

RESOLUTION NO. 2022-13

A Resolution of the City of McMinnville appointing David G. Hansen as Judge Pro Tempore of the McMinnville Municipal Court.

RECITALS:

Whereas, City Council, under city code 2.40.020, has the authority to appoint Judge, *Pro Tempore* to serve when the appointed Municipal Judge is unavailable; and

Whereas, Mr. Terrance Mahr currently serves as Judge, *Pro Tempore*; and

Whereas, having satisfied city code 2.40.030 concerning qualifications for the post, the City Council appoints Mr. David G. Hansen as an additional Judge, *Pro Tempore* for the City's Municipal Court.

NOW, THEREFORE, BE IT RESOLVED BY THE COMMON COUNCIL OF THE CITY OF MCMINNVILLE, OREGON as follows:

1. That Mr. David G. Hansen is appointed Judge, *Pro Tempore*, and the City Manager is authorized to enter into an agreement with Mr. Hansen in a form substantially similar to Exhibit 1 attached hereto.
2. This Resolution is effective upon passage.

Adopted by the Common Council of the City of McMinnville at a regular meeting held the 22nd day of February, 2022 by the following votes:

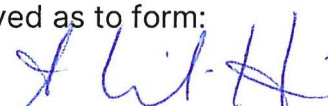
Ayes: Drabkin, Garvin, Geary, Menke, Peralta, Chenoweth

Nays: _____

Approved this 22nd day of February, 2022.



MAYOR

Approved as to form:


City Attorney

Attest:


City Recorder

Exhibits:

Exhibit A – Agreement for Municipal Court Pro Tem Judicial Services.

CITY OF McMinnville
AGREEMENT FOR MUNICIPAL COURT *PRO TEM* JUDICIAL SERVICES

This Agreement for Municipal Court *Pro Tem* Judicial Services (“Agreement”) is made and entered into on this ____ day of February 2022 (“Effective Date”) by and between the **City of McMinnville**, a municipal corporation of the State of Oregon (hereinafter referred to as the “City”), and **David Hansen**, a(n) individual (hereinafter referred to as “Pro Tem Judge”).

RECITALS

WHEREAS, the City requires services which Pro Tem Judge is capable of providing, under terms and conditions hereinafter described; and

WHEREAS, Pro Tem Judge represents that Pro Tem Judge is qualified to perform the services described herein on the basis of specialized experience and technical expertise; and

WHEREAS, Pro Tem Judge is prepared to provide such services as the City does hereinafter require.

NOW, THEREFORE, in consideration of these mutual promises and the terms and conditions set forth herein, the parties agree as follows:

AGREEMENT

Section 1. Scope of Work

Pro Tem Judge shall diligently perform the judicial services as Pro Tem Judge according to the requirements identified in the Scope of Work for the Project, attached hereto as **Exhibit 1** and incorporated by reference herein (the “Services”).

Section 2. Term

The term of this Agreement shall be from the Effective Date until June 30, 2023, unless earlier terminated in accordance herewith or an extension of time is agreed to, in writing, by the City.

Section 3. Pro Tem Judge’s Services

3.1. All written documents prepared by Pro Tem Judge in conjunction with the Services shall bear the signature, stamp, or initials of Pro Tem Judge.

3.2. Pro Tem Judge shall maintain the confidentiality of any confidential information that is exempt from disclosure under state or federal law to which Pro Tem Judge may have access by reason of this Agreement. Pro Tem Judge warrants that Pro Tem Judge’s employees assigned to the Services provided in this Agreement shall be clearly instructed to maintain this confidentiality. All

agreements with respect to confidentiality shall survive the termination or expiration of this Agreement.

Section 4. Compensation

4.1. Except as otherwise set forth in this **Section 4**, the City agrees to pay Pro Tem Judge a not-to-exceed unit price of SEVENTY-FIVE DOLLARS (\$75.00) per hour for performance of the Services (“Compensation Amount”). Any compensation in excess of the Compensation Amount will require an express written Addendum to be executed between the City and Pro Tem Judge.

4.2. During the course of Pro Tem Judge’s performance, if the City, through its Project Manager, specifically requests Pro Tem Judge to provide additional services that are beyond the Scope of Work described on **Exhibit 1**, a written Addendum to this Agreement must be executed in compliance with the provisions of **Section 14**.

4.3. Except for amounts withheld by the City pursuant to this Agreement, Pro Tem Judge will be paid for Services for which an itemized invoice is received by the City within thirty (30) days of receipt, unless the City disputes such invoice. In that instance, the undisputed portion of the invoice will be paid by the City within the above timeframe. The City will set forth its reasons for the disputed claim amount and make good faith efforts to resolve the invoice dispute with Pro Tem Judge as promptly as is reasonably possible.

4.4. Pro Tem Judge’s Compensation Amount is all inclusive and includes, but is not limited to, all work-related costs, expenses, salaries or wages, plus fringe benefits and contributions, including payroll taxes, workers compensation insurance, liability insurance, profit, pension benefits and similar contributions and benefits, technology and/or software charges, licensing, trademark, and/or copyright costs, office expenses, travel expenses, mileage, and all other indirect and overhead charges.

Section 5. City’s Rights and Responsibilities

5.1. The City will designate a Project Manager to facilitate day-to-day communication between Pro Tem Judge and the City, including timely receipt and processing of invoices, requests for information, and general coordination of City staff to support the Project.

5.2. Award of this contract is subject to budget appropriation. Funds are approved for Fiscal Year 2021-22. If not completed within this fiscal year, funds may not be appropriated for the next fiscal year. The City also reserves the right to terminate this contract early, as described in **Section 13**.

Section 6. City’s Project Manager

The City’s Project Manager is Jennifer Cuellar. The City shall give Pro Tem Judge prompt written notice of any re-designation of its Project Manager.

Section 7. Pro Tem Judge's Project Manager

Pro Tem Judge's Project Manager is David Hansen.

Section 8. Duty to Inform

If at any time during the performance of this Agreement or any future phase of this Agreement for which Pro Tem Judge has been retained, Pro Tem Judge becomes aware of actual or potential problems, conflicts of interest, or possible ethics issues, or of any nonconformance with federal, state, or local laws, rules, or regulations, Pro Tem Judge shall give prompt written notice thereof to the City's Project Manager.

Section 9. Subcontractors and Assignments

Pro Tem Judge shall not subcontract with others for any of the Services prescribed herein. Pro Tem Judge shall not assign any of Pro Tem Judge's rights acquired hereunder without obtaining prior written approval from the City, which approval may be granted or denied in the City's sole discretion.

Section 10. Pro Tem Judge Is Independent Contractor

Pro Tem Judge is an independent contractor for all purposes and shall be entitled to no compensation other than the Compensation Amount provided for under **Section 4** of this Agreement. Pro Tem Judge will be solely responsible for determining the manner and means of accomplishing the end result of Pro Tem Judge's Services. The City does not have the right to control or interfere with the manner or method of accomplishing said Services. The City, however, will have the right to specify and control the results of Pro Tem Judge's Services so such Services meet the requirements of the Project.

Section 11. Pro Tem Judge Responsibilities

11.1. Pro Tem Judge must make prompt payment for any claims for labor, materials, or services furnished to Pro Tem Judge by any person in connection with this Agreement as such claims become due. Pro Tem Judge shall not permit any liens or claims to be filed or prosecuted against the City on account of any labor or material furnished to or on behalf of Pro Tem Judge. If Pro Tem Judge fails, neglects, or refuses to make prompt payment of any such claim, the City may, but shall not be obligated to, pay such claim to the person furnishing the labor, materials, or services and offset the amount of the payment against funds due or to become due to Pro Tem Judge under this Agreement. The City may also recover any such amounts directly from Pro Tem Judge.

11.2. Pro Tem Judge must comply with all applicable Oregon and federal wage and hour laws. Pro Tem Judge shall make all required workers compensation and medical care payments on time. Pro Tem Judge shall be fully responsible for payment of all employee withholdings required by law, including but not limited to taxes, including payroll, income, Social Security (FICA), and Medicaid. Pro Tem Judge shall also be fully responsible for payment of salaries, benefits, taxes, Industrial Accident Fund contributions, and all other charges on account of any employees. Pro

Tem Judge shall pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167. All costs incident to the hiring of assistants or employees shall be Pro Tem Judge's responsibility. Pro Tem Judge shall defend, indemnify, and hold the City harmless from claims for payment of all such expenses.

11.3. No person shall be discriminated against by Pro Tem Judge in the performance of this Agreement on the basis of sex, gender, race, color, creed, religion, marital status, age, disability, sexual orientation, gender identity, or national origin. Any violation of this provision shall be grounds for cancellation, termination, or suspension of the Agreement, in whole or in part, by the City.

Section 12. Indemnity

12.1. Indemnification. Pro Tem Judge acknowledges responsibility for liability arising out of the performance of this Agreement, and shall defend, indemnify, and hold the City harmless from any and all liability, settlements, loss, costs, and expenses in connection with any action, suit, or claim resulting or allegedly resulting from Pro Tem Judge's negligent acts, omissions, errors, or willful or reckless misconduct pursuant to this Agreement, or from Pro Tem Judge's failure to perform its responsibilities as set forth in this Agreement. The review, approval, or acceptance by the City, its Project Manager, or any City employee of documents or other work performed, prepared, or submitted by Pro Tem Judge shall not be considered a negligent act, error, omission, or willful misconduct on the part of the City, and none of the foregoing shall relieve Pro Tem Judge of its responsibility to perform in full conformity with the City's requirements, as set forth in this Agreement, and to indemnify the City as provided above and to reimburse the City for any and all costs and damages suffered by the City as a result of Pro Tem Judge's negligent performance of this Agreement, failure of performance hereunder, violation of state or federal laws, or failure to adhere to the standards of performance and care described in **Subsection 12.2**. Pro Tem Judge shall defend the City (using legal counsel reasonably acceptable to the City) against any claim that alleges negligent acts, omissions, errors, or willful or reckless misconduct by Pro Tem Judge. As used herein, the term "Pro Tem Judge" applies to Pro Tem Judge and its own agents and employees.

12.2. Standard of Care. In the performance of professional services, Pro Tem Judge agrees to use at least that degree of care and skill exercised under similar circumstances by reputable members of Pro Tem Judge's profession practicing in the Portland metropolitan area. Pro Tem Judge will re-perform any Services not meeting this standard without additional compensation. Pro Tem Judge's re-performance of any Services, even if done at the City's request, shall not be considered as a limitation or waiver by the City of any other remedies or claims it may have arising out of Pro Tem Judge's failure to perform in accordance with the applicable standard of care of this Agreement and within the prescribed timeframe.

Section 13. Early Termination; Default

13.1. This Agreement may be terminated prior to the expiration of the agreed upon terms:

13.1.1. By mutual written consent of the parties;

13.1.2. By the City, for any reason, and within its sole discretion, effective upon delivery of written notice to Pro Tem Judge by mail or in person; or

13.1.3. By Pro Tem Judge, effective upon seven (7) days' prior written notice in the event of substantial failure by the City to perform in accordance with the terms through no fault of Pro Tem Judge, where such default is not cured within the seven (7) day period by the City. Withholding of disputed payment is not a default by the City.

13.2. If the City terminates this Agreement, in whole or in part, due to default or failure of Pro Tem Judge to perform Services in accordance with the Agreement, the City may procure, upon reasonable terms and in a reasonable manner, services similar to those so terminated. In addition to any other remedies the City may have, both at law and in equity, for breach of contract, Pro Tem Judge shall be liable for all costs and damages incurred by the City as a result of the default by Pro Tem Judge, including, but not limited to all costs incurred by the City in procuring services from others as needed to complete this Agreement. This Agreement shall be in full force to the extent not terminated by written notice from the City to Pro Tem Judge. In the event of a default, the City will provide Pro Tem Judge with written notice of the default and a period of ten (10) days to cure the default. If Pro Tem Judge notifies the City that it wishes to cure the default but cannot, in good faith, do so within the ten (10) day cure period provided, then the City may elect, in its sole discretion, to extend the cure period to an agreed upon time period, or the City may elect to terminate this Agreement and seek remedies for the default, as provided above.

13.3. If the City terminates this Agreement for its own convenience not due to any default by Pro Tem Judge, payment of Pro Tem Judge shall be prorated to, and include, the day of termination and shall be in full satisfaction of all claims by Pro Tem Judge against the City under this Agreement.

13.4. Termination under any provision of this section shall not affect any right, obligation, or liability of Pro Tem Judge or the City that accrued prior to such termination. Pro Tem Judge shall surrender to the City items of work or portions thereof, referred to in **Section 16**, for which Pro Tem Judge has received payment or the City has made payment.

Section 14. Modification/Addendum

Any modification of the provisions of this Agreement shall not be enforceable unless reduced to writing and signed by both the City and Pro Tem Judge. A modification is a written document, contemporaneously executed by the City and Pro Tem Judge, which increases or decreases the cost to the City over the agreed Compensation Amount in **Section 4** of this Agreement, or changes or modifies the Scope of Work or the time for performance. No modification shall be binding or effective until executed, in writing, by both Pro Tem Judge and the City. If Pro Tem Judge incurs additional costs or devotes additional time on Project tasks, the City shall be responsible for payment of only those additional costs for which it has agreed to pay under a signed Addendum to this Agreement.

Section 15. Access to Records

The City shall have access, upon request, to such books, documents, receipts, papers, and records of Pro Tem Judge as are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts, and transcripts during the term of this Agreement and for a period of four (4) years after termination of this Agreement, unless the City specifically requests an extension. This clause shall survive the expiration, completion, or termination of this Agreement.

Section 16. Property of the City

All documents, reports, and research gathered or prepared by Pro Tem Judge under this Agreement, including but not limited to spreadsheets, charts, graphs, drawings, modeling, maps, data generation, papers, diaries, and reports, shall be the exclusive property of the City and shall be delivered to the City prior to final payment. Any statutory or common law rights to such property held by Pro Tem Judge as creator of such work shall be conveyed to the City upon request without additional compensation.

Section 17. Notices

Any notice required or permitted under this Agreement shall be in writing and shall be given when actually delivered in person or forty-eight (48) hours after having been deposited in the United States mail as certified or registered mail, addressed to the addresses set forth below, or to such other address as one party may indicate by written notice to the other party.

To City: City of McMinnville
Attn: Jennifer Cuellar, Finance Director
230 NE Second Street
McMinnville, OR 97128

To Pro Tem Judge: David Hansen
Zoticus Law PC
435 NE Evans St Ste E
McMinnville, OR 97128

Section 18. Miscellaneous Provisions

18.1. Integration. This Agreement, including all exhibits attached hereto, contains the entire and integrated agreement between the parties and supersedes all prior written or oral discussions, representations, or agreements. In case of conflict among these documents, the provisions of this Agreement shall control.

18.2. Legal Effect and Assignment. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors, and assigns. This Agreement may be enforced by an action at law or in equity.

18.3. No Assignment. Pro Tem Judge may not assign this Agreement, nor delegate the performance of any obligations hereunder, unless agreed to in advance and in writing by the City.

18.4. Adherence to Law. In the performance of this Agreement, Pro Tem Judge shall adhere to all applicable federal, state, and local laws (including the McMinnville Code and Public Works Standards), including but not limited to laws, rules, regulations, and policies concerning employer and employee relationships, workers compensation, and minimum and prevailing wage requirements. Any certificates, licenses, or permits that Pro Tem Judge is required by law to obtain or maintain in order to perform the Services described on **Exhibit 1**, shall be obtained and maintained throughout the term of this Agreement.

18.5. Governing Law. This Agreement shall be construed in accordance with and governed by the laws of the State of Oregon, regardless of any conflicts of laws. All contractual provisions required by ORS Chapters 279A, 279B, 279C, and related Oregon Administrative Rules to be included in public agreements are hereby incorporated by reference and shall become a part of this Agreement as if fully set forth herein.

18.6. Jurisdiction. Venue for any dispute will be in Yamhill County Circuit Court.

18.7. Legal Action/Attorney Fees. If a suit, action, or other proceeding of any nature whatsoever (including any proceeding under the U.S. Bankruptcy Code) is instituted in connection with any controversy arising out of this Agreement or to interpret or enforce any rights or obligations hereunder, the prevailing party shall be entitled to recover attorney, paralegal, accountant, and other expert fees and all other fees, costs, and expenses actually incurred and reasonably necessary in connection therewith, as determined by the court or body at trial or on any appeal or review, in addition to all other amounts provided by law. If the City is required to seek legal assistance to enforce any term of this Agreement, such fees shall include all of the above fees, whether or not a proceeding is initiated. Payment of all such fees shall also apply to any administrative proceeding, trial, and/or any appeal or petition for review.

18.8. Nonwaiver. Failure by either party at any time to require performance by the other party of any of the provisions of this Agreement shall in no way affect the party's rights hereunder to enforce the same, nor shall any waiver by the party of the breach hereof be held to be a waiver of any succeeding breach or a waiver of this nonwaiver clause.

18.9. Severability. If any provision of this Agreement is found to be void or unenforceable to any extent, it is the intent of the parties that the rest of the Agreement shall remain in full force and effect, to the greatest extent allowed by law.

18.10. Modification. This Agreement may not be modified except by written instrument executed by Pro Tem Judge and the City.

18.11. Time of the Essence. Time is expressly made of the essence in the performance of this Agreement.

18.12. Calculation of Time. Except where the reference is to business days, all periods of time referred to herein shall include Saturdays, Sundays, and legal holidays in the State of Oregon, except that if the last day of any period falls on any Saturday, Sunday, or legal holiday observed by the City, the period shall be extended to include the next day which is not a Saturday, Sunday, or legal holiday. Where the reference is to business days, periods of time referred to herein shall exclude Saturdays, Sundays, and legal holidays observed by the City. Whenever a time period is set forth in days in this Agreement, the first day from which the designated period of time begins to run shall not be included.

18.13. Headings. Any titles of the sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

18.14. Number, Gender and Captions. In construing this Agreement, it is understood that, if the context so requires, the singular pronoun shall be taken to mean and include the plural, the masculine, the feminine and the neuter, and that, generally, all grammatical changes shall be made, assumed, and implied to individuals and/or corporations and partnerships. All captions and paragraph headings used herein are intended solely for convenience of reference and shall in no way limit any of the provisions of this Agreement.

18.15. Good Faith and Reasonableness. The parties intend that the obligations of good faith and fair dealing apply to this Agreement generally and that no negative inferences be drawn by the absence of an explicit obligation to be reasonable in any portion of this Agreement. The obligation to be reasonable shall only be negated if arbitrariness is clearly and explicitly permitted as to the specific item in question, such as in the case of where this Agreement gives the City “sole discretion” or the City is allowed to make a decision in its “sole judgment.”

18.16. Other Necessary Acts. Each party shall execute and deliver to the other all such further instruments and documents as may be reasonably necessary to carry out this Agreement in order to provide and secure to the other parties the full and complete enjoyment of rights and privileges hereunder.

18.17. Interpretation. As a further condition of this Agreement, the City and Pro Tem Judge acknowledge that this Agreement shall be deemed and construed to have been prepared mutually by each party and it shall be expressly agreed that any uncertainty or ambiguity existing therein shall not be construed against any party. In the event that any party shall take an action, whether judicial or otherwise, to enforce or interpret any of the terms of the Agreement, the prevailing party shall be entitled to recover from the other party all expenses which it may reasonably incur in taking such action, including attorney fees and costs, whether incurred in a court of law or otherwise.

18.18. Entire Agreement. This Agreement and all documents attached to this Agreement represent the entire agreement between the parties.

18.19. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall constitute an original Agreement but all of which together shall constitute one and the same instrument.

18.20. Authority. Each party signing on behalf of Pro Tem Judge and the City hereby warrants actual authority to bind their respective party.

The Pro Tem Judge and the City hereby agree to all provisions of this Agreement.

PRO TEM JUDGE:

CITY:

DAVID HANSEN

CITY OF McMinnville

By: _____

By: _____

Print Name: _____

Print Name: _____

As Its: _____

APPROVED AS TO FORM:

Amanda Guile-Hinman, City Attorney
City of McMinnville, Oregon

Exhibit 1

Scope of Services

The Pro-Tem Municipal Court Judge serves as an on-call judicial officer to provide coverage for the City's Municipal Court Judge during periods of absence, excessive workload, or other times requiring judicial services beyond the capabilities of the Municipal Court Judge. Typical duties include:

1. Presiding over Municipal Court for all Misdemeanor, City matters, criminal jury and non-jury trials, pre-trial conferences, and other cases appropriately tried in Municipal Court.
2. Adjudicating all complaints that are filed within the jurisdiction of the Court including, but not limited to, Misdemeanors, traffic violations, parking violations, city ordinances, city violations.
3. Reviewing and/or denying requests for continuances.
4. Determining innocence or culpability (when hearing cases without a jury) and levying fines commensurate with the violation in such a manner to preserve equity and uniformity in the application of existing laws and ordinances.
5. Directing jurors in trial cases on their role in the interpretation and application of law.
6. Supporting court activities with Court Clerks, City Attorney and/or City Prosecutor and other city departments.
7. Performing legal research, reviewing legislation and current case law affecting offenses and the criminal justice system and implement procedures to ensure compliance.
8. Conducting hearings.
9. Issuing warrants, summons, etc.
10. Collaborating with the Municipal Court Judge, City Manager, City Attorney, City Prosecutor and applicable city departments to ensure policies, ordinances and orders are within the parameters of state law and also consistent with the values of the community and needs of the department.
11. Supporting the relationship between the City of McMinnville and the general public by demonstrating courteous and cooperative behavior when interacting with visitors and City staff.
12. Maintaining confidentiality of work-related issues and City information.
13. Performing other related duties as assigned.