

**CITY OF CENTENNIAL
PRESIDING MUNICIPAL JUDGE
LOCAL LIQUOR LICENSING AUTHORITY HEARING OFFICER
PROFESSIONAL SERVICES AGREEMENT
(CONTINUING SERVICES)**

THIS AGREEMENT (“Agreement”) is made this ___ day of November, 2016, by and between **FORD H. WHEATLEY, IV** (the “Presiding Municipal Judge” and/or “Hearing Officer”) and the **CITY OF CENTENNIAL, COLORADO**, a home rule municipal corporation of the State of Colorado (the “City”). The City and the Presiding Municipal Judge are referred to in this Agreement as the “Parties.”

RECITALS AND REPRESENTATIONS

WHEREAS, the City is authorized by Section 13-10-105, C.R.S., Section 9.1(b) of the Home Rule Charter, and Section 2-3-30 of the Municipal Code to appoint a Presiding Municipal Judge to preside over the Municipal Court; and

WHEREAS, pursuant to Section 2-3-50 of the Municipal Code, the compensation of the Presiding Municipal Judge shall be a fixed annual amount as set forth in an agreement entered into between the City and the Presiding Municipal Judge or by resolution of the City Council, as amended from time to time; and

WHEREAS, the City entered into a Professional Services Agreement with the Presiding Municipal Judge effective January 1, 2011, (“Prior Agreement”) which agreement was for a two year term with an automatic renewal for additional two year terms unless affirmative action was taken by the City Council to not renew prior to the date of expiration of the initial or any subsequent term, and no such affirmative action was taken; and

WHEREAS, the City desires to continue the service and appointment of the Presiding Municipal Judge beyond December 31, 2016, subject to the terms and conditions set forth herein; and

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

WHEREAS, by Resolution 2016-R-03, the City Council also approved an agreement and appointed the Presiding Municipal Judge to serve as the City’s local liquor licensing authority hearing officer in accordance with Section 6-4-110(a) of the Municipal Code, such appointment to be coterminous with the appointment at Presiding Municipal Judge; and

WHEREAS, the City desires to continue the service and appointment of the Presiding Municipal Judge beyond December 31, 2016, to serve as the City’s local liquor licensing authority hearing officer in accordance with Section 6-4-110(a) of the Municipal Code subject to the terms and conditions set forth herein.

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

- 1. TERMINATION AND REPLACEMENT OF PRIOR AGREEMENTS.** The Parties agree that the Prior Agreement for appointment as Presiding Municipal Judge effective

January 1, 2011, is terminated and that the agreement approved January 11, 2016, for appointment as the local liquor licensing authority hearing officer is also terminated, both agreements being replaced hereby. The parties further agree that the City complied with the notice provisions for non-renewal set forth in paragraph 3 of the Prior Agreement.

2. **REAPPOINTMENT AS PRESIDING MUNICIPAL JUDGE.** Pursuant to Resolution 2016-R-__ adopted by the City Council contemporaneously with the approval of this Agreement, Ford H. Wheatley, IV, is reappointed to continue to serve as the Presiding Municipal Judge for the City's Municipal Court effective January 1, 2017.
3. **DUTIES OF PRESIDING MUNICIPAL JUDGE.** The Presiding Municipal Judge will perform essentially the duties set forth in the attached **Exhibit A**. The Presiding Municipal Judge is expected to preside over all City-scheduled court sessions of the Centennial Municipal Court and adjudicate all cases presented with the exception of periods of leave or emergency temporary absence, sickness, disqualification or other inability to act. The Parties' expectation is that Assistant Municipal Judges will not be routinely needed or scheduled. The Presiding 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 Presiding Municipal Judge is to use the full range of his judicial discretion in conducting the sessions over which he presides, subject to applicable law. The City will not instruct the Presiding Municipal Judge as to how to conduct court sessions or how to adjudicate the cases that come before him. The Presiding Municipal Judge will consult with the City as needed, including attending meetings as requested, to support the City in the ongoing development and administration of the Municipal Court.
4. **TERM OF REAPPOINTMENT OF PRESIDING MUNICIPAL JUDGE.** In accordance with Section 13-10-105(1), C.R.S., and Section 2-3-30 of the Municipal Code, this subsequent term reappointment is for a one (1) year term ("Reappointment Term") with automatic additional and unlimited renewal terms of two (2) year duration ("Renewal Term") unless affirmative action is taken by either party to not renew prior to sixty (60) days before the date of expiration of the Reappointment Term or any Renewal Term.
5. **REMOVAL AS PRESIDING MUNICIPAL JUDGE.** In accordance with Section 13-10-105(2), C.R.S., and Section 2-3-70 of the Municipal Code, removal is only permitted for "cause" as defined in such statute or ordinances or any amendments thereto. 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.
6. **HEARING OFFICER / APPOINTMENT AND TERM.** Pursuant to Resolution 2016-R-__ adopted by the City Council contemporaneously with the approval of this Agreement, Ford H. Wheatley, IV, is reappointed to serve as the Hearing Officer serving as the local licensing authority in accordance with Section 6-4-110(a) of the Centennial Municipal Code. The appointment of Ford H. Wheatley IV as Hearing Officer hereunder shall be continuous until terminated on the earlier of (a) his removal from the appointment as hearing officer with or without cause by a vote of six members of the City Council present at a meeting at which the issue of removal is presented, or (b) his removal or termination of his appointment as the Presiding Municipal Judge of the City's Municipal Court. Removal under subsection (a) of the paragraph will not operate automatically to

terminate the term of appointment as Presiding Municipal Judge, such term being governed by paragraphs 4 and 5 hereof.

7. **HEARING OFFICER DUTIES.** The Hearing Officer will perform the duties of the local liquor licensing authority under state and local law. The Hearing Officer is expected to preside over all City-scheduled quasi-judicial public hearings on applications for new licenses and allegations of violations of the State Liquor Code and Beer Code, in addition to all matters as may be referred to the local liquor licensing authority by City staff responsible for administration of the state and local liquor and beer laws.
8. **HEARING OFFICER SCHEDULE.** Unless otherwise agreed to by the parties, the City shall at all times schedule hearings and meetings of the local liquor licensing authority on the same dates as docket dates for the City's Municipal Court and will endeavor to schedule meeting times to allow the Hearing Officer to perform the duties assigned under this Agreement before or at the conclusion of such municipal court sessions.
9. **HEARING OFFICER AVOIDANCE OF CONFLICTS.** The Hearing Officer shall not have any financial interest in the operation of any business located or operating in the City that holds a license pursuant to C.R.S. § 12-46-101, et seq., or C.R.S. § 12-47-101, et seq. A person shall be deemed to have such an interest if the person or a member of his or her immediate family has such an interest. Ownership of stock solely for investment purposes in a corporation whose stock is publicly traded shall not be deemed a disqualifying interest.
10. **INDEPENDENT CONTRACTOR.** The Presiding Municipal Judge/Hearing Officer shall be an independent contractor within the meaning of Colorado law. The Presiding Municipal Judge/Hearing Officer shall not be considered an employee of the City for purposes of any law. Except as specifically set forth in this Agreement, the City shall not be obligated to secure and shall not provide any benefits of any kind or type to or for the Presiding Municipal Judge/Hearing Officer, including but not limited to disability insurance, errors and omissions insurance, vacation or sick leave, or retirement contributions. Nothing contained herein shall be construed so as to limit the right of the Presiding Municipal Judge/Hearing Officer 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 Presiding Municipal Judge's/Hearing Officer's duties to the City of Centennial or result in the need for a modification of the City's Municipal Court schedule to accommodate the Presiding Municipal Judge's/Hearing Officer's proposed schedule. Notwithstanding the foregoing, if the City wishes to expand or change the current court sessions, it will endeavor to coordinate the new schedule with the Presiding Municipal Judge's/Hearing Officer's availability; however the City shall make the final decision concerning the dates and times of the Municipal Court sessions.
11. **COMPENSATION.**
 - a. **PRESIDING MUNICIPAL JUDGE.** In exchange for services provided as Presiding Municipal Judge, for the Reappointment Term, the Presiding Municipal Judge shall be entitled to annual compensation of \$69,300 payable at the lump sum rate for services hereunder of \$5,775 each month in regular intervals consistent with the normal accounts payable practices of the City. For any Renewal Term, the Presiding Municipal Judge shall be entitled to annual compensation of \$72,600 payable at the lump sum rate for services hereunder of \$6,050 each month consistent with the normal accounts payable practices of the City. The annual compensation amount is based on average monthly

expected hours of service of approximately 37 hours per calendar month. If either: (1) hours of service is expected to increase consistently above an average of 37 hours a month due to the addition of additional or expanded court sessions to be handled by the Presiding Municipal Judge; or (2) hours of service is greater than 45 hours for 2 or more consecutive months, then the City and Presiding Municipal Judge will negotiate in good faith for a reasonable increase in compensation. Prior to September 1 of any Renewal Term of appointment, the Presiding Municipal Judge may request in writing an increase in compensation for the next following term of appointment. Requests for increases in compensation shall be considered by the City Council as part of the Council's discretionary and legislative budget process and, if approved by the Council as part of its budget approval process, shall be considered an effective amendment of this Agreement without further written instrument.

- b. **HEARING OFFICER.** In exchange for services provided as Hearing Officer, the Hearing Officer shall be entitled to compensation on a time and materials basis at a rate of \$250.00 per hour (payable in ¼ hour increments) for time spent in preparation and attending hearings payable each month in regular intervals consistent with the normal accounts payable practices of the City. Prior to September 1 of any calendar year in which this Agreement is in effect, the Hearing Officer may request in writing an increase in hourly rate for the next following calendar year. Requests for increases in compensation shall be considered by the City Council as part of the Council's discretionary and legislative budget process and, if approved by the Council as part of its budget approval process, shall be considered an effective amendment of this Agreement without further written instrument.

12. **ALLOWABLE ABSENCE.**

- a. **AS PRESIDING MUNICIPAL JUDGE.** The Presiding Municipal Judge shall be entitled to allowable absence from service as the Presiding Municipal Judge of not greater than twelve (12) court sessions per calendar year. Allowable absence shall be taken in accordance with the provisions of this Agreement. Allowable absence from service is intended to permit or allow for reasonable annual vacation periods, attendance at conferences and other events, and for unanticipated or unforeseen absence due to illness or emergency. Unused allowable absence in any calendar year shall not be accrued and carried over from year to year, shall not be compensable, and will be forfeited upon the end of each calendar year. Allowable absences are based on any day of scheduled court sessions missed and not on any hourly or other basis. An allowable absence from a portion of a court session at which an Assistant Judge is scheduled for coverage shall constitute a full day of allowable absence regardless of the Presiding Judge's attendance at a portion of the session. The City's decision to cancel or vacate a court session due to an allowable absence of the Presiding Judge and/or inability of the City to schedule coverage through an Assistant Judge shall constitute a day of allowable absence. Except in emergency circumstances, the Presiding Municipal Judge shall consult with the Municipal Court Administrator and Assistant Judge(s) in reasonable advance of the date of such allowable absence to ensure coverage of the Municipal Court's docket before scheduling and taking any allowable absence. For any allowable absences from presiding greater than twelve (12) court sessions in a calendar year, the Presiding Municipal Judge shall promptly notify the City Manager. At the City's option and discretion, the Presiding Judge's allowable absence in excess of twelve (12) days in any calendar year may be permitted subject to a reduction in the compensation of the Presiding Judge in amount equal to the costs incurred by the City to cover such court sessions through an Assistant Judge.

- b. **AS HEARING OFFICER.** If the Hearing Officer is on allowable absence from service as the Presiding Municipal Judge in accordance with this Agreement, City liquor licensing administrative staff will endeavor to schedule any local liquor licensing authority meetings to accommodate such allowable absence. Except in emergency circumstances, the Hearing Officer shall consult with the City liquor licensing administrative staff in reasonable advance of the date of such allowable absence to ensure coverage of the liquor licensing authority before scheduling and taking any leave.
13. **REIMBURSABLE EXPENSES AND COSTS.** The Presiding Municipal Judge/Hearing Officer shall not be entitled to reimbursement for any personal expenses, including but not limited to vehicle mileage expenses, associated with attendance at sessions of the Municipal Court or to attend to local liquor licensing authority matters. The City will either pay or reimburse the Presiding Municipal Judge for the annual cost of his membership in the Colorado Municipal Judge's Association. The City will either pay or reimburse the Presiding Municipal Judge for the cost of the registration fee for the twice-annual conferences of the Colorado Municipal Judge's Association along with reasonable and customary costs for actual costs for attendance to include lodging, meals, parking and vehicle travel mileage reimbursement provided that all such payments or reimbursements for such conferences does not exceed Two Thousand Dollars (\$2,000.00) annually.
14. **ARTICLE X, SECTION 20.** The City is subject to Article X, § 20 of the Colorado Constitution ("TABOR"). The appointments 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.
15. **PRESIDING MUNICIPAL JUDGE/HEARING OFFICER TO BE INSURED PARTY.** Notwithstanding the fact that the Presiding Municipal Judge/Hearing Officer acts as and is compensated as an independent contractor, pursuant to the Colorado Governmental immunity Act, Section 24-10-101, C.R.S., *et seq.*, the Presiding Municipal Judge/Hearing Officer is considered an appointed official of the City entitled to any and all benefits of law pertaining to judicial or governmental immunity and to coverage by the City's insurance applicable to persons holding such a position. The City hereby declares the Presiding Municipal Judge/Hearing Officer to be a municipal official of the City of Centennial for purposes of including the Presiding Municipal Judge/Hearing Officer as an insured official subject to the City's insurance coverage for claims against the Presiding Municipal Judge/Hearing Officer arising out of injuries sustained from an act or omission of such Presiding Municipal Judge/Hearing Officer occurring during the performance of his duties and within the scope of his duties, except where such act or omission is found by the court to be willful and wanton. The City has consulted with its insurance administrator, the Colorado Intergovernmental Risk Sharing Agency, and the City has determined that the Presiding Municipal Judge/Hearing Officer will be an insured municipal official within the City's policy of insurance.
16. **APPOINTMENTS SUBJECT TO PROVISIONS OF MUNICIPAL CODE.** The performance of the Presiding Municipal Judge/Hearing Officer shall be at all times subject to this Agreement and the provisions of the Municipal Code of the City of Centennial, as such may be amended..

17. **ENTIRE AGREEMENT.** This Agreement and any City ordinance or state statute governing the conduct and/or terms of the appointment of Presiding Municipal Judges or hearing officers to hear local liquor licensing matters shall constitute the entire agreement between the Parties and is binding upon and inures to the benefit of the Presiding Municipal Judge's/Hearing Officer's heirs at laws and executors.
18. **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.
19. **AMENDMENTS.** The terms and conditions of this Agreement may be modified only by written amendment executed by the Presiding Municipal Judge/Hearing Officer and the City.
20. **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 Arapahoe County, Colorado.
21. **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.
22. **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.
23. **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.
24. **OATH REMAINS EFFECTIVE.** The Presiding Municipal Judge has previously undertaken an oath of affirmation that he 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. The Parties recognize and agree that such oath remains effective and valid for purposes of performance of the services described in this Agreement, although the City may at its election require a new oath of office by the Presiding Municipal Judge.

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

CITY OF CENTENNIAL

**PRESIDING JUDGE/
HEARING OFFICER**

By: _____
Cathy A. Noon, Mayor

Ford H. Wheatley, IV

ATTEST:

By: _____
City Clerk or Deputy City Clerk

Approved as to form:

By: _____
for City Attorney's Office

DEPARTMENT OF ORIGINATION: Municipal Court

FINANCE DEPARTMENT REVIEW:

Finance has reviewed this agreement and the funds:

- ⊗ *are appropriated and available for this agreement.*
- ⊗ *are not available for this agreement.*
- ⊗ *Other:* _____

By: _____

Budgeted Item/Account: _____

DEPARTMENT/POSITION RESPONSIBLE FOR ADMINISTRATION OF CONTRACT:
Municipal Court

**EXHIBIT A
PRESIDING MUNICIPAL JUDGE
SERVICES TO BE PROVIDED**

- Attend all court dates for arraignment and trials.
- Appoint a court clerk from amongst City-hired court staff to assist in managing the docket in the courtroom on a daily basis.
- Coordinate with the administrator of the municipal court appointed by the City Manager, whose responsibilities include oversight of court staff and of all operational aspects of the municipal court, including establishing the necessary standards and procedures for the operation of the court.
- Conduct arraignments, trials, hearings, sentencings and case dispositions. Issue written and/or oral findings and judgments when necessary.
- Manage the courtroom on a daily basis to ensure efficiency, orderliness and justice.
- Enforce the ordinances of the City as adopted by the City Council.
- Explain the laws and legal system to defendants. Ensure that all defendants understand their rights and, if applicable, knowingly waive their rights.
- Evaluate evidence, testimony, and legal pleadings.
- Interpret and apply appropriate ordinances, municipal code provisions and/or regulations.
- Impose fines and penalties as prescribed by the municipal code or ordinances. Assess and oversee collection of penalties.
- Order and enforce contempt, failure to appear, abatement of nuisance, and other requirements of the municipal code or ordinances.
- Issue inspection orders and search warrants, and enforce municipal subpoenas in accordance with applicable laws.
- Administer oaths of office.