

Agenda Item No. CA-d
Meeting Date: 04-12-2021

Subject: An Agreement with the Honorable Willard B. Hardesty for Municipal Court Judge Services

Presented by: Matthew B. Skaggs
Chief of Police

Background: This agreement contains updates from the current agreement with Dacono Municipal Presiding Judge Willard Hardesty. The former agreement contained only references to state law and appeared in a manner that characterized the City as a statutory municipality. This revision updated the agreement to reference relevant Charter and Code provisions. The former agreement was effective only for one year. The Charter requires appointments for one-year terms. However, the agreement doesn't need to terminate every year if the Judge is reappointed for a subsequent one-year term. This agreement has been revised so that the agreement will remain in effect in future years if Judge Hardesty is reappointed (subject to earlier termination in accordance with the contract), and to terminate on December 31 in any year the Judge is not reappointed for a subsequent term. This way, the parties won't need to execute an amendment each year to extend the agreement. The Council will still need to reappoint the Judge before the end of each year so that the agreement doesn't terminate by its terms. Finally, I've dated the contract "as of" January 1, 2021. That way, the contract tracks with Judge Hardesty's appointed term.

Otherwise, this agreement is the same in substance as the Judge's former agreement.

Recommended Action: Approval of Resolution 21-23 Authorizing an Agreement with the Honorable Willard B. Hardesty for Municipal Court Judge Services

AGREEMENT FOR MUNICIPAL COURT JUDGE SERVICES

THIS AGREEMENT FOR MUNICIPAL COURT JUDGE SERVICES (this “Agreement”) is made and entered into as of the 1st day of January, 2021, by and between the CITY OF DACONO, a Colorado home rule municipal corporation (the “City”), and WILLARD B. HARDESTY, ESQ., an individual.

WITNESSETH:

WHEREAS, pursuant to Section 6-2 of the Dacono Home Rule Charter, the City has established the Dacono Municipal Court, and the City Council of the City is vested with the authority to appoint a presiding municipal judge; and

WHEREAS, pursuant to Section 2-137 of the Dacono Municipal Code, the City Council of the City desires to appoint the Honorable William B. Hardesty, Esq. as Presiding Municipal Court Judge of the Dacono Municipal Court; and

NOW THEREFORE, in consideration of the mutual covenants hereinafter contained, the parties hereby agree as follows:

1. Appointment. The City Council hereby appoints the Honorable William B. Hardesty, Esq. as Presiding Municipal Court Judge for the Dacono Municipal Court (hereafter “Judge”), for the term specified in Section 2, below.

2. Term. Pursuant to Section 6-2 of the Dacono Home Rule Charter, the Judge is hereby appointed for a one-year term commencing as of January 1, 2021. This Agreement shall continue in full force and effect until the earlier of (i) December 31 of any year the Judge is not reappointed by the City Council for a subsequent term, or (ii) until terminated pursuant to Section 4.

3. Duties.

A. The Judge shall perform all duties normally associated with the position of municipal court judge, including but not limited to the following:

(i) The Judge shall preside over regular and special sessions of the Municipal Court. The Municipal Court typically conducts one regular session on one day per month, depending on the length and nature of the docket.

(ii) The Judge shall perform all such duties and exercise all such powers as are required of and vested in a Municipal Court Judge by the Dacono Home Rule Charter and Dacono Municipal Code, and other applicable laws, regulations, municipal court rules, and codes of conduct (including but not limited to the Colorado Code of Judicial Conduct) that are applicable to the position.

(iii) The Judge may be contacted at night for the issuance of emergency warrants or hearings when necessary.

(iv) The Judge, like other Municipal Court personnel, shall be subject to the City Administrator or the City Administrator's designee; provided, however, that such direction shall not deprive the Municipal Court of its judicial independence and discretion in matters pending before the Municipal Court.

(v) The Judge shall perform the administrative duties of a municipal judge, and swearing in duties and other ceremonial duties as directed by the Mayor.

(vi) The Judge shall, at his own expense, enroll in judicial training programs, which, in the opinion of the City and the Judge, will enhance or maintain the Judge's expertise in fulfilling the duties of Municipal Court Judge.

B. The Judge shall refrain from any activities that might constitute a conflict of interest, including but not limited to representing parties adverse to the City, representing officials or employees of the City, representing applicants for permits, licenses or other approvals from the City, and representing any parties having financial or legal dealings with the City.

C. In the event the Judge is unavailable to preside over any court session, the Judge shall provide the City with reasonable advance notice of such unavailability, and the City shall arrange for a Deputy Municipal Judge to preside in the Judge's absence.

4. Compliance with Law.

A. The Judge shall be licensed to practice law in the State of Colorado, and the Judge shall provide the City with a copy of the Judge's current license in January of each year of this Agreement.

B. The Judge shall carry attorneys' professional malpractice insurance. The Judge shall provide the City with a copy of the Judge's current attorneys' professional insurance certificate in January of each year of this Agreement.

4. Removal or Resignation; Termination. During the term, the Judge may be removed from office by at least four (4) affirmative votes of the City Council, as set forth in Section 6-2 of the Dacono Home Rule Charter. The Judge may also voluntarily resign by providing at least 30 days' advance written notice to the City Council, unless a shorter notice period is agreed to by the City Council. In the event of any such removal or resignation, or any other termination of this Agreement prior to the expiration of the term, the Judge shall be paid solely for services rendered through the effective date of such removal, resignation or termination.

5. Compensation. Pursuant to Section 2-137 (c) of the Dacono Municipal Code, the compensation of the Judge is established by City Council Resolution and is not dependent upon

the outcome of the matters to be decided by the judge. The Judge shall receive five hundred dollars (\$500.00) per month as full compensation for such presiding municipal judge's services. The Judge shall submit monthly an invoice for services for the preceding month. The City shall pay the invoice within 30 days of receipt thereof.

6. Additional Judges. The City Council may employ, at the City's expense, such Deputy Municipal Judges as the City determines to be necessary or otherwise in the best interest of the City during the term of this Agreement.

7. Independent Contractor Status. The Judge shall be an independent contractor and not an employee of the City and shall make no representation that she is a City employee for any purpose. Further:

a. ***No Payment of Employment Taxes or Other Withholdings.*** The City shall not withhold or pay or be obligated to withhold or pay any payroll or employment taxes (including, but not limited to, FICA, FUTA, federal personal income tax, state personal income tax, state disability insurance tax, state unemployment insurance tax, and state worker's compensation insurance tax) or other amounts with respect to any services performed by or fees paid or expenses reimbursed to the Judge.

b. ***No Payment of Workers' Compensation/Unemployment Compensation.*** The City shall not provide or be obligated to provide to Judge any workers' compensation or unemployment compensation insurance coverage.

8. Payments Subject to Appropriation. Nothing in this Agreement is intended or shall be deemed or construed as creating any multiple-fiscal year direct or indirect debt or financial obligation on the part of the City within the meaning of Colorado Constitution Article X, Section 20 or any other constitutional or statutory provision. All financial obligations of the City under this Agreement are subject to annual budgeting and appropriation by the Dacono City Council, in its sole discretion. Notwithstanding anything in this Agreement to the contrary, in the event of non-appropriation, this Agreement shall terminate effective December 31 of the then-current fiscal year. The City hereby states that it has appropriated in the 2021 budget sufficient funds for the payment of all amounts due, or which may be due hereunder in the 2021 fiscal year.

9. Miscellaneous Provisions. The parties agree that this Agreement is a personal services contract. No party shall assign this Agreement or delegate duties under this Agreement or any portion thereof. This Agreement may only be amended by written instrument signed by the Judge and Mayor and City Clerk of the City, after approval of such amendment by the City Council. This Agreement represents the entire Agreement between the parties and there are no oral or collateral agreements or understandings. If one or more provisions of this Agreement should be invalid, illegal or unenforceable in any respect, the remaining provisions contained in this Agreement shall not in any way be affected. This Agreement may be signed in counterparts. Faxed, electronic, and scanned signatures shall be accepted as originals.

10. Prior Agreements. This Agreement shall supersede any and all prior agreements with regard to the covered subject matter.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates shown.

CITY OF DAcono, COLORADO

By: _____
Joe Baker, Mayor

Date: _____

ATTEST:

Valerie Taylor, City Clerk

JUDGE

Willard B. Hardesty, Esq.

Date: _____

RESOLUTION NO. 21-23

A RESOLUTION APPROVING AN AGREEMENT WITH THE HONORABLE WILLARD B. HARDESTY FOR MUNICIPAL COURT JUDGE SERVICES

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DACONO, COLORADO:

Section 1. The Agreement for Municipal Court Judge Services by and between the City of Dacono and the Honorable Willard B. Hardesty, Esq., a copy of which accompanies this resolution (the “Agreement”), is hereby approved.

Section 2. The Mayor and City Clerk are hereby authorized to execute the Agreement, and the Mayor is further authorized to negotiate and approve on behalf of the City such revisions to the Agreement as the Mayor determines are necessary or desirable for the protection of the City, so long as the essential terms and conditions of the Agreement are not altered.

INTRODUCED, READ, and ADOPTED this 12th day of April, 2021.

CITY OF DACONO, COLORADO

Joe Baker, Mayor

ATTEST:

Valerie Taylor, City Clerk