

AGENDA ITEM SUMMARY

May 21, 2019

City Council

STAFF

Judge Kathleen M. Lane, Chief Judge
Ingrid Decker, Legal

SUBJECT

Resolution 2019-062 Appointing Brandi Lynn Nieto as an Assistant Municipal Judge of the Fort Collins Municipal Court and Authorizing the Execution of an Employment Agreement.

EXECUTIVE SUMMARY

The purpose of this item is to appoint Brandi Lynn Nieto as an Assistant Municipal Judge for the Fort Collins Municipal Court. The City Charter provides for the appointment of judges of the Municipal Court for two (2) year terms. Chief Judge Kathleen M. Lane recommends that Ms. Nieto be appointed as a second Assistant Municipal Judge, to serve in the absence of the Chief Judge and Assistant Judge Teresa Ablao.

STAFF RECOMMENDATION

Staff recommends adoption of the Resolution.

BACKGROUND / DISCUSSION

This Resolution appoints Brandi Lynn Nieto as an Assistant Municipal Judge for the Fort Collins Municipal Court and authorizes the Mayor to execute an employment agreement with Ms. Nieto. Chief Judge Lane recommends the appointment of this second Assistant Municipal Judge in order to provide a back-up for herself and Assistant Judge Teresa Ablao. After advertising the position opening, reviewing applications, and conducting interviews with a panel, Judge Lane recommends that Ms. Nieto be appointed to this position. Ms. Nieto is a reputable and qualified attorney who has substantial experience as a Municipal Judge for other Colorado courts.

CITY FINANCIAL IMPACTS

The proposed rate of pay of \$75 per hour is the same rate that Assistant Judge Ablao has been earning since starting in this position in mid-2012. That hourly rate is in line with the rate being paid by other Municipal Courts in the front range. This second Assistant Municipal Judge will likely serve 1-2 days per month and the expense will be covered by the current Municipal Court budget.

RESOLUTION 2019-062
OF THE COUNCIL OF THE CITY OF FORT COLLINS
APPOINTING BRANDI LYNN NIETO AS AN ASSISTANT MUNICIPAL
JUDGE OF THE FORT COLLINS MUNICIPAL COURT AND
AUTHORIZING THE EXECUTION OF AN EMPLOYMENT AGREEMENT

WHEREAS, Article VII of the City Charter provides that the City Council shall appoint the judge or judges of the Municipal Court for two year terms; and

WHEREAS, Chief Judge Kathleen Lane has recommended that City Council appoint an additional Assistant Municipal Judge as a back-up for herself and Assistant Judge Teresa Ablao; and

WHEREAS, the City Council recognizes that Brandi Lynn Nieto is a reputable and qualified attorney and wishes to appoint Ms. Nieto to serve in such capacity on the recommendation of the Chief Judge.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. That the City Council hereby makes and adopts the determinations and findings contained in the recitals set forth above.

Section 2. That Brandi Lynn Nieto is hereby appointed Assistant Municipal Judge, for a term beginning May 22, 2019, and ending May 21, 2021, to serve as an Assistant Municipal Judge for the City as deemed necessary by the Chief Judge.

Section 3. That the compensation to be paid by the City to Ms. Nieto for serving in this capacity shall be at the rate of Seventy-Five Dollars (\$75) per hour.

Section 4. That the Mayor is hereby authorized to enter into an employment agreement in a form consistent with Exhibit "A" attached hereto and incorporated herein by this reference, for the period of May 22, 2019, through May 21, 2021, between the City and Brandi Lynn Nieto to effectuate the purposes of this Resolution.

Passed and adopted at a regular meeting of the Council of the City of Fort Collins this 21st day of May, A.D. 2019.

Mayor

ATTEST:

Chief Deputy City Clerk

EMPLOYMENT AGREEMENT

THIS AGREEMENT is made and entered into this 22nd day of May 2019, by and between the City of Fort Collins, hereinafter referred to as the “City,” and Brandi Lynn Nieto, hereinafter referred to as the “Employee,” pursuant to these terms and conditions:

WHEREAS, the City wishes to employ the services of the Employee as Assistant Municipal Judge and the Employee wishes to provide her services to the City in that capacity; and

WHEREAS, pursuant to Resolution 2019-062, the City Council has approved of the appointment of the Employee as Assistant Municipal Judge and has authorized the Mayor to enter into an Employment Agreement; and

WHEREAS, the City and the Employee desire to provide for certain procedures, benefits, and requirements regarding the employment of the Employee by the City.

NOW, THEREFORE, for and in consideration of the mutual covenants and promises herein contained, the City and the Employee do hereby agree to the following:

1. Scope of Services

The City agrees to employ the Employee as Assistant Municipal Judge and the Employee agrees to perform all functions and duties as specified in the job description attached hereto as Exhibit “A” and incorporated herein by reference, and to perform such other duties as might be assigned.

2. Compensation

The Employee shall be compensated at the regular rate of Seventy-Five Dollars (\$75.00) per hour, less deductions and withholdings required by law, or authorized by Personnel Policies and Procedures, or authorized by the Employee. The Court Administrator, in coordination with the Employee, shall maintain and submit to the City a time sheet showing all hours worked prior to any payment therefor. All payments shall be made within thirty (30) days of receipt of said time sheet. This position shall be considered exempt for the purposes of the Fair Labor Standards Act and applicable state laws; accordingly, the Employee shall not be eligible for overtime pay.

3. Term of Employment

(a) The term of this Agreement shall be from May 22, 2019, to and including May 21, 2021. Nothing contained in this Agreement shall preclude renegotiation of this Agreement prior to the expiration of its term.

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(b) It is understood and agreed to by the Employee that upon termination of this Agreement, either under this paragraph or under the provisions of Paragraph 4 hereof, the Employee shall not be entitled to any amount of additional compensation, as severance pay or otherwise, other than as provided in Paragraphs 2 and 6 of this Agreement.

4. Early Termination

(a) Either party may terminate this Agreement at any time with or without cause prior to the expiration of the term hereof by providing written notice of termination to the other party at least fifteen (15) calendar days prior to the date of early termination. The City may, at its discretion, provide the Employee with fifteen (15) calendar days' compensation at her regular rate in lieu of such notice. Such notice shall be deemed effective upon personal delivery or as of the date of deposit into the United States mail, postage prepaid, addressed as follows:

TO THE EMPLOYEE:

Brandi Lynn Nieto

At last known address on file with the Human Resources Department

TO THE CITY:

City of Fort Collins, Colorado Judge

Kathleen M. Lane

P.O. Box 580

Fort Collins, CO 80522

(b) The City has appropriated funds in the current fiscal year to meet the obligations of this Agreement through the current fiscal year. This Agreement shall terminate at the end of the City's current fiscal year if the City does not, prior to the end of the current fiscal year, appropriate funds for the subsequent fiscal year with which to meet its obligation under this Agreement in the subsequent fiscal year. The parties acknowledge that the City has made no promise to continue to appropriate funds beyond the current fiscal year.

5. Insurance Coverage; Vacation, Holiday and Sick Leave

The Employee shall not be entitled to the medical insurance plans, dental insurance plans, vision plan, life and accidental death and dismemberment insurance plans, long term disability plan, an Employee Assistance Program, retirement or deferred compensation plans, or any other group insurance plan or other benefits that may be offered to some other City employees. The Employee shall not be entitled to paid vacation time, paid holiday time, paid sick leave, paid short-term disability leave, or any other sort of paid leave as may be available to some other City employees.

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6. Applicability of Personnel Policies

(a) The Employee hereby acknowledges receipt of the City's *Personnel Policies and Procedures* and agrees that she shall comply with and be bound by all provisions that apply to contractual employees. The Employee acknowledges that the City may in its sole discretion amend, modify, supplement, rescind or otherwise change any and all policies and procedures in the *Personnel Policies and Procedures* at any time.

(b) Although the City's *Personnel Policies and Procedures* contains examples of types of disciplinary action including dismissal and examples of misconduct, it is understood and agreed by the Employee that the City is not required to take any disciplinary action whatsoever or follow any sort of disciplinary procedures prior to terminating this Agreement pursuant to paragraphs 3 and 4 above. In the event the City, in its sole discretion, decides to undertake disciplinary action, the City may discontinue such action at any time and at no time waives its right to terminate this Agreement pursuant to paragraphs 3 and 4 above.

(c) In the event that any applicable personnel policies set forth in the City's *Personnel Policies and Procedures* are inconsistent or conflict with the terms of this Agreement, then the terms of this Agreement shall be controlling.

7. Proprietary Rights

(a) The Employee will disclose to the City promptly all improvements, discoveries, ideas, inventions, and information pertinent to the operation or functions of the City which the Employee may develop either individually or in conjunction with others, or of which existence the Employee may otherwise learn during the period of employment by the City.

(b) The Employee agrees that all products which she may develop during the Employee's employment, whether individually or in conjunction with others, and all intermediate and partial versions thereof, as well as all materials, flow charts, notes, outlines and the like created in connection therewith (collectively referred to as "Work Product"), and any formulae, processes, logarithms, ideas and other information not generally known to the public, whether or not protected by copyright, and developed or generated by the Employee in the course of the Employee's employment hereunder, shall be the sole property of the City upon their creation or, in the case of copyrightable works, fixation in a tangible medium of expression.

(c) The Employee hereby assigns to the City the sole and exclusive right, title and interest in and to all Work Product, and all copies of such Work Product, without further consideration. The

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Employee further acknowledges that the City shall retain ownership of and the right to reproduce, market, license, or otherwise distribute any program or material produced by the Employee under the terms of this Agreement. If the Chief Municipal Judge in her discretion evaluates and determines that a form, record, document, program or material is not of significant value from the City's standpoint or confidential, Employee may reproduce, use or otherwise disseminate such information used, created or learned during her employment.

8. Entire Agreement

This Agreement constitutes the entire agreement between the parties concerning the rights granted herein and the obligations assumed herein. Any oral representation or oral modification concerning this Agreement shall be of no force or effect. Although the personnel policies set forth in the City's *Personnel Policies and Procedures* may be amended, modified, supplemented or rescinded at any time at the sole discretion of the City, the terms of this Agreement can be modified only by a writing signed by the parties hereto. It is further understood and agreed by the Employee that no representation, promise or other agreement not expressly contained herein has been made to induce the execution of this Agreement, and that the terms of this Agreement are contractual and not merely recitals.

9. Enforcement of Agreement; Attorneys' Fees and Costs

If any action is brought to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and costs in addition to any other relief to which it or she is entitled.

10. Severability

Should any provision, part or term of this Agreement be declared or determined by a court of competent jurisdiction to be illegal, invalid or unenforceable, then the legality, validity and enforceability of the remaining parts, terms and provisions should not be affected thereby and said illegal, invalid or unenforceable part, provision or term shall be deemed not to be part of this Agreement.

11. Binding Effect

This Agreement shall be binding upon the parties hereto and the heirs, successors and assigns of each respectively. The City and the Employee freely and voluntarily enter into this Agreement and have executed this Agreement having first read the same and intending to be bound.

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CITY OF FORT COLLINS, COLORADO,
a municipal corporation

ATTEST:

By: _____
Wade O. Troxell, Mayor

City Clerk

APPROVED AS TO FORM:

Assistant City Attorney

EMPLOYEE:

APPROVED:

Brandi Lynn Nieto, Esq.

Human Resources Director

APPROVED:

Judge Kathleen M. Lane

EXHIBIT A
JOB DESCRIPTION FOR THE ASSISTANT MUNICIPAL JUDGE

The Assistant Municipal Judge shall handle arraignment and trial sessions as well as other hearings of the Fort Collins Municipal Court on the dates and times agreed upon with the Chief Judge or, in her absence, the Court Administrator. During arraignment sessions (including video advisements of prisoners held at the Larimer County Jail), the Assistant Municipal Judge shall give the advisements (or ensure that written advisements have been reviewed and signed by defendants) accept any type of plea allowed by law and process paperwork as requested by the Chief Judge or Court Administrator. During Court sessions, the Assistant Municipal Judge shall conduct all the hearings in accordance with the laws and procedures applicable to the Court.