

RESOLUTION NO. 23-09

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF MARICOPA, ARIZONA, APPOINTING SUSAN J. KAYLER AS A JUDGE PRO TEMPORE FOR THE CITY OF MARICOPA MUNICIPAL COURT, SETTING HER COMPENSATION, PROVIDING A COMMENCEMENT DATE THEREFOR AND AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT SETTING FORTH THE SPECIFIC TERMS AND CONDITIONS FOR THESE SERVICES.

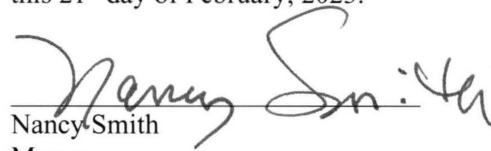
WHEREAS, pursuant to Section 3.80.130 of the City Code of the City of Maricopa, the Maricopa City Council may appoint, upon recommendation of the presiding judge, a number of judges pro tempore necessary to fulfill the needs of the court; and

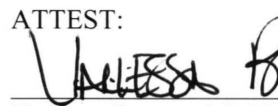
WHEREAS, from time to time, the City of Maricopa Municipal Court is in need of a Judge Pro Tempore to handle conflict cases and cases or search warrants when the Presiding Judge is unavailable; and

WHEREAS, the Maricopa City Council believes that it is in the best interest of the City of Maricopa to appoint Susan J. Kayler to serve in the capacity of Judge Pro Tempore for the City of Maricopa Municipal Court.

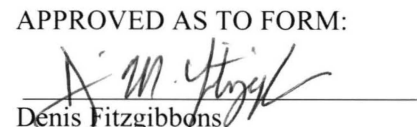
NOW, THEREFORE, BE IT RESOLVED by the Mayor and City Council of the City of Maricopa, Arizona, that Susan J. Kayler is hereby appointed to serve in the capacity of Judge Pro Tempore for the City of Maricopa Municipal Court. This appointment shall commence on April 1, 2023. Pursuant to Resolution 16-04, when Susan J. Kayler is working as a Judge Pro Tempore for the City of Maricopa Municipal Court, she shall be compensated at the same rate as provided for in A.R.S. §22-122(D), excluding any travel time to or from the City of Maricopa Municipal Court. The City Manager is hereby authorized to execute an agreement setting forth the specific terms and conditions for these services in the form substantially similar to the agreement attached to and made a part of this Resolution.

PASSED AND ADOPTED by the Mayor and Council of the City of Maricopa, Arizona, this 21st day of February, 2023.


Nancy Smith
Mayor

ATTEST:

Vanessa Bueras, MMC
City Clerk



APPROVED AS TO FORM:

Denis Fitzgibbons
City Attorney

JUDGE PRO TEMPORE AGREEMENT

THIS AGREEMENT is made and entered into this 21st day of February 2023, by and between the City of Maricopa, Arizona, an Arizona municipal corporation ("City"), and Susan J. Kayler ("Kayler"), to serve as a Judge Pro Tempore for the City as determined necessary by the City Magistrate ("Services").

RECITALS:

WHEREAS, pursuant to Section 3.80.130 of the Maricopa City Code, the City Council may appoint, upon recommendation of the Presiding Judge, a number of judges pro tempore necessary to fulfill the needs of the City of Maricopa Municipal Court ("Court"); and

WHEREAS, pursuant to Resolution 23-08, City Council appointed Kayler to serve as a Judge Pro Tempore for the Court; and

WHEREAS, City desires to retain Kayler to provide the Services and to make payment for the same in accordance with the terms and conditions set forth in this Agreement.

AGREEMENT

For the reasons set forth above and in consideration of the mutual promises and agreements hereinafter set forth, the City and Kayler agree as follows:

1. The City agrees to retain the services of Kayler to serve as a Judge Pro Tempore for the Court, as requested by the City Magistrate. The City Magistrate and Kayler will coordinate the scheduling of hearings and the processes and procedures related thereto taking into consideration the requirements of any applicable laws, rules, and regulations. Kayler shall report to the City Magistrate.

2. Kayler agrees that she will at all times faithfully and to the best of her ability and experience perform all duties that are required pursuant to the terms of this Agreement. Kayler hereby acknowledges and agrees that Services provided under this Agreement shall be solely on behalf of the Court.

3. Pursuant to Resolution 16-04, the City shall pay Kayler and Kayler shall accept the following from the City, in full payment for Kayler's Services during this Agreement the same rate as provided for in A.R.S. §22-122(D), as may be amended from time to time. The rate provided for in A.R.S. §22-122(D) is currently \$46.70 per hour. Kayler acknowledges and agrees she will not be paid for any travel time to or from the Court and will not be entitled to any additional compensation or benefits from the City.

4. Kayler shall bill City monthly on a time and expenses basis in a total amount not to exceed Section 3 above. The City shall pay such billings within thirty (30) days of the date of

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Attachment to RES 23-09

receipt of the Kayler's invoice unless a good faith dispute exists as to any obligation to pay all or a portion of the invoice.

5. The term of this Agreement shall commence on April 1, 2023 and terminate on June 30, 2023 ("Initial Term"), unless extended or terminated as otherwise provided pursuant to the terms and conditions of this Agreement. After the Initial Term, this Agreement shall automatically renew for successive one-year periods from July 1 until June 30 until terminated as provided herein.

6. This Agreement may be terminated by either party upon ninety (90) days written notice. If this Agreement is terminated, Kayler shall be paid for services performed to the effective date of the termination.

7. The parties agree that Kayler will provide the Services for the City as an independent contractor who serves at the pleasure of the City Council. Kayler shall at all times during the performance of the Services retain her status as an independent contractor. The City shall have no obligation to pay or withhold state or federal taxes or provide workers' compensation or unemployment insurance for or on behalf of Kayler. Therefore, Kayler understands she will solely be responsible for any taxes incurred because of this Agreement.

8. All of the provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, if any, successor and assigns.

9. Kayler shall not assign any of her rights and duties under this Agreement without the prior written consent of the City.

10. The terms and conditions of this Agreement shall be governed by and interpreted in accordance with the laws of the State of Arizona. Any action at law or in equity brought by either party for the purpose of enforcing a right or rights provided for in this Agreement shall be tried in a court of competent jurisdiction in Pinal County, State of Arizona. The parties hereby waive all provisions of law providing for a change of venue in such proceeding to any other county. In the event either party shall bring suit to enforce any term of this Agreement or to recover any damages for and on account of the breach of any term or condition in this Agreement, it is mutually agreed that the prevailing party in such action shall recover all costs including all litigation and appeal expenses, collection expenses, reasonable attorneys' fees, necessary witness fees and court costs to be determined by the court in such action.

11. In the event that there is a dispute hereunder that the parties cannot resolve between themselves, the parties agree to attempt to settle the dispute by nonbinding arbitration before the commencement of litigation. The arbitration shall be held under the rules of the American Arbitration Association. The matter in dispute shall be submitted to an arbitrator mutually selected by Kayler and the City. In the event that the parties cannot agree upon the selection of an arbitrator within seven (7) days, then within three (3) days thereafter, the City and Kayler shall request the presiding judge of the Superior Court in and for the County of Pinal, State of Arizona, to appoint an independent arbitrator. The cost of any such arbitration shall be divided equally between the City and Kayler. The results of the arbitration shall be nonbinding on the

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parties, and any party shall be free to initiate litigation subsequent to the final decision of the arbitrator.

12. Should any provision of this Agreement be held invalid or unenforceable by any governmental body, arbitrator, or court of competent jurisdiction, such holding will not diminish the validity or enforceability of any other provision hereof.

13. All notices to the other party required under this Agreement shall be in writing and sent by first-class certified mail, postage prepaid, return receipt requested, addressed to the following personnel:

If to City:

City of Maricopa

Attn: City Manager

39700 W. Civic Center Plaza

Maricopa, AZ 85138

With a Copy to:

Maricopa Municipal Court

Attn: Presiding Judge

39700 W. Civic Center Plaza

Maricopa, AZ 85138

If to Kayler:

Susan J. Kayler

11164 N. 110th Pl.

Scottsdale, AZ 85259

14. This Agreement represents the entire agreement between City and Kayler and supersedes all prior negotiations, representations, or agreements, either express or implied, written or oral. It is mutually understood and agreed that no alteration or variation of the terms and conditions of this Agreement shall be valid unless made in writing and signed by the parties hereto. Written and signed amendments shall automatically become part of the Agreement, and shall supersede any inconsistent provision therein; provided, however, that any apparent inconsistency shall be resolved, if possible, by construing the provisions as mutually complementary and supplementary.

15. The failure of City or Kayler to insist in any one or more instances on the

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performance of any of the terms or conditions of this Agreement or to exercise any right or privilege contained herein shall not be considered as thereafter waiving such terms, conditions, rights or privileges, and they shall remain in full force and effect.

16. This Agreement is subject to cancellation pursuant to A.R.S. §38-511.

17. Nothing in this Agreement shall imply City is obligated to obtain the Services described herein exclusively with Kayler.

18. City and Kayler shall exert all efforts to perform their respective responsibilities under this Agreement. However, neither party shall hold the other party responsible for the inability to render timely performance if such inability is a direct result of a force beyond its control, including but not limited to the following: strikes, lockouts, embargoes, failure of carriers, inability to obtain transportation facilities, acts of God or the public enemy, or other events beyond the control of the other or the other's employees and agents.

19. To the fullest extent allowed by law, Kayler shall be granted judicial immunity. This section shall survive the expiration or early termination of the Agreement.

20. There are no third-party beneficiaries of this Agreement.

21. Kayler warrants that no person has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee. For breach or violation of this warranty, the City shall have the right to annul this Agreement without liability, or at its discretion to deduct from the compensation to be paid Kayler hereunder, the full amount of such commission, percentage, brokerage, or contingent fee.

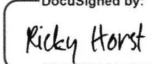
IN WITNESS WHEREOF, the parties have caused this Agreement to be signed by their duly authorized representatives as of the day and year first above written.

KAYLER


Susan J. Kayler

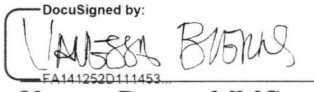
CITY OF MARICOPA

An Arizona municipal corporation

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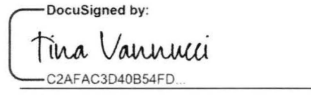
Rick Horst
City Manager

ATTEST:

DocuSigned by:

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Vanessa Bueras, MMC
City Clerk

APPROVED AS TO FORM:

DocuSigned by:

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City Attorney