



CITY COUNCIL ACTION FORM

DEPARTMENT Administration	PRESENTED BY Christy Doon - City Administrator	DATE December 19, 2023
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ITEM

Ordinance 2023-21 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, 2024 and Running Through December 31, 2025, 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. She has been reappointed to the position in January of 2018, January 2020 and January 2022, with the last rate of pay set at \$1,700 per month. During the reappointment process in 2022, the City Council set the Judge's compensation via ordinance (Ordinance 2021-20), 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 2023-21, if approved via Emergency Ordinance, would become effective on January 1, 2024, 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 2024 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 2023-21, reappointing Cheryl Hardy-Moore as Municipal Court Judge for a two-year term, and setting the second reading and public hearing for January 1, 2024", followed by a second and a roll call vote.

CITY OF SALIDA, COLORADO
ORDINANCE NO. 2023-21
(Series of 2023)

**AN EMERGENCY ORDINANCE OF THE CITY COUNCIL FOR 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, 2024 AND
RUNNING THROUGH DECEMBER 31, 2025**

WHEREAS, Salida Municipal Code § 2-5-30 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. § 13-10-105; and

WHEREAS, Salida Municipal Code § 2-5-30 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 Salida Municipal Code § 2-5-40; and

WHEREAS, Cheryl Hardy-Moore has performed the duties of Municipal Court Judge for the City of Salida conscientiously and appropriately during her past 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; and

WHEREAS, the City Council deems and declares that the need to appoint the Municipal Court Judge constitutes an emergency requiring expedited adoption procedures to preserve the City's ability to operate the Municipal Court session to be held on January 19, 2024; and

WHEREAS, this Ordinance shall be deemed and declared an emergency measure necessary to the immediate preservation of the public health or safety.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL FOR 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, 2025, 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.

4. Declaring an Emergency pursuant to C.R.S. § 31-16-105, it is hereby declared that, in the opinion of the Salida City Council, an emergency exists; that there is a need for the immediate preservation of the peace, health, and safety of the City of Salida, its residents and its guests; and the immediate appointment of the Municipal Court Judge is necessary to avoid undue delay in Salida Municipal Court proceedings. This ordinance shall be effective immediately upon its adoption.

INTRODUCED ON FIRST READING, FINAL ADOPTED, AND ORDERED PUBLISHED IN FULL in a newspaper of general circulation in the City of Salida by the City Council on the 19th day of December, 2023, and set for second reading and public hearing on the 2nd day of January, 2024.

INTRODUCED ON SECOND READING, FINAL ADOPTED, AND ORDERED PUBLISHED BY TITLE ONLY, upon the affirmative vote of not less than three-fourths (3/4) of the members of the City Council on the 2nd day of January, 2024.

CITY OF SALIDA, COLORADO

By: _____
Dan Shore, Mayor

[SEAL]

ATTEST

City Clerk Erin Kelley

AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT FOR PROFESSIONAL SERVICES (“Agreement”) is made and executed effective on the 1st day of January, 2024, 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, 2025, or until the Agreement is terminated pursuant to Section 10 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 Subcontractor.** Any subcontractors shall be pre-approved by the City. A rate sheet for each sub-contractor shall be provided to the City.

7. **Ownership of Instrument 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. **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.

11. **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.

12. **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.

13. **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.

14. **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.*

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

16. **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.

17. **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.

18. **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.

19. **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. 1st Street, Suite 112
Salida, CO 81201
719-530-2629

Copy to: Wilson Williams LLP
1314 Main Street, Suite 101
Louisville, CO 80027

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

20. **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.

21. **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

[SEAL]

ATTEST

City Clerk Erin Kelley

CONTRACTOR:

By: _____
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 _____, 202__ by Cheryl Hardy-Moore.

Witness my hand and official seal.

My commission expires: _____.

Notary Public