, either written or oral. Any amendments to this Agreement must be in writing and be signed by both the City and the Employee.
- 6.11 **Severability.** Invalidity of any of the provisions of this Agreement or any paragraph, sentence, clause, phrase, or word herein or the application thereof in any given circumstance shall not affect the validity of any other provision of this Agreement.
- 6.12 **Notices.** Any notice required or permitted by this Agreement shall be in writing and shall be deemed to have been sufficiently given for all purposes if sent by certified mail or registered mail, postage and fees prepaid, addressed to the Party to whom such notice is to be given at the address set forth below or at such other address as has been previously furnished in writing, to the other Party. Such notice shall be deemed to have been given when deposited in the United States Mail properly addressed to the intended recipient.

**If to the City:**

**If to the Employee:**

City Manager City of Littleton 2255 W. Berry Avenue Littleton, Colorado 80120	Ethan Feldman 6673 S. Sycamore Street Littleton, Colorado 80120
With Copy to: City Attorney City of Littleton 2255 W. Berry Avenue Littleton, Colorado 80120	

**7. AUTHORITY**

The individuals executing this Agreement represent that they are expressly authorized to enter into this Agreement on behalf of City and the Employee and bind their respective entities.

THIS AGREEMENT is executed and made effective as provided above.

**CITY OF LITTLETON, COLORADO**

By: \_\_\_\_\_  
Debbie Brinkman, Mayor

**APPROVED AS TO FORM**

**EMPLOYEE**

By: \_\_\_\_\_  
Stephen M. Kemp,  
City Attorney

By: \_\_\_\_\_  
Hon. Ethan Feldman

## **EXHIBIT A**

To Agreement between the City and Employee, Ethan Feldman:

1. Scope of Services. The Employee hereby agrees to and accepts responsibility to perform, among other things, the following services.

- Insure coverage over all court sessions of the Littleton Municipal Court so that all cases are adjudicated in a timely manner. Employee should work with the Clerk of the Court (Municipal Court Administrator) and with the City's appointed associate/substitute judges regarding scheduling of the court's docket and shall develop a plan in coordination with the Clerk of the Court (Municipal Court Administrator) demonstrating coverage of court sessions. Such plan shall be available for review by City Council, upon request.
- Adjudicate civil and criminal cases arising under the City Charter, City code and other ordinances of the City of Littleton. This includes:
- Explain the laws and system to offenders. Evaluate evidence, testimony and legal briefs. Issue written findings as necessary.
- Apply appropriate ordinances, code provisions and/or regulations. Impose fines and penalties as authorized by code or ordinance. Assess and direct the collection of civil penalties.
- Order and enforce contempt, failure to appear, abatement of nuisance and other responsibilities prescribed by the City Charter, City code or ordinance.
- Issue inspection and search warrants in accordance with applicable law.
- Record changes to policies in court proceeding in the Judge's Bench Book on an annual basis.
- Provide input on the revision and creation of City ordinances relevant to impacts on the Court or Court procedures.
- Be responsible for developing, implementing and refining Court policies and procedures in collaboration with Court administrative personnel. Establish docketing, calendaring and case management policies and procedures. Keep abreast and current in the areas of Municipal court policies and leadership skills through related professional education, training and development.
- Be responsible for developing, implementing and refining Court policies and procedures and establishing quality control validation and auditing processes.

- Provide relevant legal training, consultation, and assistance to Court staff as needed and appropriate on the state of the operation in the court room.

2. Compensation. The City agrees to compensate Employee for the performance of services detailed in Section 1, Scope of Services, as follows:

The Judge shall be compensated at the guaranteed fixed annual amount of \$81,984.00, payable in the same manner as other City Employees. The fixed amount is based on Employee working 67 hours per month. In any month where Employee is working more than 67 hours per month, Employee shall provide the City with a monthly billing statement itemizing the additional hours worked and will be paid at the rate of \$102 per hour. The Additional hours may include hours spent on Court administration, written findings and other duties outside case adjudication up to a maximum of 12 hours per month. For purposes of calculating hours, each morning or afternoon docket appearance on a Monday, Wednesday, or Thursday shall be deemed to be a three hour session. Video arraignment/advisement session on non-docket/non-jury days shall be deemed to be a one hour session. Review and issuance of probable cause warrants or review of probable cause statements on non-docket, non-trial days shall be deemed to be one hour sessions. The Judge shall be compensated for actual time spent for jury trials and video arraignments on Fridays.

3. Addresses for Notices. The addresses for notices are as follows:

To the City:                   City Attorney  
2255 West Berry Avenue  
Littleton, Colorado 80120

To the Employee:       Ethan Feldman  
6673 S. Sycamore Street  
Littleton, Colorado 80120