

## MUNICIPAL COURT JUDICIAL SERVICES AGREEMENT – ASSOCIATE JUDGE

The **City of Wylie, Texas**, a home-rule municipality (“Wylie”), and **Ashley McSwain** (“Contractor”) hereby enter into this Municipal Court Judicial Services Agreement (“Agreement”). Wylie and Contractor are sometimes referred to collectively as the “parties” or individually as a “party.”

WHEREAS, the City Council of the City of Wylie, Texas (“Wylie”) has established and maintains the Wylie Municipal Court and appoints judges as may be necessary to serve the Court pursuant to Article IV, § 3 of Wylie City Charter; and

WHEREAS, Contractor desires to contract with Wylie to provide such judicial services as an associate judge for the Wylie Municipal Court under the terms and conditions of this Agreement; and

WHEREAS, Contractor represents and warrants that through education and experience, Contractor possesses the requisite skills to provide such judicial services in a professional and competent manner; and

WHEREAS, Wylie and Contractor acknowledge and agree that this Agreement is not an employment agreement and does not establish a relationship of employer and employee between Wylie and Contractor, but defines a relationship between the parties wherein the Contractor is in fact an independent contractor of Wylie; and

WHEREAS, Contractor reserves independence to act within the limits imposed by law and professional obligations such that Wylie’s objectives during the term of this Agreement will be furthered through means the Contractor considers appropriate in accordance with Contractor’s professional obligations and as may be required by the Texas Code of Judicial Conduct and other applicable rules and regulations.

NOW, THEREFORE, in consideration of the mutual agreements and covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Scope of Services. Contractor shall provide judicial services as an associate judge in Wylie Municipal Court and shall furnish all labor, equipment, supplies and all other items necessary to provide the services and deliverables as specified by the terms and conditions of this Agreement (collectively, “Services”). The Services include, but are not limited to, the following:
  - (a) Hearing and consideration of cases and other matters scheduled and assigned to Contractor in the Wylie Municipal Court;
  - (b) Presiding over Wylie Municipal Court dockets, including pretrial conferences, pretrial hearings, plea and arraignments proceedings, trials and other proceedings scheduled and assigned to Contractor in the Wylie Municipal Court;
  - (c) Issuing appropriate rulings and orders in cases and other matters scheduled and assigned to Contractor in the Wylie Municipal Court;
  - (d) Perform magistrate, arraignment and warrant duties scheduled and assigned to Contractor;
  - (e) Communicating with Wylie Municipal Court staff, judges, prosecuting and defending

attorneys, defendants and other participants in cases and other matters scheduled and assigned to Contractor in the Wylie Municipal Court;

- (f) Performing such other functions within Wylie Municipal Court normally required of a municipal court associate judge; and
- (g) Providing Wylie timely updates regarding changes in the scope and nature of the Services provided hereunder that may affect operations, policies or activities of Wylie Municipal Court and making recommendations on improving the quality and efficiency of the Services provided hereunder.

The Presiding Judge of the Wylie Municipal Court shall establish the times and days for the court dockets and retains authority to change the same from time to time. Contractor shall perform the Services at the dockets so established and to which he/she may be scheduled. If Contractor is unavailable to complete these Services, it shall be the duty of Contractor to seek an alternative method of fulfilling these duties through another Wylie-appointed Judge.

2. Term; Termination. The term of this Agreement shall commence on the Effective Date (hereinafter defined) of this Agreement and shall continue in effect until the second anniversary of the Effective Date, unless terminated earlier in accordance with this Agreement or the City Charter. Wylie shall have the option to extend this Agreement for additional terms of two (2) years each on the same terms and conditions by giving Contractor written notice of its intent to extend prior to the expiration of the then-current two (2) year term, provided that the City Council has re-appointed Contractor as the presiding judge in accordance with Section 4.03 of the City Charter. Wylie is entitled to terminate this Agreement at any time for any reason or for no reason by giving Contractor written notice of termination, removal or non-appointment. Contractor is entitled to terminate this Agreement at any time for any reason or for no reason by giving Wylie at least thirty (30) days' prior written notice of the termination date. The term of this Agreement shall automatically terminate on the date that Contractor ceases to maintain all necessary qualifications to serve as a judge for the Wylie Municipal Court, including but not limited to being a licensed attorney in good standing and/or having two or more years of experience in the practice of law in Texas should the Wylie Municipal Court be converted to a municipal court of record.
3. Compensation; Billing. In exchange for Contractor's provision of the Services as described in this Agreement, Wylie agrees to pay Contractor at the rate of \$3,000.00 per month of work actually performed by Contractor under this Agreement. Such amount shall be payable on a monthly basis at the time and in the manner determined by Wylie. Wylie is entitled to withhold, deduct and pay from such amount applicable income and other payroll taxes, but in no event shall such actions by Wylie alter the parties' independent contractor relationship or entitle Contractor to any employment, insurance, vacation or other benefits. In this regard, Contractor shall defend, indemnify and hold harmless Wylie from any and all liability which may result from the failure to withhold, and/or the withholding of, any sums from the monies payable to Contractor under this Agreement, including, but not limited to, any taxes, interest or penalties owed to the Internal Revenue Service or any other party.

No additional compensation shall be due to Contractor for any travel to or from Wylie or for travel to any hearings, trials or other proceedings. Notwithstanding anything to the contrary herein, Wylie shall not be required to pay Contractor if Contractor is in breach of this Agreement.

As an appointed official, Contractor agrees to perform the service required by the position of

presiding judge and is not limited to or guaranteed a preset number of hours per week or per month to perform such services. Contractor is expected to engage in those hours of work which are necessary to fulfill the obligations of Contractor's position. Contractor acknowledges that the proper performance of duties as presiding judge will often require the performance of necessary services at times and for extended periods other than as scheduled. Contractor agrees to devote such additional time as is necessary for the full and proper performance of duties and that the compensation herein provided for includes compensation for the performance of all such Services.

4. Cooperation. Contractor acknowledges that Wylie is entitled, in its sole discretion, to contract with and/or assign other judges to provide the same or similar judicial services for Wylie Municipal Court, and Contractor agrees to fully cooperate with Wylie and any such other judges in this regard, including but not limited to, coordinating the scheduling and coverage of the dockets and other needs of Wylie Municipal Court.
5. Conflicts. Wylie recognizes that Contractor may represent clients as an attorney. During the term of this Agreement, Contractor shall not represent any person or entity or otherwise engage in the practice of law in a matter directly adverse to Wylie, in an adversarial capacity before the Wylie City Council or any of its courts, agencies, boards or commissions, or in a matter that Wylie determines is adverse to the interests of Wylie. Further, Contractor represents that Contractor does not have any personal, business or financial interests or relationships which would cause a reasonable individual with knowledge of the relevant facts to question the integrity or impartiality of Contractor in performing the Services. Contractor shall evaluate on an ongoing basis whether, in Contractor's professional judgment, a conflict may become apparent or imminent. In the event that Contractor believes a conflict may develop or has developed, Contractor shall immediately communicate with Wylie about the perceived potential conflict.
6. Professional Obligations. Contractor must complete the minimum number of hours of instruction annually in the performance of the duties of a municipal court associate judge as required by the laws of the State of Texas and any applicable rule or statute. Wylie shall pay the reasonable cost of such required training, including required books and materials upon receipt by Wylie of written invoices for the same. Contractor shall ensure that official copies of records documenting such training shall be kept and maintained at all times. The Contractor shall provide proof of current certification from the State Bar of Texas on October 1 of each year during the term of this Agreement.
7. Entire Agreement. This Agreement contains all representations, understandings, contracts and agreements between the parties regarding the subject matter of this Agreement. This Agreement supersedes all oral or written previous and contemporaneous agreements, writings, understandings, representations or contracts between the parties regarding the subject matter of this Agreement. No amendment to this Agreement shall be made except on the written agreement of the parties, which shall not be construed to release either party from any obligation of this Agreement except as specifically provided for in such amendment.
8. No Supervisory Capacity. Contractor acknowledges that the clerks of the Wylie Municipal Court are supervised by the City Manager as administrative employees and that Municipal Court prosecutors are supervised by the City Attorney. Contractor does not serve in a supervisory role as to any of these or other employees of Wylie except with regard to judicial procedures of the court. However, he/she shall consult with the appropriate department head or City Manager concerning needed improvements or problems that come to his/her attention through his/her service under this Agreement.

9. No Prohibited Interest. Contractor acknowledges and agrees that it is aware of, and will abide by, the no prohibited interest requirement of Wylie City Charter. Contractor acknowledges and agrees that the existence of a prohibited interest during the term of this Agreement will render this Agreement voidable.
10. Liability. To the fullest extent permitted by law, Contractor shall be fully and solely responsible and liable for Contractor's own acts and omissions and for any and all damage to Contractor's equipment and other property. Wylie assumes no such responsibility or liability. Wylie shall have no such responsibility or liability to Contractor.
11. Compliance with Laws. Contractor shall comply with all federal, state and local laws, statutes, ordinances, regulations and policies, as they exist, may be amended or in the future arising, applicable to Contractor and its work under this Agreement. If Contractor observes or is notified that the work under this Agreement is at variance with applicable laws, statutes, ordinances, regulations and policies, Contractor shall immediately notify Wylie in writing.
12. Assignment. Contractor agrees that neither this Agreement nor the work to be performed hereunder will be assigned or sublet without the prior written consent of Wylie.
13. Savings/Severability. In the event that a term, condition or provision of this Agreement is determined to be invalid, illegal, void, unenforceable or unlawful by a court of competent jurisdiction, then that term, condition or provision shall be deleted and the remainder of the Agreement shall remain in full force and effect as if such invalid, illegal, void, unenforceable or unlawful provision had never been included in this Agreement.
14. Consideration. This Agreement is executed by the parties without coercion or duress and for substantial consideration, the sufficiency of which is forever confessed.
15. Attorneys' Fees. If either party files any action or brings any proceeding against the other arising from this Agreement, then as between Wylie and Contractor, the prevailing party shall be entitled to recover as an element of its costs of suit, and not as damages, reasonable and necessary attorneys' fees and litigation expenses both at trial and on appeal.
16. Governing Law; Venue. The laws of the State of Texas shall govern the interpretation, validity, performance and enforcement of this Agreement, without regard to conflict of law principles. This Agreement is performable in Collin County, Texas, and the exclusive venue for any action arising out of this Agreement shall be a court of appropriate jurisdiction in Collin County, Texas.
17. No Waiver. Waiver by either party of any breach of this Agreement, or the failure of either party to enforce any of the provisions of this Agreement, at any time, shall not in any way affect, limit, or waive such party's right thereafter to enforce and compel strict compliance.
18. Headings. The headings of the various sections of this Agreement are included solely for convenience of reference and are not to be full or accurate descriptions of the content thereof.
19. Notice. Any notice provided or permitted to be given under this Agreement must be in writing and may be served by depositing the same in the United States Mail, addressed to the party to be notified, postage pre-paid and registered or certified with return receipt requested; by electronic mail, with documentation evidencing the addressee's receipt thereof; or by delivering the same in person to such party a via hand-delivery service, or to any courier service that provides a return

receipt showing the date of actual delivery of the same to the addressee thereof. Notice given in accordance herewith shall be effective on receipt at the address of the addressee. For purposes of notification, the addresses of the parties shall be as follows:

If to Contractor, to: Ashley McSwain  
108 S. Jackson Ave. Ste.207  
Wylie, Texas 75098  
Telephone:469-626-9871

If to Wylie, to: City of Wylie  
Attn: City Manager, Brent Parker  
300 Country Club Rd  
Wylie, Texas  
Email: brent.parker@wylietexas.gov

With a copy to: Abernathy, Roeder, Boyd & Hullett, P.C.  
Attn.: Ryan D. Pittman  
1700 Redbud Blvd., Suite 300  
McKinney, Texas 75069  
Telephone: (214) 544-4000  
Facsimile: (214) 544-4054

20. Representations. Each party states that it has carefully read this Agreement, knows the contents hereof, has consulted with an attorney of its choice regarding the meaning and effect hereof and is signing the same solely of its own judgment.
21. Independent Contractor. Contractor covenants and agrees that Contractor is an independent contractor and not an officer, agent, servant or employee of Wylie; that Contractor shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing the same; that the doctrine of respondent superior shall not apply as between Wylie and Contractor; and that nothing herein shall be construed as creating a partnership or joint enterprise between Wylie and Contractor. Neither Contractor nor his agents or employees shall be deemed to be an employee of Wylie for any purpose whatsoever. Contractor shall not be eligible to participate in any benefit program provided by Wylie for its employees. Contractor shall be exclusively responsible for the payment of his/her own taxes, withholding payments, penalties, fees, fringe benefits, contributions to insurance and pension or other deferred compensation plans, including but not limited to worker's compensation and Social Security obligations, professional fees or dues. Wylie may arrange to provide space for Contractor to use to facilitate access to the Municipal Court staff and others. The provision of space is not compensation, nor does it change the nature of the relationship from that of independent contractor. Contractor agrees to make use of the space, if any, as an accommodation to Wylie and only to conduct business in accordance with this Agreement.
22. Incorporation of Recitals. The representations, covenants and recitations set forth in the foregoing recitals of this Agreement are true and correct and are hereby incorporated into the body of this Agreement and adopted as findings of the authorized representatives of Wylie and Contractor.

- 23. Miscellaneous Drafting Provisions. This Agreement shall be deemed drafted equally by all parties hereto. The language of all parts of this Agreement shall be construed as a whole according to its fair meaning, and any presumption or principle that the language herein is to be construed against any party shall not apply. Headings in this Agreement are for the convenience of the parties and are not intended to be used in construing this document.
- 24. No Waiver of Immunity. The parties acknowledge and agree that, in executing and performing this Agreement, Wylie has not waived, nor shall be deemed to have waived, any defense or immunity, including governmental, sovereign and official immunity, that would otherwise be available to it against claims arising in the exercise of governmental powers and functions. By entering into this Agreement, the parties do not create any obligations, express or implied, other than those set forth herein
- 25. Chapter 2270 Certification. In accordance with Chapter 2270 of the Texas Government Code, Contractor hereby certifies that Contractor (a) does not boycott Israel; and (b) will not boycott Israel during the term of any contract with Wylie, including during the term of this Agreement.
- 26. Multiple Counterparts. This Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes. An electronic mail and/or facsimile signature will also be deemed to constitute an original if properly executed and delivered to the other party.

IN WITNESS WHEREOF, the parties have executed this Agreement and caused this Agreement to be effective when all the parties have signed it. The date this Agreement is signed by the last party to sign it (as indicated by the date associated with that party’s signature below) will be deemed the effective date of this Agreement (“Effective Date”).

**CITY OF WYLIE, TEXAS**

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Date: \_\_\_\_\_