

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY OF DENTON APPROVING A ONE TIME LUMP SUM MERIT PAYMENT FOR MUNICIPAL COURT PRESIDING JUDGE TYLER ATKINSON (PRESIDING JUDGE); APPROVING A THIRD AMENDED COMPENSATION AGREEMENT FOR THE PRESIDING JUDGE UNDER THE REVIEW PROVISION OF HIS CURRENT AGREEMENT WITH THE CITY; AMENDING THE CURRENT AGREEMENT TO AUTHORIZE THE PRESIDING JUDGE TO PERFORM MAGISTRATE DUTIES FOR DENTON COUNTY AND TO PROVIDE FOR AN INCREASE IN SEVERANCE PAY, SALARY, AND CAR ALLOWANCE; AUTHORIZING THE EXPENDITURE OF FUNDS; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, on July 13, 2020, the City Council appointed, and approved an agreement with, Tyler Atkinson as the Presiding Municipal Judge of the City of Denton by Ordinance No. 20-1253; and

WHEREAS, on November 10, 2020, the City Council approved a first amendment to the agreement to provide additional compensation for after-hours warrant service in Ordinance No. 20-2310; and

WHEREAS, on August 17, 2021, the City Council approved a Second Amended Agreement ("Second Amended Agreement") with Tyler Atkinson as the Presiding Municipal Judge of the City of Denton by Ordinance No. 21-1781; and

WHEREAS, the City Council and the Presiding Judge desire to enter into a Third Amended Compensation Agreement to amend the provisions of the Compensation Agreement; and

WHEREAS, the City Council and Presiding Judge desire to amend Section 4, Salary, of the Agreement to be titled Salary and Contract Rate for Additional Duties to increase the annual base salary to one hundred and forty eight thousand seven hundred and twenty dollars (\$148,720) effective October 1, 2022, and to add automatic amendment provisions that would allow cost of living adjustments on the same basis as full-time non-civil service employees beginning with fiscal year 2023-2024; and

WHEREAS, the City Council and Presiding Judge desire to amend Section 3, Separation, to be titled Separation and Severance Pay to provide for a severance payment in an amount not to exceed twelve month's base salary effective October 1, 2022; and

WHEREAS, the City Council and Presiding Judge desire to amend Section 6. Hours of Work to be titled Hours of Work and Outside Employment to expressly authorize the Presiding Judge to perform Denton County magistrate duties for Denton County at times and in a manner which will not in any way interfere with the performance of, or the Appointee's availability for the performance of, the Presiding Judge's duties for the City of Denton; and

WHEREAS, the City Council and Presiding Judge desire to amend Section 7, Automobile, of the Agreement to increase the amount to seven thousand two hundred dollars (\$7,200) annually, effective October 1, 2022; and

WHEREAS, the City Council desires to award a one-time lump sum merit payment pursuant to the review provision of the Presiding Judge's employment agreement, and in accordance with the merit payments provided for by City Council to other non-civil service employees; and

WHEREAS, the City Council finds that approval of the Third Amended Agreement, which is attached hereto as Exhibit 1 and incorporated by reference, is in the best interest of the City of Denton; NOW, THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. The recitals and findings contained in the preamble of this ordinance are incorporated into the body of this ordinance.

SECTION 2. The City Council hereby approves a one-time lump sum merit payment in the amount of two thousand nine hundred seventy four dollars and forty cents (\$2,974.40).

SECTION 3. The City Council hereby approves a third amendment entitled "Third Amended Compensation Agreement" with the Municipal Court Presiding Judge Tyler Atkinson, said agreement attached hereto as Exhibit 1 and incorporated herein by reference, and authorizes the Mayor to execute the Amendment.

SECTION 4. The City expenditures provided for in this Agreement are hereby authorized.

SECTION 5. This ordinance shall become effective immediately upon its passage and approval.

The motion to approve this ordinance was made by \_\_\_\_\_ and seconded by \_\_\_\_\_. The ordinance was passed and approved by the following vote [\_\_ - \_\_]:

	<u>Aye</u>	<u>Nay</u>	<u>Abstain</u>	<u>Absent</u>
Gerard Hudspeth, Mayor:	_____	_____	_____	_____
Vicki Byrd, District 1:	_____	_____	_____	_____
Brian Beck, District 2:	_____	_____	_____	_____
Jesse Davis, District 3:	_____	_____	_____	_____
Alison Maguire, District 4:	_____	_____	_____	_____
Brandon Chase McGee, At Large Place 5:	_____	_____	_____	_____
Chris Watts, At Large Place 6:	_____	_____	_____	_____

PASSED AND APPROVED this the \_\_\_\_\_ day of \_\_\_\_\_, 2022.

BY: \_\_\_\_\_  
GERARD HUDSPETH, MAYOR

ATTEST:

BY: \_\_\_\_\_  
ROSA RIOS, CITY SECRETARY

APPROVED AS TO LEGAL FORM

BY:  \_\_\_\_\_  
MACK REINWAND, CITY ATTORNEY



STATE OF TEXAS       §  
COUNTY OF DENTON   §

**THIRD AMENDED COMPENSATION AGREEMENT**

This Third Amended Employment Agreement ("Agreement"), is made and entered into this 1st day of October 2022 by and between the City of Denton, Texas, a Texas municipal corporation, hereinafter called "City," and Tyler Atkinson, Denton Municipal Court Presiding Judge, (hereinafter called ("Appointee" or "Presiding Judge")) and agree as follows:

WHEREAS, on July 13, 2020, the City Council appointed, and approved an agreement for compensation, including benefits ("Agreement") with, Tyler Atkinson as the Presiding Municipal Court Judge of the City of Denton by Ordinance No. 20-1253; and

WHEREAS, on November 10, 2020, the City Council approved a first amendment to the agreement to provide additional compensation for after-hours warrant service in Ordinance No. 20-2310; and

WHEREAS, on August 17, 2021, the City Council approved a Second Amended Employment Agreement ("Second Agreement") with Tyler Atkinson as the Presiding Municipal Judge of the City of Denton by Ordinance No. 21-1781; and

WHEREAS, the City Council and the Presiding Judge desire to enter into an amended agreement entitled Third Amended Compensation Agreement to amend the provisions of the Agreement and Second Amended Agreement; and

WHEREAS, the parties acknowledge that Presiding Judge is a member of the State Bar of Texas ("State Bar") and that Presiding Judge is subject to the Code of Professional Responsibility of the State Bar and shall comply with all conditions and restrictions as set forth for municipal judges under all applicable state statutes and as required under the Texas Code of Judicial Conduct;

WHEREAS, the parties agree the appointment ordinance appointing Tyler Atkinson as the Presiding Judge from October 1, 2022 through September 30, 2024, was approved in accordance with all applicable Texas constitutional and statutory requirements, and supersedes all previous ordinances appointing Tyler Atkinson as the Presiding Judge of the Denton Municipal Court.

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

**SECTION 1. PREAMBLE AND DUTIES.**

- A. All matters stated in the Preamble of this Third Amended Compensation Agreement are true and correct and are hereby incorporated into the body of this Contract as though fully set forth in their entirety.
- B. City hereby engages the services of Tyler Atkinson as Presiding Judge of said City to perform the functions and duties specified by the Code of Judicial Conduct, the Denton City Charter, the City Code, Chapters 29 and 30 of the Texas Government Code, the laws

of the State of Texas, and all other applicable laws, and to perform other legally permissible and proper duties and functions as City shall from time to time assign. Such duties include court sessions, workday arraignments, in-house training, office hours, and other services of the Municipal Court Judge, including as a statutory magistrate, for the City of Denton.

## SECTION 2. TERM OF APPOINTMENT AND AGREEMENT.

- A. Presiding Judge has previously been appointed for a term, commencing on July 24, 2021, and ending on July 24, 2023.
- B. Presiding Judge on or before the date of execution of this Agreement has been appointed for two-year term, commencing on October 1, 2022, through September 30, 2024.
- C. This Agreement shall commence on October 1, 2022, and expire at 11:59p.m. on September 30, 2024.
- D. This Agreement supersedes all previous agreements between the City of Denton and the Appointee.
- E. Notwithstanding the expiration date stated in Section 2.B. above, this Agreement shall immediately and automatically terminate upon the City Council's action to remove Tyler Atkinson prior to the expiration of this Agreement, provided however, that Section 3 shall survive such termination.
- F. Nothing in this Agreement shall prevent, limit, or otherwise interfere with the right of City to terminate the services of Presiding Judge at any time, subject only to the provisions set forth in Section 3, paragraphs A and B of this Agreement.
- G. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the Presiding Judge to resign at any time from his position with the City, subject only to the provision set forth in Section 4, paragraph B, of this Agreement.
- H. Presiding Judge agrees not to accept or perform other work or employment, except as provided in Section 6.C., nor to become employed by any other employer or as an independent contractor until this Agreement is terminated by either party as provided herein.

## SECTION 3. SEPARATION AND SEVERANCE.

- A. Upon Involuntary Separation occurring during any term of the Agreement, Presiding Judge shall be entitled to those benefits paid other City of Denton non-civil service employees upon termination pursuant to policy in effect at the time of separation.
- B. In the event Presiding Judge voluntarily resigns his position with City before expiration of the aforesaid term of his employment, then Presiding Judge shall give City 30 days' notice in advance, unless the parties otherwise agree.



C. City must pay severance as described below to the Appointee when employment is involuntarily terminated during an appointment term without good cause.

1. City shall provide a minimum severance payment equal to all amounts then due and owing to the Appointee, plus twelve (12) month's salary at the then current rate of pay, less customary payroll deductions. This severance shall be paid in a lump sum or in a continuation of salary on the existing biweekly basis, at the Appointee's option.
2. The Appointee shall also be compensated for all accrued vacation leave and sick leave.
3. If Appointee elects to receive severance in a continuation of salary, insurance and other benefits and leave accruals set forth in Section 4 and contribution to retirement in accordance with Section 8 shall continue for the same period that salary is continued.
4. If Appointee elects to receive severance in a lump sum, the City agrees to make a contribution to the Appointee's deferred compensation account on the value of this compensation calculated using the then current annual salary of Appointee at the date of termination divided by two thousand and eighty (2080) hours. If the amount of the contribution under this Section exceeds the limit under the Internal Revenue Code for a contribution to the Deferred Compensation plan, the remainder shall be paid to the Appointee in a lump sum as taxable compensation.
5. If Appointee elects to receive severance in a lump sum, for a minimum period of one year following termination, the City shall pay the cost to continue the following benefits:
  - a. Insurance and other benefits for the Appointee and all dependents as provided in Section 4, after which time, Appointee will be provided access to health insurance pursuant to the Consolidated Omnibus Budget Reconciliation Act ("COBRA") or, if Appointee is eligible, as a retiree.
  - b. Any other available benefits to which the Appointee is entitled under this Agreement.
6. If the Appointee is terminated for good cause, then the City is not obligated to pay severance under this section but may be required to recognize and pay benefits that have vested and to which Appointee is entitled under the City's personnel policies, state law or federal law.
7. For the purpose of this Agreement, involuntary termination or involuntary separation shall occur when:
  - a. The majority of the governing body votes to terminate the Appointee at a properly posted and duly authorized meeting of the governing body.
  - b. If the City, citizens or legislature acts to amend any provisions of the Charter pertaining to the role, powers, duties, authority, responsibilities of the Appointee's

position that substantially changes the form of government or the duties of the Appointee, the Appointee shall have the right to declare that such amendments constitute involuntary termination.

- c. If the City reduces the base salary, compensation or any other financial benefit of the Appointee, unless it is applied in no greater percentage than the average reduction of all employees, such action shall constitute a breach of this Agreement and will be regarded as a termination.
- d. If the Appointee resigns at the request of the City, whether formal or informal, then the Appointee may declare an involuntary termination as of the date of the request.

D. For purposes of this Agreement the term "good cause" shall:

1. Be defined as follows:

- a. Conviction of a class B or above misdemeanor, felony, or a crime of moral turpitude; or
- b. Knowingly falsifying records or documents related to the City's activities or Employee's duties under this Agreement; or
- c. Loss of license to practice law in the State of Texas, or
- d. A public sanction for a violation of the Texas Code of Judicial Conduct.

2. Include the reasons for removal stated in the Texas Constitution Article V, Section 1-a (6) and Local Government Code 21.025.

E. For purposes of this section, a crime of moral turpitude means a criminal offense involving dishonesty or fraud such as theft; forgery, perjury; and bribery.

#### SECTION 4. SALARY AND CONTRACT RATE FOR ADDITIONAL DUTIES.

- A. City agrees to pay Presiding Judge for his services rendered pursuant hereto an annual base salary of one hundred and forty eight thousand seven hundred and twenty dollars (\$148,720.00), payable in installments in the same manner and at the same time as other employees of the City are paid. All provisions of the City Charter, City Code, Policies, Procedures and Administrative Directives, and Rules and Regulations of the City adopted by the City Council relating to vacation and sick leave, retirement and pension system contribution, holidays, and other fringe benefits and working conditions as they now exist or hereafter may be amended, shall apply to Presiding Judge as they would to other employees of the City, which benefits include health insurance, long-term disability insurance, retirement under the Texas Municipal Retirement System, and other benefits as provided to other Council appointees of the City, including that the City will pay Appointee's portion of the Texas Municipal Retirement System contribution.



- B. This Agreement shall be automatically amended to reflect a salary increase on the same basis as applied to cost of living adjustments provided to full-time non-civil service employees effective beginning with increases for fiscal year 2023-2024.
- C. The City Council may also determine whether an increase in salary or contract rates is warranted based on annual performance review.
- D. The Presiding Judge, as one of several appointed magistrates for the City of Denton, may be required to serve as an assigned "Jail Magistrate" to perform magisterial duties related to persons arrested by, and in the custody of the Denton Police Department. In addition to the annual base salary referenced herein, the Presiding Judge shall be paid Three Hundred Twenty-Five Dollars and No Cents (\$325.00) for each day of service as designated or assigned "Jail Magistrate" when such services are required on a Saturday, Sunday or holiday as designated by the City.
- E. The Presiding Judge shall be entitled to compensation at a rate of One Hundred Dollars (\$100) per hour for after-hours warrant service, with a one hour minimum. Any additional portions of time after the first hour shall be billed in increments of fifteen (15) minutes. Compensation is based on time and not the number of warrants reviewed. "After hours" is defined as all hours excluding 8:00 AM to 5:00 PM on Monday through Friday but including City-approved holidays, Saturdays, and Sundays. Travel time to and from court shall not be included as billable time.

#### SECTION 5. PERFORMANCE EVALUATION.

- A. The Council shall review and evaluate the performance of the Presiding Judge at least once annually during the time set aside each year for the performance review of other Council appointees. Said review and evaluation shall be in accordance with specific criteria developed jointly by Presiding Judge and City. Said criteria may be added to or deleted from as the Council and Presiding Judge shall agree.
- B. The Council and Presiding Judge shall define annually such goals and performance objectives which they determine necessary for the proper operation of the City of Denton Municipal Court, and in the attainment of the Council's policy objectives and shall further establish a relative priority among those various goals and objectives.
- C. In effecting the provision of this Section, the Council and the Presiding Judge mutually agree to abide by the provisions of applicable law.

#### SECTION 6. HOURS OF WORK AND OUTSIDE EMPLOYMENT.

- A. It is recognized by both City and Presiding Judge that the duties of Presiding Judge require a great deal of time outside of normal office hours. It is also recognized by the parties that Presiding Judge is required to devote the amount of time and energy necessary to carry out those duties with the highest amount of professionalism possible. That being the case, the parties recognize that Presiding Judge may choose to take personal time off during business



hours when it is appropriate and when his duties allow. Although this personal time off is not considered vacation, neither is it to be considered as compensatory time for time spent by Presiding Judge in carrying out his duties outside of normal office hours, as the parties agree that the Presiding Judge must devote the amount of time necessary to fulfill those duties. The Council will consider, in correlation with any applicable Federal and state law, the Presiding Judge's use of personal time off during the performance evaluation.

- B. The Appointee will devote full time and effort to the performance of the Appointee's duties, and shall remain in the exclusive employ of the City during the term of this Agreement.
- C. Notwithstanding provision B. of this Section 6., Presiding Judge may perform Denton County magistrate duties for Denton County at times and in a manner which will not in any way interfere with the performance of, or the Appointee's availability for the performance of, the Appointee's duties hereunder.

#### SECTION 7. AUTOMOBILE.

The Presiding Judge is required to be on call for 24-hour service, so therefore, must have access to a vehicle for City business. City shall grant to the Presiding Judge a car allowance of Seven Thousand Two Hundred Dollars and No Cents (\$7,200.00) per year, payable monthly, for providing such vehicle. The Presiding Judge shall be responsible for the purchase, maintenance, insurance, taxes, etc. for said vehicle. The monthly allowance will be considered for increase during the performance evaluation process. The City also agrees to reimburse Presiding Judge for mileage for out-of-county travel associated with City business at the current IRS rate for mileage reimbursement in accordance with the then current City Travel Reimbursement Policy for City employees with car allowances.

#### SECTION 8. RETIREMENT.

- A. City agrees to pay the percentage of the cost of Presiding Judge's participation in the TMRS retirement program, in accordance with City's current policy for other City employees, except that the City will pay Appointee's portion of the Texas Municipal Retirement System contribution.
- B. City agrees to execute all necessary agreements provided by MissionSquare Retirement (formerly ICMA-RC and hereinafter referred to MSR) for Presiding Judge's participation in said MSR retirement plans. City further agrees to contribute 6% of Presiding Judge's annual base salary to MSR's 457 plan. All sums contributed to said plans shall be in addition to Presiding Judge's base salary. City also agrees to allow Presiding Judge to contribute whatever portion of his base salary he may deem appropriate to said plan, including "catch-up" provisions.
- C. If the Presiding Judge retires pursuant to a qualified retirement plan, or is permanently disabled during the term of this Agreement, the Presiding Judge shall be compensated for vacation leave, holidays, and other benefits then accrued or credited to the Presiding Judge in accordance with City's current policies for compensation for these benefits, and, at the Presiding Judge's option, shall be permitted to continue to participate in the City's health

insurance plan on the same basis as other retirees from the City are permitted to do so, or, if such other retirees are not permitted to do so, at the cost of the Presiding Judge.

#### SECTION 9. DUES, MEMBERSHIPS AND SUBSCRIPTIONS.

City agrees to budget and to pay for the professional dues, memberships, and subscriptions of Presiding Judge necessary for his continuation of full participation in national, regional, state and local associations and organizations necessary and desirable for his continued professional participation, growth and advancement as Presiding Judge, and for the good of the City in amounts that are approved by the City Council in the annual budget for the City's Municipal Court Judge – Administration.

#### SECTION 10. PROFESSIONAL DEVELOPMENT.

City hereby agrees to budget for and to pay the full travel, participation, and subsistence expenses of Presiding Judge for professional and official travel, meetings and occasions adequate to continue the professional development of Presiding Judge, and to adequately pursue necessary official and other functions for City, including such national, regional, state and local groups and committees thereof which Presiding Judge serves as a member in the amounts approved by the City Council in the annual budget for the City's Municipal Court Judge - Administration.

#### SECTION 11. BONDING.

City shall bear the full cost of any fidelity or other bonds that may be required of the Presiding Judge under any law or ordinance.

#### SECTION 12. OTHER TERMS AND CONDITIONS OF EMPLOYMENT.

- A. The City Council, and in consultation with the Presiding Judge, shall fix any such other terms and conditions of employment as it may determine from time to time, relating to the performance of Presiding Judge, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this Agreement, the City Charter, Chapter 30 of the Texas Government Code, or any other law, and are memorialized by a written amendment to this Agreement.
- B. All provisions of the City Charter and Code, and regulations and rules of the City relating to vacation and sick leave, retirement and pension system contributions, holiday, and other fringe benefits and working conditions as they now exist or hereafter may be amended, shall also apply to Presiding Judge as they would to other employees of the City, in addition to said benefits enumerated specifically for the benefit of Presiding Judge.

#### SECTION 13. GENERAL PROVISIONS.

- A. The text herein shall constitute 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 Presiding Judge.



- C. If any provision, or any portion, thereof, contained in this Agreement is held unconstitutional, invalid, or unenforceable, the remainder of this Agreement, or portion thereof, shall be deemed several, shall not be affected and shall remain in force and effect.
- D. The venue of any litigation involving this Agreement shall be in a court of competent jurisdiction sitting in Denton County, Texas.

SECTION 14. APPROPRIATIONS.

The City has appropriated, set aside and encumbered, and does hereby appropriate, set aside, and encumber available and unappropriated funds of the City in an amount sufficient to fund and pay all financial obligations of the City pursuant to this Agreement, including, but not limited to the severance pay, salary and benefits set forth and described herein.

SECTION 15. EFFECTIVE DATE.

This Agreement shall take effect on October 1, 2022.

IN WITNESS WHEREOF, the Mayor as duly authorized by the City Council and on behalf of the City of Denton, has signed and executed this Agreement and the Presiding Judge has signed and executed this Agreement, both in duplicate, the day and year first above written.

CITY OF DENTON

\_\_\_\_\_  
GERARD HUDSPETH, MAYOR

ATTEST:

ROSA RIOS, CITY SECRETARY

BY: \_\_\_\_\_

APPROVED AS TO LEGAL FORM:  
MACK REINWAND, CITY ATTORNEY

BY:  \_\_\_\_\_

  
\_\_\_\_\_  
TYLER ATKINSON  
PRESIDING JUDGE