

AGREEMENT BETWEEN THE CITY OF CAPITOLA
AND THE CITY OF SCOTTS VALLEY FOR SHARING
OF CHIEF BUILDING OFFICIAL SERVICES

THIS AGREEMENT, effective as of January 1, 2022 by and between the CITY OF CAPITOLA ("Capitola") and the CITY OF SCOTTS VALLEY ("Scotts Valley"), (referred to individually as a "Party" and collectively as the "Parties") is made with reference to the following facts:

A. Scotts Valley desires to obtain the services of a Chief Building Official.

B. Capitola is willing to provide such services by hiring a Chief Building Official and sharing with Scotts Valley this position, as herein set forth.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. Hiring Process. Capitola shall hire a Chief Building Official in consultation with Scotts Valley. Selection of Chief Building Official shall be mutually agreed upon by both parties.

2. Sharing of Services. The Chief Building Official shall act as the Chief Building Official for both Capitola and Scotts Valley, with approximately half of his or her total working time being devoted to each Party.

3. Employment of Chief Building Official by Capitola. The Chief Building Official shall at all times during the term of this Agreement remain a full-time employee of Capitola and shall continue to receive all of his or her salary, health insurance, and other employment benefits from Capitola. During the course of this Agreement, it is expected that the Chief Building Official will take time off from employment for eligible leaves as provided under Capitola's applicable personnel rules and regulations. Scotts Valley agrees that such leaves will not constitute a breach of this Agreement, and Capitola agrees that it will provide reasonable notice of all scheduled leaves as well as prompt notice of all unscheduled leaves. Capitola will coordinate with Scotts Valley to minimize any potential scheduling impacts. It is understood that the Chief Building Official may elect to leave the employment of Capitola at any time. In such event, Capitola shall provide prompt notice of such departure to Scotts Valley.

4. Work for Capitola and Scotts Valley. For purposes of this Agreement, the Chief Building Official shall be deemed to be working for a Party once he or she begins the commute, in a vehicle owned by Capitola, to the Party's city hall or the Party's work site, and/or performing services for that particular Party.

5. Automobile Use. Capitola shall provide a vehicle owned by Capitola for the Chief Building Official's use when conducting business for either Party. The vehicle may be used to commute to and from work within Santa Cruz County. The vehicle shall not be used for personal business by the Building Official.

6. Services for Scotts Valley. The Chief Building Official shall perform the customary and usual duties of Chief Building Official for Scotts Valley and shall report directly to the Scotts Valley Community Development Director. His or her duties for the City of Scotts Valley shall include the Essential Duties and Responsibilities outlined in the City of Capitola Building Official job description.

7. Term of Agreement. The term of this Agreement shall be for (3) three years, unless terminated by either Party pursuant to section 12 herein.

8. Payment.

(a) Scotts Valley agrees to pay Capitola fifty percent (50%) of the following, for the Building Official:

- (i) Actual salary;
- (ii) Actual Health Care Premium;
- (iii) Actual Employer PERS costs;
- (iv) Overhead costs (ISFs, liability, worker's compensation insurance, payroll, HR costs, etc.) which is calculated as 40% of Actual Salary; and
- (v) \$750 per month for vehicle operation, maintenance, and replacement costs.

(b) The Parties agree that Scotts Valley's share of the total costs shall not exceed one hundred and twenty thousand dollars (\$120,000) annually.

(c) Such costs shall be payable in monthly installments in response to invoices from Capitola showing the amount due for the preceding month. In the event an invoice covers only a portion of the month, the amount shall be pro-rated based upon the actual number of days in that month. Invoices shall be paid by Scotts Valley within thirty (30) days after receipt.

(d) Any proposed adjustment by Capitola to the total salary and benefit package for the Chief Building Official during the term of this Agreement shall be submitted to Scotts Valley for review and approval at least 60 days prior to the effective date of the adjustment, which will not be unreasonably withheld.

9. Employee Evaluations. The Parties shall meet and confer on an as needed basis to prepare a joint annual employee evaluation for the Chief Building Official. Either as part of the evaluation or otherwise, both Parties may establish performance goals and objectives, as appropriate.

10. Schedule. The Parties agree the Building Official will spend approximately 50% of their time working for each Party. Within 30 days from the effective date of this Agreement, the Community Development Directors of Capitola and Scotts Valley, and the Building Official, shall develop a work schedule for review and approval by the City Manager of each Party. The Parties agree that this schedule may be modified based on changes in workload by prior mutual written consent of the Parties.

11. Independent Contractor. It is understood that Capitola and its employees, in the performance of the services agreed to be performed hereunder, shall act as and be an independent contractor and not an agent or employee of Scotts Valley. As an independent contractor, no employee of Capitola shall obtain any rights to retirement benefits, medical benefits, leave, or any other benefits that accrue to Scotts Valley employees. Capitola agrees to make its employees available to testify in any litigation brought regarding the subject of the work performed for Scotts Valley under this Agreement. Should such need arise following the termination of this Agreement, Capitola shall be compensated for its employees' costs and expenses in preparing for, traveling to, and testifying in such matters at its then current hourly rates of compensation, plus 40% overhead costs, unless such litigation is brought by Capitola or is based on allegations of Capitola's negligent performance or wrongdoing.

12. Termination. Either Party may terminate this Agreement by providing six months written notice to the other Party. However if at any time the Chief Building Official commits acts of gross negligence and/or willful misconduct, the City of Scotts Valley shall have the right to terminate this contract with 60-days notice, or upon termination of the Chief Building Official, whichever occurs first.

Notwithstanding the above, Capitola reserves its full rights to make employment decisions regarding the Chief Building Official, including disciplining and terminating the Chief Building Official, pursuant to Capitola's policies and procedures governing employment. To the extent possible, Capitola will provide reasonable notice of any such employment decisions to Scotts Valley. If, for any reason, the Chief Building Official is no longer a full-time employee of Capitola, this Agreement shall terminate immediately.

13. Indemnification. Each Party ("Indemnitor") agrees to defend, indemnify, and hold harmless the other Party, its respective officials, officers, employees and agents (collectively "Indemnitees") from any and all claims, demands, losses, damages, legal defense costs, liability of any kind or nature ("Claims"), which Indemnitee may sustain or incur or which may be imposed upon it, but only in proportion to and to the extent such Claims result from, arise out of, or in any manner are caused by the Chief Building Official's acts or omissions on behalf of the Indemnitor, provided that such hold harmless and

indemnity shall not extend to liabilities or damages caused by the sole negligence or willful misconduct of Indemnitees. Capitola and Scotts Valley shall maintain any right to subrogation which any insurer for either party may acquire against the other by virtue of payment of any loss arising out of the Chief Building Official performing services or work for that party.

14. Insurance. Capitola shall maintain workers' compensation and employment liability insurance coverage or self-insurance for the Chief Building Official as required to be provided by Capitola to its employees under California law. This Agreement shall require both Parties to continue participation in Monterey Bay Area Self Insurance Authority (MBASIA) or other comparable insurance.

15. Waiver. No failure on the part of either Party to exercise any right or remedy hereunder shall operate as a waiver of any other right or remedy that Party may have hereunder, nor does waiver of a breach or default under this Agreement constitute a continuing waiver of a subsequent breach of the same or any other provision of this Agreement.

16. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California. Venue for any action regarding this Agreement shall be in the Superior Court of the County of Santa Cruz.

17. Disputes. In the event legal action shall become necessary in order to enforce or interpret this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and costs.

18. Review of Service Sharing Arrangement. The City Managers of Capitola and Scotts Valley and the Chief Building Official may meet and evaluate the implementation of this Agreement and determine whether any changes should be made to the arrangement for sharing the services of the Chief Building Official at any time upon the request of the City Manager of Capitola or Scotts Valley or the Chief Building Official.

19. Notices. If either Party shall desire or is required to give notice to the other, such notice shall be given in writing, addressed to recipient as follows:

City of Capitola:
City Manager
420 Capitola Ave.
Capitola, CA 95010

City of Scotts Valley:
Community Development Director
One Civic Center Drive
Scotts valley, CA 95066

20. Severability. The unenforceability, invalidity or illegality of any provision(s) of this Agreement shall not render the other provisions unenforceable, invalid or illegal.

21. Entire Agreement. This Agreement constitutes the entire agreement between Capitola and Scotts Valley and supersedes and cancels any prior agreement or understanding, whether written or verbal. No modification, waiver, mutual termination, or amendment of this Agreement is effective unless made in writing and signed by Capitola and Scotts Valley.

22. Counterparts. The Parties may execute this Agreement in two or more counterparts, which shall, in the aggregate, be deemed an original but all of which, together, shall constitute one and the same instrument. Electronic signatures and fully executed copies of this Agreement are deemed valid as originals.

IN WITNESS WHEREOF, the Parties have executed this Agreement effective as of the day and year first above written.

CITY OF CAPITOLA

By:

Jamie Goldstein, City Manager

APPROVED AS TO FORM:

Samantha W. Zutler, City Attorney

CITY OF SCOTTS VALLEY

By:

Mali LaGoe , City Manager

APPROVED AS TO FORM:

Kirsten Powell, City Attorney