



## CITY COUNCIL ACTION FORM

DEPARTMENT	PRESENTED BY	DATE
Administration	Drew Nelson - City Administrator	December 7, 2021

### **ITEM**

Ordinance 2021-20 An Ordinance of the City Council of the City of Salida, Colorado, Reappointing and Setting Compensation for Cheryl Hardy-Moore as Municipal Court Judge for a Two Year Term Commencing January 1, 2022 and Running Through December 31, 2023, First Reading

### **BACKGROUND**

Section 2-5-30 of the Salida Municipal Code provides that the City Council will appoint a qualified judge to preside over the Municipal Court. The SMC states:

***Sec. 2-5-30. - Appointment and qualification of Municipal Judge.***

*The Municipal Court shall be presided over by a Municipal Judge who shall be appointed to office for a two-year term in accordance with Section 13-10-105, C.R.S., unless removed during such term by the City Council in accordance with Section 13-10-105(2), C.R.S. The Municipal Judge must also be a resident and qualified elector of the County or of a county adjoining the County. Additional judges as may be needed to transact the business of the Court may be appointed by the City Council for such terms as necessary.*

Judge Cheryl Hardy-Moore was appointed to the position of Municipal Court Judge in January of 2016 for an initial term of two years and was reappointed to the position in January of 2018 and January 2020, with the last rate of pay set at \$1,700 per month. During the reappointment process in 2020, the City Council set the Judge's compensation via ordinance (Ordinance 2020-01), which is required per the SMC, which states:

***Sec. 2-5-40. - Compensation of Judge.***

*The compensation of the Municipal Judge shall be an annual salary in an amount set by ordinance of the City Council, and shall be payable monthly.*

Judge Hardy-Moore has expressed interest in remaining in the position as Municipal Court Judge. The proposed Ordinance 2021-20, if approved, would become effective on January 20, 2021, which is prior to the January Municipal Court date. The Independent Contractor Services Agreement is attached as Exhibit A.

### **FISCAL NOTE**

The fiscal impact of this Ordinance would be \$20,400 annually (monthly compensation of \$1,700). This amount has been budgeted for in the 2022 Annual Budget for the City of Salida.

### **STAFF RECOMMENDATION**

Staff believes it is appropriate to refrain from making a recommendation on this matter, as the Municipal Court Judge is a direct report to the City Council and should enjoy independence from Administration.

### **SUGGESTED MOTION**

A City Councilmember should state, "I move to approve Ordinance 2021-20, reappointing Cheryl Hardy-Moore as Municipal Court Judge for a two-year term, and setting the second reading and public hearing for December 21, 2021", followed by a second and a roll call vote.

**CITY OF SALIDA, COLORADO**  
**ORDINANCE NO. 20**  
**(Series of 2021)**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SALIDA, COLORADO,  
REAPPOINTING AND SETTING COMPENSATION FOR CHERYL HARDY-MOORE  
AS MUNICIPAL COURT JUDGE FOR A TWO YEAR TERM COMMENCING  
JANUARY 1, 2022, AND RUNNING THROUGH DECEMBER 31, 2023**

**WHEREAS**, Section 2-5-30 of the Salida Municipal Code provides that the Municipal Court Judge shall be appointed by a majority vote of the members of the Salida City Council to serve a two-year term in accordance with C.R.S. Section 13-10-105; and

**WHEREAS**, Section 2-5-30 of the Salida Municipal Code further provides that the Municipal Court Judge shall serve a term of two (2) years, unless earlier removed from office; and

**WHEREAS**, the compensation of the Municipal Court Judge is set by Ordinance pursuant to Section 2-5-40 of the Salida Municipal Code; and

**WHEREAS**, Cheryl Hardy-Moore has performed the duties of Municipal Court Judge for the City of Salida conscientiously and appropriately during her past three (3) terms, and she has indicated an interest in serving for an additional term; and

**WHEREAS**, the Salida City Council desires to reappoint Cheryl Hardy-Moore as Municipal Court Judge.

**NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SALIDA, COLORADO THAT:**

1. The aforementioned recitals are hereby fully incorporated herein.
2. Based upon past performance in the position and her willingness to serve again, the Salida City Council hereby appoints Cheryl Hardy-Moore as Municipal Court Judge for a term of two (2) years expiring December 31, 2023, and setting the Municipal Court Judge's salary at \$1,700 per month.
3. This appointment shall be subject to execution of the contract for services attached hereto as **Exhibit A** and incorporated herein by this reference.

**INTRODUCED ON FIRST READING, FINALLY ADOPTED, and ORDERED PUBLISHED IN FULL** in a newspaper of general circulation in the City of Salida by the City Council on the 7<sup>th</sup> day of December, 2021, and set for second reading and public hearing on the 21<sup>st</sup> day of December, 2021.

**INTRODUCED ON SECOND READING, FINAL ADOPTED and ORDERED PUBLISHED OBY TITLE ONLY**, by the City Council on the 21<sup>st</sup> day of December, 2021.

CITY OF SALIDA, COLORADO

[SEAL]

By \_\_\_\_\_  
Dan Shore, Mayor

[ATTEST]

\_\_\_\_\_  
Erin Kelley, City Clerk

## **AGREEMENT FOR PROFESSIONAL SERVICES**

THIS AGREEMENT FOR PROFESSIONAL SERVICES ("Agreement") is made and entered into this 1<sup>st</sup> day of January, 2022 by and between the CITY OF SALIDA, COLORADO, a Colorado municipal corporation ("City"), and Cheryl Hardy Moore ("Contractor").

WHEREAS, the City desires that Contractor perform the services of Municipal Court Judge as an independent contractor, in accordance with the provisions of this Agreement; and

WHEREAS, Contractor desires to perform such duties pursuant to the terms and conditions provided for in this Agreement; and

WHEREAS, the parties hereto desire to set forth certain understandings regarding the services in writing.

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

1. Services. The City agrees to retain Contractor to provide the following professional services (hereinafter "Services"): (a) serve as Municipal Court Judge for the City of Salida; (b) exercise all powers and duties of Municipal Court Judge called for in the Salida Municipal Code; (c) conduct regular Municipal Court sessions and special sessions for the trial of cases as required; and (d) make and adopt rules and regulations for the conduct of business of the Municipal Court. Contractor warrants and represents that it has the requisite authority, capacity, experience, and expertise to perform the Services in compliance with the provisions of this Agreement and all applicable laws and agrees to perform the Services on the terms and conditions set forth herein.

2. Compensation. Compensation to Contractor from the City for Services pursuant to this Agreement shall be One-Thousand Seven Hundred Dollars (\$1,700) per month, payable monthly.

3. Term. The Term of this Agreement shall be from the date first written above until December 31, 2023, or until the Agreement is terminated pursuant to Section 12 of this Agreement.

4. The position of Municipal Court Judge requires that the Contractor be an attorney with an active license to practice law in the State of Colorado. Contractor shall maintain an active law license at all times pertinent to this Agreement.

5. The Municipal Court Judge shall, as an attorney, be bound by the Colorado Rules of Professional Responsibility. The Municipal Judge, as a part time judge, shall be familiar with and guided by the Colorado Code of Judicial Ethics.

6. Outside Support Services and Sub-Contractor. Any sub-contractors shall be pre-approved by the City. A rate sheet for each sub-contractor shall be provided to the City.

7. Ownership of Instruments of Service. The City acknowledges the Contractor's work product, including electronic files, as instruments of professional service. Nevertheless, the

final work product prepared under this Agreement shall become the property of the City upon completion of the services and payment in full of all monies due to the Contractor.

8. Monitoring and Evaluation. The City reserves the right to monitor and evaluate the progress and performance of the Contractor to ensure that the terms of this Agreement are being satisfactorily met in accordance with the City's and other applicable monitoring and evaluating criteria and standards. Contractor shall cooperate with the City relating to such monitoring and evaluation.

9. Independent Contractor. The parties agree that the Contractor shall be an independent contractor and shall not be considered an employee, agent, or servant of the City for any purpose. Contractor is not entitled to workers' compensation benefits from the City and is obligated to pay federal and state income tax on any money earned pursuant to this Agreement.

10. Insurance Requirements. Contractor shall be responsible for, procure and keep in full force during the duration of this Agreement a policy of liability insurance insuring Contractor and any other insurance necessary to perform the duties contemplated by this Agreement and shall indemnify and hold harmless the City from any acts attributable to Contractor's negligence for which City may be held liable not covered by the City's insurance.

11. Indemnification. Contractor hereby covenants and agrees to indemnify, save, and hold harmless the City, its officers, employees, and agents from any and all liability, loss, costs, charges, obligations, expenses, attorney's fees, litigation, judgments, damages, claims, and demands of any kind whatsoever arising from or out of any negligent act or error and omission or other tortious conduct of Contractor, its officers, subcontractors, employees, or agents in the performance or nonperformance of its obligations under this Agreement.

12. Termination. Contractor may be removed from their term of office only for cause. Contractor may be removed for cause if:

- a. She is found guilty of a felony or any other crime involving moral turpitude; or
- b. She has a disability which interferes with the performance of her duties and which is or is likely to become of permanent character; or
- c. She has willfully or persistently failed to perform her duties; or
- d. She is habitually intemperate; or
- e. The municipality required the judge, at the time of appointment, to be a resident of the municipality, or county in which the municipality is located, and she subsequently becomes a nonresident of the municipality or the county during her term of office; or
- f. She fails to maintain an active bar license as an attorney in the State of Colorado.

13. Entire Agreement. This Agreement, along with any addendums and attachments hereto, constitutes the entire agreement between the parties. The provisions of this Agreement may be amended at any time by the mutual consent of both parties. The parties shall not be bound by any other agreements, either written or oral, except as set forth in this Agreement.

14. Governing Law and Venue. This Agreement shall be governed by the laws of the State of Colorado, and venue for any action instituted pursuant to this Agreement shall be in the County of Chaffee, State of Colorado.

15. Authority. Each person signing this Agreement, and any addendums or attachments hereto, represents and warrants that said person is fully authorized to enter into and execute this Agreement and to bind the party it represents to the terms and conditions hereof.

16. Governmental Immunity Act. No term or condition of this Agreement shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions of the Colorado Governmental Immunity Act, C.R.S. §§ 24-10-101, *et seq.*

17. Assignability. Contractor shall not assign this Agreement without the City's prior written consent.

18. Binding Effect. This Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective heirs, personal representatives, successors, and assigns.

19. Survival Clause. The "Indemnification" provision set forth in this Agreement shall survive the completion of the Services and the satisfaction, expiration, or termination of this Agreement.

20. Severability. In the event a court of competent jurisdiction holds any provision of this Agreement invalid or unenforceable, such holding shall not invalidate or render unenforceable any other provision of this Agreement.

21. Notices. Any written notices required to be given under this Agreement shall be delivered as follows:

To the City:                      City Administrator  
    City of Salida  
    448 E. 1<sup>st</sup> Street, Suite 112  
    Salida, CO 81201  
    (719) 530-2629

Copy to:                          Wilson Williams LLP  
    15306 W 93<sup>rd</sup> Avenue  
    Arvada, CO 80007  
    (303) 376-8510

To the Contractor:              Cheryl Hardy-Moore  
    31 Silver Spruce Drive  
    Salida, CO 81201  
    (970) 846-1251

22. Authority. Each person signing this Agreement, and any addendums or attachments hereto, represents and warrants that said person is fully authorized to enter into and execute this Agreement and to bind the party it represents to the terms and conditions hereof.

23. Attorneys' Fees. Should this Agreement become the subject of litigation between the City and Contractor, the prevailing party shall be entitled to recovery of all actual costs in connection therewith, including but not limited to attorneys' fees and expert witness fees. All rights concerning remedies and/or attorneys' fees shall survive any termination of this Agreement.

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

CITY OF SALIDA, COLORADO

By: \_\_\_\_\_  
Dan Shore, Mayor

ATTEST:

\_\_\_\_\_  
Erin Kelley, City Clerk

CONTRACTOR:

By: \_\_\_\_\_  
Title: Cheryl Hardy-Moore  
Municipal Court Judge

STATE OF COLORADO                    )  
  ) ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing Agreement for Professional Services was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by Cheryl Hardy-Moore.

Witness my hand and official seal.

My commission expires \_\_\_\_\_.

\_\_\_\_\_  
Notary Public