

RESOLUTION NO. 2023 - 07

A Resolution authorizing the approval of an intergovernmental agreement between the city of McMinnville and the city of Lincoln City Oregon regarding Municipal Judge appointments.

RECITALS:

The City of McMinnville employs a municipal judge part-time by contract.

The City of Lincoln City desires to employ the same person to be its part-time municipal judge.

The schedules of the two courts allow that the activities of each will not generally come into conflict with each other. In the event that scheduling issues arise, the municipal court supervisors will resolve them to the mutual satisfaction of both courts.

An intergovernmental agreement pursuant to ORS 221.335 will protect the judge and jurisdictions from being in violation of the dual office holding prohibition in the Oregon Constitution.

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

1. That entry into an agreement with the City of Lincoln City acknowledging that both jurisdictions employ the same person to act as Municipal Court Judge in both jurisdictions is approved.
2. The Mayor is hereby authorized and directed to sign the agreement between the City of Lincoln City and the City of McMinnville.
3. That this resolution shall take effect immediately upon passage and shall continue in full force and effect until modified, revoked, or replaced.

Adopted by the Common Council of the City of McMinnville at a meeting held the 14th day of February 2023 by the following votes:

Ayes: _____ Geary, Menke, Chenoweth, Payne, Peralta, Garvin _____

Nays: _____

Approved this 14th day of February 2023.

MAYOR

Approved as to form:



City Attorney

Attest:



City Recorder

**INTERGOVERNMENTAL AGREEMENT
FOR MUNICIPAL COURT JUDGE
The City of Lincoln City, Oregon and the City of McMinnville, Oregon**

This Agreement is entered into this 14th day of February, 2023 by and between **THE CITY OF LINCOLN CITY**, Oregon, and **THE CITY OF MCMINNVILLE**, Oregon.

RECITALS

A. ORS 190.010 permits units of local government to enter into intergovernmental agreements for the performance of any or all functions and activities that a party to the agreement has authority to perform; and

B. ORS 221.355 expressly provides that one City may enter into an intergovernmental agreement with another City for the provision of judicial services; and

C. ORS 221.355 further provides that such exercise of jurisdiction under an intergovernmental agreement shall not constitute the holding of more than one office in violation of Article II, Section 10 of the Oregon Constitution; and

D. The City of McMinnville employs Judge Arnold W. Poole ("the Judge") as its Municipal Court Judge; and

E. The City of Lincoln City is recruiting for a new Municipal Court Judge and is interested in hiring Judge Poole; and

F. In the Circuit Court for Columbia County, Oregon, a sitting municipal court judge has been challenged as being in violation of the dual-office holding prohibition in the Oregon Constitution. CIS is defending; and

G. An Intergovernmental Agreement pursuant to ORS 221.335 will protect the Judge from allegations of "dual office holding" under the Constitution.

NOW, THEREFORE, in consideration for the mutual covenants contained herein the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **RECITALS.** The recitals set forth above are true and correct and are incorporated herein by this reference.

2. **DURATION.** [ORS 190.020(1)(e)]. This Agreement shall be effective upon approval and execution by both City of Lincoln City and the City of McMinnville. The term of this Agreement shall commence January 24, 2023 and shall terminate on December 31, 2027, unless administratively extended in writing as provided for herein. The Lincoln City Manager may extend this Agreement by twelve (12) months by indicating in writing to the City of

McMinnville that an extension of the Agreement is sought under the same terms and conditions of this Agreement. The extension shall be effective upon receipt of a document from an authorized representative of the City of McMinnville that the City of McMinnville agrees to the extension under the same terms and conditions.

3. **FUNCTIONS OR ACTIVITIES.** [ORS 190.020(1)]. The City of McMinnville shall make available to the City of Lincoln City, its employee, Arnold W. Poole (the Judge) to act as Municipal Court Judge for the City of Lincoln City on those dates and at those times as are agreed upon between the Judge and the City of Lincoln City, provided such dates and times do not conflict with the City of McMinnville Municipal Court proceedings. The Judge's calendar shall be accordingly coordinated through the respective Municipal Court Clerks. Generally, in McMinnville, Municipal Court is conducted every Wednesday. Generally, Lincoln City will hold Court on two Tuesdays during the month (about 16 hours per month).

The McMinnville Municipal Court Judge providing services to Lincoln City pursuant to this Agreement shall have all judicial jurisdiction, authority, powers, functions, and duties of the Municipal Court of the City of Lincoln City under the Charter and laws of Lincoln City with respect to any and all violations of the Charter, Oregon Statutes, or City ordinances.

4. **PAYMENT.** [ORS 190.020(1)(a)]. The City of Lincoln City will pay the Judge directly as a contract employee, at an agreed upon salary for a minimum sixteen (16) hours per month with an agreed upon hourly rate for additional work. In addition, Lincoln City will report hours worked for Lincoln City to PERS and make any required PERS payment, if any, based on the Judge's eligibility based on the aggregate number of hours worked in different jurisdictions. Lincoln City shall not be responsible to pay PERS benefits for hours worked in other jurisdictions. Notwithstanding the above, it is the Judge's responsibility to ensure that all employers are reporting / paying PERS should his aggregate hours of service qualify. No payment shall be required to the City of McMinnville from the City of Lincoln City, nor to the City of Lincoln City from the City of McMinnville. The City of McMinnville and the City of Lincoln City reserve the right to negotiate and amend their respective and separate employment contracts and /or terms with the Judge without the consent of the other City.

5. **REVENUE.** [ORS 190.020(1)(b)]. All fines, costs, assessments, receipts, and forfeited security deposits collected shall be paid to the respective prosecuting city, as shall be disbursed as required by statute. No revenues are contemplated to be shared. There are no revenues expected to be derived pursuant to this Agreement which need to be apportioned between the parties.

6. **PERSONNEL.** [ORS 190.020(1)(c)]. No employees will be transferred pursuant to this Agreement but the Parties consent and agree to the Judge performing judicial services under this Agreement for both jurisdictions. The parties will separately contract / employ the Judge under terms and conditions to be agreed upon by the respective parties. With the exception of hours of PERS eligible work, the parties are not required to share information.

The City of McMinnville and the City of Lincoln City remain subject employers under ORS Chapter 656, and shall procure and maintain current valid workers compensation insurance coverage for all subject workers throughout the period of this Agreement. This Agreement does not change the status of any employee, contractor or officer of the respective Cities.

7. **REAL OR PERSONAL PROPERTY.** [ORS 190.020(1)(d)]. There shall be no transfer of title or possession to any real or personal property pursuant to this Agreement.

8. **TERMINATION.** [190.020(1)(f)]. This Agreement may be terminated by mutual consent by both parties; or unilaterally by either party at any time, upon ninety (90) days notice in writing, and delivered by certified mail or personal service. Such termination shall be without prejudice to any obligations or liabilities of either party accrued prior to such termination.

9. **INDEMNITY / HOLD HARMLESS.**

9.1 Subject to the limitations of the Oregon Constitution, and the Oregon Tort Claims Act, the City of Lincoln City shall hold harmless, defend and indemnify the City of McMinnville from any and all claims, demands, damages or injuries that anyone may have or assert by reason of any error, act or omission of Party for claims arising out of or in any way associated with the Judge in the performance of the Judge's duties as Municipal Court Judge for the City of Lincoln City. Subject to the limitations of the Oregon Constitution, and the Oregon Tort Claims Act the City of McMinnville shall hold harmless, defend and indemnify the City of Lincoln City from all claims, demands, damages or injuries that anyone may have or assert by reason of any error, act or omission of Party for claims arising out of or in any way associated with the Judge in the performance of the Judge's duties as Municipal Court Judge for the City of McMinnville. The Parties shall not be held responsible for any claims, actions, costs, judgments or other damages, directly and proximately caused by the criminal or wanton acts of the other Party's employees or the negligence of such employees. Such indemnification shall also cover claims brought against any Party under state or federal employees' compensation laws. It is the intention of the parties, to be solely responsible for the actions of the Judge acting with full judicial power of the respective Cities within or for their local jurisdiction pursuant to this Agreement. If any aspect of this indemnity shall be found to be illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of this indemnification.

9.2 A Party nor any attorney engaged by a party may not defend a claim in the name of another party, nor purport to act as legal representative of the other Party without

consent of the other Party's attorney. Parties may not settle any claim on behalf of another Party without the approval of the other Party.

9.3 The Parties agree that they are not agents of each other and are not entitled to statutory indemnification and defense under ORS 30.285 and ORS 30.287

10. **METHOD AND PLACE OF GIVING NOTICE, SUBMITTING BILLS, AND MAKING PAYMENTS.** All notices, bills, and payments shall be made in writing and may be given by personal delivery or by mail. Notices, bills, and payments sent by mail should be addressed as follows:

City of Lincoln City
Attn: Daphnee Legarza, City Manager
P.O. Box 50
Lincoln City, Oregon 97367
Phone: 541-996-1200
Fax: 541-994-7232
dlegarza@lincolncity.org

City of McMinnville
Attn: Jeff Towery, City Manager
230 NE 2nd Street
McMinnville, Oregon 97128
Phone: 503-434-7302
Jeff.Towery@mcminnvilleoregon.gov

and when so addressed, shall be deemed given upon deposit in the United States Mail, postage prepaid. In all other instances, notices, bills, and payments shall be deemed given at the time of actual delivery. Changes may be made to the names and addresses of the person to whom notices, bills, and payments are to be given by providing notice pursuant to this paragraph.

11. **MERGER.** This writing is intended both as the final expression of the Agreement between the parties with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement. No modification of this Agreement shall be effective unless and until it is made in writing and signed by both parties.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed in two (2) duplicate originals, either as individuals, or by their officers, thereunto duly authorized.

Dated this _____ day of February 2023.

City of Lincoln City, Oregon

City of McMinnville, Oregon

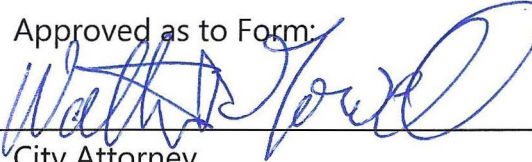
By: _____
Daphnee Legarza, City Manager
[per LCMC 4.04.010.B.]

By:  _____
Remy Drabkin, Mayor

Approved as to Form:

City Attorney

Approved as to Form:

 _____
City Attorney