
AGENDA ITEM

TO: Mayor McNeill, Lansing City Council
FROM: Tim Vandall, City Administrator
DATE: February 10, 2022
SUBJECT: Appointment of Municipal Court Judge

Explanation: Per section 10-104 of the Lansing City Code, Mayor McNeill is authorized to appoint the Municipal Court Judge. Mr. Gary L Fuller has practiced law in Leavenworth County since 1989. Mr. Fuller currently serves as Lansing's reserve public defender and is familiar with our law enforcement and municipal court staff. Mr. Fuller was also recently appointed as the Leavenworth Municipal Court Judge. Staff believes Mr. Fuller has the knowledge and experience to perform the duties of Lansing's Municipal Court Judge.

Policy Consideration: There is currently a vacancy in the Municipal Court Judge position due to the death of Judge William Pray. This contract would be effective March 1, 2022.

Financial Consideration: Compensation for the Municipal Court Judge is covered by line item 010-012-41101 in the Municipal Court Department.

Action: Authorize Mayor McNeill to appoint Gary Fuller as Lansing's Municipal Court Judge.

MUNICIPAL JUDGE ENGAGEMENT AGREEMENT

This MUNICIPAL JUDGE ENGAGEMENT AGREEMENT (this “Agreement”) is entered into effective as of the 1st day of March, 2022, by and between the **City of Lansing, Kansas, a Kansas municipal corporation** (the “City”), and **Gary L. Fuller**, an individual (the “Judge”).

In consideration of the foregoing and of the mutual promises set forth herein, and intending to be legally bound, the parties hereto agree as follows.

1. **Engagement.** The City hereby engages the Judge to provide and perform, as an independent contractor, the functions and duties of municipal judge as set forth in state statute, city ordinance, and the Lansing City Code, consistent with the Scope of Work attached hereto as exhibit A and incorporated by reference with all duties, rights, and benefits accompanying the specified position. The Judge does not have supervisory authority over City staff.

The Judge hereby accepts the engagement to provide the above-described services to the City on the terms and conditions set forth herein. The Judge must take the oath of office as prescribed by Kansas law, and will be directly and personally responsible for the performance of the duties of such office, as specified in this Agreement, Lansing city ordinances and applicable Kansas statutes. It is expressly understood by the parties hereto that, while acting in the capacity of Municipal Judge and while carrying out the judicial duties thereof, the Judge has by law the power of independent judgment and discretion as to the management and disposition of cases coming before the Court.

2. **Term.** This Agreement will commence on the date first written above and shall continue until either party provides notice to terminate. Notwithstanding the foregoing, this Agreement may be terminated by the City or the Judge upon not less than 60 days prior written notice to the other of them, except in the event of default by the Judge under this Agreement, in which event the City may terminate this Agreement immediately.
3. **Compensation.** In consideration of the services to be performed by the Judge, the City agrees to pay the Judge the sum of \$1500 per calendar month. Payments to the Judge shall be made in accordance with the City’s regular schedule for payments to City personnel, and divided by pay periods in such manner as the City may reasonably determine. The Judge shall receive no other benefits from the City, whether health insurance, retirement, or otherwise.
4. **Performance of Services.**
 - a. The Judge shall conduct himself/herself in accordance with all applicable City policies while performing services under this Agreement. Such policies may include, but may not be limited to, tobacco, drugs, language, weapons, and sexual harassment policies. Failure of a person to so comply will be cause for his or her immediate dismissal from the work.
 - b. In performing his/her duties under this Agreement, the Judge will use the same care and skill ordinarily used by members of his/her profession under the same or similar circumstances. The Judge warrants and agrees that he/she is licensed to practice law in this state without limitation. The Judge must maintain his/her license to practice law in good standing throughout the term of this

Agreement as a condition of this engagement. Should the Judge no longer be authorized to practice law in this state, this Agreement will terminate immediately for just cause.

- c. The Judge acknowledges the proper performance of the duties of the Judge will require him/her to generally observe normal business hours and will also often require the performance of necessary services outside of normal business hours. The Judge agrees to devote such additional time as is necessary for the full and proper performance of the Judge's duties and that the compensation herein provided includes compensation for the performance of all such services.

5. **Representations and Warranties.** The Judge represents and warrants that:

- a. the Judge does not have any obligations, legal or otherwise, inconsistent with the terms of this Agreement or with the Judge's undertaking this relationship with the City,
- b. the performance of the services called for by this Agreement do not and will not violate any applicable law, rule or regulation or any proprietary or other right of any third party, and
- c. the Judge has not entered into nor will enter into any agreement (whether oral or written) in conflict with this Agreement.

6. **Indemnification.** To the extent permitted under Kansas law, the Judge hereby indemnifies and agrees to defend and hold harmless the City from and against any and all claims, demands and actions, and any liabilities, damages or expenses resulting therefrom, including court costs and reasonable attorneys' fees, arising out of or relating to the services performed under or pursuant to this Agreement or the representations and warranties made by the Judge. The Judge's obligations under this paragraph 6 shall survive the termination, for any reason, of this Agreement.

7. **Entire Agreement.** This Agreement contains the entire understanding and agreement between the parties hereto with respect to its subject matter and supersedes any prior or contemporaneous written or oral agreements, representations or warranties between them respecting the subject matter hereof.

8. **Amendment.** This Agreement may be amended only by a writing signed by both parties.

9. **Severability.** If any term, provision, covenant or condition of this Agreement, or the application thereof to any person, place or circumstance, shall be held by a court of competent jurisdiction to be invalid, unenforceable or void, the remainder of this Agreement and such term, provision, covenant or condition as applied to other persons, places and circumstances shall remain in full force and effect.

10. **Rights Cumulative.** The rights and remedies provided by this Agreement are cumulative, and the exercise of any right or remedy by either party hereto (or by its successors), whether pursuant to this Agreement, to any other agreement, or to law, shall not preclude or waive its right to exercise any or all other rights and remedies.

11. **Nonwaiver.** No failure or neglect of either party hereto in any instance to exercise any right, power or privilege hereunder or under law shall constitute a waiver of any other right, power or privilege or of the same right, power or privilege in any other instance. All waivers by either party hereto must be contained in a written instrument signed by the party to be charged.

12. **Agreement to Perform Necessary Acts.** The Judge agrees to perform any further acts and execute and deliver any documents that may be reasonably necessary to carry out the provisions of this Agreement.
13. **Assignment.** Neither party shall have the right to assign this Agreement without the prior written consent of the other party.
14. **Compliance with Law.** In connection with the services rendered hereunder, both parties agree to abide by all federal, state and local laws, ordinances and regulations.
15. **Independent Contractor.** The relationship between the City and the Judge is that of independent contractors. It is understood and agreed that the Judge is not and shall not be deemed an employee of the City. As such, the Judge shall be responsible for all administrative employment matters for the Judge, if any, such as payment of salaries and wages, withholding and payment of all federal, state and local employment taxes, providing worker compensation insurance coverage, and providing non-obligatory fringe benefits programs. The Judge agrees to hold the City harmless from direct out-of-pocket expenses of the City that may arise from the Judge's failure to withhold taxes or to conduct himself/herself in accordance with applicable law.
16. **Absence.** In the event the Judge is temporarily unable to preside due to absence, illness or disqualification, the Judge shall designate an attorney or other qualified person to act as Judge Pro Tempore. In the event the Judge fails to appoint a Judge Pro Tempore, one shall be appointed in accordance with the provisions set forth in the Lansing City Code.
17. **Governing Law.** This Agreement shall be construed in accordance with, and all actions arising hereunder shall be governed by, the laws of the State of Kansas.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date and year first above written.

CITY OF LANSING, KANSAS

JUDGE

By: _____
Anthony R. McNeill, Mayor

Gary L. Fuller

ATTEST:

By: _____
City Clerk

APPROVED AS TO FORM:

By: _____
Gregory Robinson, City Attorney

EXHIBIT A
CITY OF LANSING, KANSAS
MUNICIPAL COURT JUDGE – SCOPE OF WORK

The Judge's primary responsibilities shall include, but are not limited to, the following:

1. Presiding over the Court's regularly scheduled dockets;
2. Scheduling and presiding over such additional or special dockets or hearings as may from time to time be necessary for expeditious disposition of pending matters;
3. Establishing or ratifying a fine schedule applicable to traffic infractions and any other violation for which a scheduled fine is permissible;
4. Establishing or ratifying policies and procedures for posting and revoking appearance bonds;
5. Adjudging such convictions, acquittals and other dispositions as the evidence and law warrant;
6. Imposing authorized punishment upon persons convicted of violating city ordinances;
7. Issuing or authorizing the issuance of such subpoenas, bench warrants, arrest warrants and other process as court procedures and the facts and law warrant; and
8. Coordinating administrative aspects of his/her performance hereunder with the Municipal Court Clerk or designee to ensure effective and efficient operation of the Court.