

RESOLUTION NO. 2016-08-03

APPOINTMENT OF KELLY S. HANSEN AS DEPUTY MUNICIPAL JUDGE FOR THE CITY OF FORT MORGAN

WHEREAS, the City of Fort Morgan, pursuant to the City of Fort Morgan Charter Article XI, operates a Municipal Court; and,

WHEREAS, Pursuant to the City of Fort Morgan Charter Article XI Section 2(b) the City Council shall appoint deputy municipal judges as the council deems necessary; and,

WHEREAS, Council has determined that Kelly S. Hansen should be appointed as a Deputy Municipal Judge to provide services on an as-needed basis to the Municipal Court; and,

WHEREAS, the appointment requires authorization for the execution of a contract as reflected in Exhibit A, attached hereto and incorporated herein.

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

Section 1: Pursuant to Article XI Section 1 of the City of Fort Morgan Charter, Council hereby appoints Kelly S. Hansen as Deputy Municipal Judge.

Section 2: Council hereby approves the execution of the contract attached hereto as Exhibit A.

INTRODUCED, PASSED, APPROVED AND ADOPTED this 16th day of August 2016, the vote upon roll call being as follows:

Ayes: Mayor Shaver, Councilmembers Anderson, Castoe, Lindell, Marler, Northrup

Nays: None.

Absent /Abstain: None



THE CITY COUNCIL OF THE CITY OF
FORT MORGAN, COLORADO

BY: Ronald Shaver

Ronald Shaver, Mayor

ATTEST:

John Brennan
John Brennan, City Clerk

STATE OF COLORADO)
COUNTY OF MORGAN)
CITY OF FORT MORGAN)

ss.

CERTIFICATE

I, John Brennan, City Clerk of the City of Fort Morgan, Colorado, do hereby certify that the above and foregoing **Resolution** is a true, perfect and complete copy of the **Resolution** adopted by the City Council and is identical to the original thereof appearing in the official records of the City of Fort Morgan, Colorado, and that the same has not been, since its adoption, in any respect, rescinded or amended.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of the City of Fort Morgan this 16th day of August, 2016.

John Brennan
John Brennan, City Clerk

**DEPUTY MUNICIPAL JUDGE
PROFESSIONAL SERVICES AGREEMENT**

THIS AGREEMENT ("Agreement") is made this 16th day of AUGUST, 2016, by and between Kelly S. Hansen (the "Deputy Municipal Judge") and the CITY OF FORT MORGAN, COLORADO, a Colorado home rule municipality (the "City"). The City and the Deputy Municipal Judge are referred to in this Agreement as the "Parties."

RECITALS AND REPRESENTATIONS

WHEREAS, the City operates a municipal court of record in accordance with the provisions of Title 3 of the Municipal Code and C.R.S. Article 10 of Title 13; and

WHEREAS, the City is authorized by C.R.S. Section 13-10-105(b) and Section 3.1.103 of the Municipal Code to appoint deputy municipal judge(s) as may be necessary to act in case of temporary absence, sickness, disqualification or other inability of the Presiding Judge or other deputy municipal judges to act; and

WHEREAS, pursuant to Section 3.1.105(B) of the Municipal Code, the compensation of the Deputy Municipal Judge shall be based on hours of service or number of court sessions served and shall be as set by resolution of the City Council as amended from time to time or as agreed to in writing executed by the City and the Deputy Judge(s); and

WHEREAS, a committee composed of City staff and elected officials has recommended the Deputy Municipal Judge to City Council for appointment as Deputy Municipal Judge on the terms and conditions as set forth in this Agreement; and

WHEREAS, the Deputy Municipal Judge desires to accept the appointment under the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual undertakings set forth in this Agreement, the City and the Deputy Municipal Judge agree as follows:

1. APPOINTMENT. Pursuant to a resolution adopted by the City Council contemporaneous with the approval of this Agreement, Kelly S. Hansen is appointed as a Deputy Municipal Judge for the City's Municipal Court effective August 16, 2016.

2. DUTIES. When scheduled, the Deputy Municipal Judge is expected to preside over City-scheduled sessions of the Fort Morgan Municipal Court and adjudicate all cases presented at such session. The Deputy Municipal Judge will not be routinely scheduled but shall be available on a mutually agreeable basis to cover absences of the Presiding Municipal Judge due to leave, sickness, conflict or inability to act. The Deputy Municipal Judge recognizes that he or she may be contacted on a short-notice basis to cover court sessions and agrees to use best reasonable efforts to cover absences of the Presiding Municipal Judge. In presiding over the Municipal Court, the Deputy Municipal

Judge shall comply with the Colorado Rules of Municipal Court Procedure, the constitutions and applicable laws of the United States and the State of Colorado, and the ordinances, resolutions and regulations of the City. The Deputy Municipal Judge is to use the full range of his or her judicial discretion in conducting the sessions over which he or she presides, subject to applicable law. The City will not instruct the Deputy Municipal Judge as to how to conduct court sessions or how to adjudicate the cases that come before him or her. However, the judge shall be subject to the rules and procedure established by the presiding judge.

3. TERM OF APPOINTMENT. This appointment is for an initial term until January 31, 2018, with automatic renewals for additional two (2) year term(s) unless affirmative action is taken by the City Council to not renew a term of appointment prior to the date of expiration of the initial or any subsequent term.

4. REMOVAL. In accordance with Section 13-10-105(1)(c), C.R.S., and the ordinances of the City, removal is only permitted for "cause" as defined in such statute or ordinances or any amendments thereto or, if and upon adoption, any home rule charter of the City. The Parties acknowledge that, in addition to any other circumstances constituting cause within the meaning of state law, breach of this Agreement shall constitute sufficient cause for removal.

5. TEMPORARY PART-TIME EMPLOYEE. The Deputy Municipal Judge shall be considered a temporary part-time employee of the City as defined in the City's Employee Handbook. Deputy Municipal Judge shall receive benefits consistent with temporary part-time employees as reflected in the City's employment policies. Nothing contained herein shall be construed so as to limit the right of the Deputy Municipal Judge to engage in other employment or independent contractor positions, whether in the legal field or otherwise, provided that such employment or position does not create a conflict of interest with the performance of the Deputy Municipal Judge's duties to the City of Fort Morgan.

6. COMPENSATION. The Deputy Municipal Judge shall be entitled to a flat rate per session of \$250/session for two hours per session. Thereafter, Deputy Municipal Judge shall be compensated hourly at a rate of \$125/hour payable pursuant to the normal payroll practices of the City. Prior to October 1 of any year within the term of appointment except for the first year, the Deputy Municipal Judge may request in writing an increase in compensation. Requests for increases in compensation shall be considered by the City Council as part of the Council's discretionary and legislative budget process.

7. Scheduling. The Deputy Municipal Judge may be used on a rotating basis with any other Deputy Municipal Judges depending on availability and conflicts.

8. ARTICLE X, SECTION 20. The City is subject to Article X, § 20 of the Colorado Constitution ("TABOR"). The appointment and compensation recited in this Agreement

do not create a multi-fiscal year direct or indirect debt or obligation within the meaning of TABOR and all payment obligations of the City are conditioned upon the continuing availability of funds beyond the term of the City's current fiscal period ending upon the next succeeding December 31. Upon the failure to appropriate such funds, the appointment made hereunder shall be terminated.

9. DEPUTY MUNICIPAL JUDGE TO BE INSURED PARTY. Pursuant to the Colorado Governmental immunity Act, C.R.S. § 24-10-101 et seq., the Deputy Municipal Judge is considered an appointed official of the City entitled to any and all benefits of law pertaining to judicial or sovereign immunity and to coverage by the City's insurance applicable to persons holding such a position. The City hereby declares the Deputy Municipal Judge to be a municipal official of the City of Fort Morgan for purposes of including the Deputy Municipal Judge as an insured official subject to the City's insurance coverage for claims against the Deputy Municipal Judge arising out of injuries sustained from an act or omission of such Deputy Municipal Judge occurring during the performance of his or her duties and within the scope of his or her duties, except where such act or omission is found to be willful and wanton.

10. APPOINTMENT SUBJECT TO PROVISIONS OF MUNICIPAL CODE. The performance of the Deputy Municipal Judge shall be at all time subject to this Agreement, the provisions of the Municipal Code of the City of Fort Morgan, as such may be amended, and in particular, the provisions of Article XI, Sec. 2 of the Charter governing the qualifications of judges and conduct of the Municipal Court.

11. ENTIRE AGREEMENT. This Agreement and any City ordinance or state statute governing the conduct and/or terms of the appointment of Deputy Municipal Judges shall constitute the entire agreement between the Parties and is binding upon and inures to the benefit of the Deputy Municipal Judge's heirs at laws and executors. Any prior agreements between the parties for services as provided for under this Agreement are terminated.

12. SEVERABILITY. If any provision, or any portion thereof, contained in this Agreement is held unconstitutional, invalid, or unenforceable, the remainder of this Agreement shall be deemed severable, shall not be affected, and shall remain in full force and effect.

13. AMENDMENTS. The terms and conditions of this Agreement may be modified only by written amendment executed by the Deputy Municipal Judge and the City.

14. GOVERNING LAW AND VENUE. This Agreement shall be governed by and interpreted according to the law of the State of Colorado. Venue for any action arising under this Agreement shall be in the appropriate court for Morgan County, Colorado.

15. NO WAIVER. A waiver by any party to this Agreement of the breach of any term or provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by either party.

16. NO WAIVER OF GOVERNMENTAL IMMUNITY. Nothing in this Agreement shall be construed to waive, limit, or otherwise modify any governmental immunity that may be available by law to the City, its officials, employees, contractors, or agents, or any other person acting on behalf of the City and, in particular, governmental immunity afforded or available pursuant to the Colorado Governmental Immunity Act, Title 24, Article 10, Part 1 of the Colorado Revised Statutes.

17. PARAGRAPH CAPTIONS. The captions of the paragraphs are set forth only for the convenience and reference of the Parties and are not intended in any way to define, limit or describe the scope or intent of this Agreement.

18. OATH. Prior to entering upon the duties of the office of Deputy Municipal Judge, the Deputy Municipal Judge shall take an oath of affirmation that he or she will support the Constitution and laws of the United States, the Constitution and laws of the State of Colorado, and the laws of the City, and will faithfully perform the duties of office.

IN WITNESS WHEREOF, the City has caused this Agreement to be signed and executed on its behalf by the Mayor and the Deputy Municipal Judge has signed and executed this Agreement, both in duplicate, as of the day and year first above written.

DEPUTY MUNICIPAL JUDGE

By: Kelly S. Hansen
Kelly S. Hansen

CITY OF FORT MORGAN

By: Ronald Shaver
Ronald Shaver, Mayor

Approved as to Form:

By: [Signature]
For City Attorney's Office