

## **2014 MAGISTRATE AGREEMENT**

This Magistrate Agreement (the "Agreement") is made and entered into on this \_\_\_\_ day of \_\_\_\_\_, 2014, by and between the City of Gahanna, Ohio ("City"), an Ohio Municipal Corporation, with offices at 200 S. Hamilton Road, Gahanna, Ohio 43230 and Sean H. Maxfield ("Maxfield"), with a mailing address of 825 S. Front Street, Columbus, OH 43206 for the services as detailed herein. The City and Maxfield are collectively referred to herein as the "Parties."

WITNESSETH:

WHEREAS: The Mayor of Gahanna, Rebecca W. Stinchcomb, hereby appoints Sean H. Maxfield as Magistrate on behalf of the City of Gahanna, to perform magistrate services for the City of Gahanna Mayor's Court.

NOW, THEREFORE, in consideration of the terms and conditions set forth in this Agreement, the Parties agree as follows:

### **SECTION I – TERM**

The Magistrate shall provide non-exclusive magistrate services to the City, beginning on October 1, 2014, and ending on December 31, 2015.

### **SECTION II – SCOPE OF MAGISTRATE'S OBLIGATIONS**

The Magistrate agrees to serve as Magistrate for each session of the Gahanna Mayor's Court (a "Session") and additionally fulfill such ancillary duties as would reasonably be considered necessary for the effective function of the Court, including but not limited to probation hearings and other proceedings and the typical administrative tasks of a magistrate. Gahanna Mayor's Court currently has two sessions: morning and afternoon. No provision herein shall prevent the City from changing the day or time of a Session.

The Magistrate shall maintain at all times all the requirements necessary to be a licensed magistrate and shall be responsible for all expenses associated with maintaining the Magistrate's licensure including but not limited to education requirements.

The Magistrate must successfully complete a full background check with the State of Ohio.

The Magistrate shall be responsible for all customary expenses incurred that constitute operating expenses while performing as a magistrate under this Agreement.

The Magistrate agrees to carry sufficient workers compensation insurance which shall be in effect throughout the duration of this Agreement. The Magistrate agrees to furnish the City with a certificate of insurance for workers compensation for a minimum of \$250,000.

### **SECTION III – SCOPE OF CITY'S OBLIGATIONS**

The City shall compensate the Magistrate at a rate of five hundred dollars (\$500.00) per Session of Mayor's Court to be paid monthly upon the Magistrate's submission of a detailed invoice for services.

#### **SECTION IV – TERMINATION**

Either party may terminate this Agreement for any reason or for no reason at all, upon written notification to the other party at least thirty (30) days prior to such termination. Upon termination, the Magistrate shall invoice the City for that portion of the work completed, and the City shall pay the invoiced amount according to the terms herein.

The City may also terminate the Agreement immediately should the Magistrate engage in any of the following:

- Dishonesty of a material nature that relates to the performance of services under this Agreement.
- Criminal conduct that relates to the performance of services under this Agreement and that undermines the Magistrate's ability to perform services under this Agreement.
- Failure to perform services as outlined in the Agreement to the satisfaction of the Mayor.
- Violations of any City Policies with regards to conduct.

No provision herein shall prevent the City from contracting with other magistrates.

#### **SECTION V – INDEMNIFICATION**

Gahanna assumes no liability, express or implied, for any claim, demand, action, liability, loss or expense, including attorneys' fees that may arise from Maxfield or a third party as a result of this Agreement outside the scope of duties prescribed herein.

#### **SECTION VI – CONFIDENTIALITY**

By virtue of this Agreement, a Party may have access to information that is confidential to the other Party ("Confidential Information"). A Party's Confidential Information shall not include information that:

- a) is or becomes a part of the public domain through no act or omission of the other Party;
- b) was in the other Party's lawful possession prior to the disclosure and had not been obtained by the other Party either directly or indirectly from the disclosing Party;
- c) is lawfully disclosed to the other Party by a third party without restriction on disclosure; or
- d) is independently developed by the other Party. The Parties agree, unless required by law, not to make each other's Confidential Information available in any form to any third party for any purpose other than the

implementation of this Agreement. Neither Party shall be prohibited by this Section from making disclosures to the extent required by law; prior written notice via electronic mail for such disclosure shall be given to the other party prior to such disclosure.

#### **SECTION VII – ASSIGNMENT/TRANSFER**

Unless otherwise specified herein, the magistrate may not assign and/or transfer all or part of this Agreement without obtaining the prior written consent of the other Party. The third party accepting the assignment of this Agreement agrees to abide by the terms of this Agreement.

#### **SECTION VIII – NOTICE**

Any notices permitted or required by this Agreement shall be in writing and shall be given or made by hand delivery, certified mail, return receipt requested or by overnight express with written receipt, addressed to the respective Parties as follows:

If to the Magistrate:  
Sean W. Maxfield  
825 S. Front Street  
Columbus, Ohio 43206

If to City of Gahanna:  
Mayor, City of Gahanna  
200 South Hamilton Road  
Gahanna, Ohio 43230

#### **SECTION IX – FORCE MAJEURE**

Notwithstanding any other provisions in this Agreement, no default, delay or failure to perform on the part of either party shall be considered a breach of this Agreement if such default, delay or failure to perform is shown to be due to causes beyond the reasonable control of the defaulting Party, including but not limited to, causes such as riots, civil disturbances, actions or inactions of governmental authorities or suppliers, epidemics, war, embargoes, severe weather, fire, earthquakes, acts of God or the public enemy, or nuclear disasters.

#### **SECTION X – CAPTIONS**

The subject headings of the various sections of this Agreement are included for purposes of convenience only and shall not affect the construction or interpretation of any of its provisions.

#### **SECTION XI – COUNTERPARTS**

This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same agreement, binding on all parties hereto, notwithstanding that all parties are not signatories to the same counterpart.

#### **SECTION XII – THIRD PARTY BENEFICIARIES**

Nothing herein expressed or implied is intended or shall be construed to confer upon or give any person other than the Parties hereto, and their permitted successors and assigns, any rights or remedies under or by reason of this Agreement.

#### **SECTION XIII – NO AGENCY**

The Parties hereto specifically agree that this Agreement is for independent personal services and is not a contract of employment. The Magistrate is acting, and shall act, solely as an independent contractor and is not to be deemed an employee of the City of Gahanna in any respect whatsoever.

**SECTION XIV – ENTIRE AGREEMENT**

This Agreement, together with any Exhibits referenced herein, constitutes the entire Agreement and understanding of the Parties and supersedes all prior discussions and agreements relating to the subject matter hereof. This Agreement may be amended or modified only in writing signed by the Parties.

**SECTION XV – NO WAIVER OF CONTRACTUAL RIGHT**

No term or provision hereof shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the Party claimed to have waived or consented. Any consent by either Party to, or waiver of, a breach by the other, whether express or implied, shall not constitute consent to, waiver of, or excuse for any other different or subsequent breach.

**SECTION XVI – GOVERNING LAW**

This Agreement is subject to applicable federal laws, federal or state tariffs, if any, and will be governed by the laws of the State of Ohio. Any inconsistency between this Agreement and those regulations, this Agreement shall be deemed amended as necessary to conform to such regulations.

**SECTION XVII – VENUE**

The Parties hereto hereby consent to the exclusive jurisdiction of the courts of the State of Ohio in Franklin County, and the United States District Court for the Southern District of Ohio and waive any contention that any such court is an improper venue for enforcement of this Agreement.

**SECTION XVIII – SEVERABILITY**

If any term or provision of this Agreement operates or would prospectively operate to invalidate this Agreement in whole or in part, then such term or provision only will be void to the extent of such invalidity, and the remainder of this Agreement shall remain in full force and effect; provided, however, that if such term or provision constitutes the essence of this Agreement then this Agreement shall be deemed terminated without such termination constituting a breach hereof.

**SECTION XIX – BINDING EFFECT**

This Agreement will be binding upon and inure to the benefit of each party and their respective successors and assignees.

IN WITNESS WHEREOF, the parties hereto have caused this Magistrate Agreement to be duly executed as of the date first above written.

For the City of Gahanna:

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Mayor Rebecca W. Stinchcomb

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Sean W. Maxfield  
Attorney at Law

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

Approved as to form:

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Shane W. Ewald  
City Attorney