

**PROFESSIONAL SERVICES AGREEMENT
BETWEEN THE CITY OF CAPITOLA AND
CALIFORNIA HEARING OFFICERS, LLP
FOR HEARING OFFICER SERVICES**

This agreement is entered into between the City of Capitola, a political subdivision of the State of California (“City”), and California Hearing Officers, LLP (“Contractor”), for the purpose of providing hearing officers for administrative hearings (collectively, the “Parties” and individually a “Party”).

NOW THEREFORE, the Parties hereto mutually agree as follows:

Section 1. SCOPE OF SERVICES.

- A. Pursuant to the terms and conditions of this agreement, when requested by the City of Capitola, Contractor shall, during the term of this agreement, assign a hearing officer pursuant to Capitola Municipal Code 2.18.090. The hearing officer shall preside over and conduct hearings as identified in Section 2.18.090.F of the City of Capitola Municipal Code pursuant to hearing procedures which may be adopted by the City pursuant to Section 2.18.090, hear and consider the evidence, rule on procedural and legal issues, and prepare necessary findings and orders.
- B. For all findings and orders, the hearing officer shall endeavor to issue those findings and orders within 30 calendar days from the closing of the record, unless otherwise agreed to in advance by all Parties.
- C. When requested by the City of Capitola or another party in an administrative hearing and agreed to by Contractor, Contractor shall hear cases through a mutually agreed video conference program. For cases heard through such video conferencing program, Contractor shall maintain and provide an audio record of all such proceedings to all Parties, unless otherwise agreed to in writing by the Parties.
- D. The City of Capitola will not have the authority to select the hearing officer for any specific case. Contractor will have sole authority and responsibility for assigning a hearing officer to conduct a hearing.
- E. Depending on the particular City Code and/or California Public Resources Code requirements for service of decisions, decisions may be sent directly to the parties by the Contractor, or they may be emailed in PDF format to the appropriate City representative for service on the parties. In the latter procedure, the City may not alter or amend the decision other than to place a date on the decision that matches the date the City actually serves the decision.
- F. The City shall provide the hearing file to Contractor at least 24 hours prior to the hearing.

Section 2. RESPONSIBILITIES OF CITY.

The City shall compensate Contractor as prescribed in sections 3 and 4 of this agreement.

Section 3. COMPENSATION.

For services provided in this agreement, Contractor shall be paid \$700 per hour for the hearing officer's preparation, conducting the hearing, and issuing a written decision for the services described in this agreement. Travel time paid at a rate of \$175 per hour, plus mileage at the allowable IRS rate at the time the travel is conducted, and accommodations and per diem expenses, if necessary.

Contractor shall receive a minimum of four (4) hours of compensation for each hearing conducted hereunder. Thereafter, time shall be billed in 15-minute increments. If a hearing is rescheduled or canceled within 7 days (168 hours or less) of the scheduled hearing date, a four-hour charge will apply. If a hearing is rescheduled or canceled beyond 7 days (more than 168 hours) of the scheduled hearing date, a two-hour charge will apply. This charge shall be incurred each time a hearing is rescheduled or canceled at the rate applicable at the time the hearing is rescheduled or canceled, unless it is rescheduled or canceled at the request of the Contractor in which case no charge shall be applied.

Section 4. BILLING AND PAYMENT.

Contractor shall submit to City after completion of the services prescribed in section I, an itemized statement or invoice of services rendered. City shall make payment within 30 days of receipt of Contractor's correct and approved statement or invoice.

In no event shall City refuse to pay any portion of the statement or invoice because of Contractor's ruling on any particular case.

Should City, or the state or federal government, disallow any amount claimed by Contractor, Contractor will have an opportunity to substantiate its billing before a final decision to disallow. If, however, any amount is disallowed, the Contractor shall reimburse City, or the state or federal government, as directed by City, or the state or federal government, for such disallowed cost.

Section 5. TERM OF AGREEMENT.

This agreement shall commence on May 9, 2025 and shall end May 8, 2028, and shall remain in full force and effect unless sooner terminated as provided herein.

Section 6. TERMINATION OF AGREEMENT.

- A. If Contractor materially fails to preside over a matter when requested by City, or if Contractor fails to fulfill in a timely and professional manner Contractor's responsibilities under this agreement, then City shall have the right to terminate this agreement for cause effective immediately upon the City giving written notice thereof to Contractor. In no event shall City terminate this agreement because of Contractor's ruling on any particular case.

- B. Without Cause. City or Contractor may terminate this Agreement without cause upon thirty (30) days advance written notice to the other party. Such notice shall state the effective date of the termination.
- C. Insufficient Funding. City's obligations under this Agreement are contingent upon the availability of local, state and/or federal funds. In the event such funding is reduced or eliminated, City shall, at its sole discretion, determine whether this Agreement shall be terminated. City shall provide Contractor seven (7) days advance written notice of its intent to terminate this Agreement due to insufficient funding.
- D. City's right to terminate this agreement may be exercised by the City Manager.
- E. Should this agreement be terminated, Contractor shall promptly provide to City any and all finished and unfinished reports, data, studies, photographs, charts, and other documents prepared by Contractor pursuant to this agreement.
- F. If this agreement is terminated, Contractor shall only be paid for services satisfactorily completed and provided prior to the effective date of termination.
- G. Contractor shall have a right to terminate this Agreement in the event of the City's material breach hereof; provided, however, the termination of the breach of this Agreement will not become effective unless and until the Contractor has given the City written notice of breach, which notice shall state the nature of said breach, and the City shall thereafter have a period of ten (10) days following the giving of said notice in which to remedy said default to the reasonable satisfaction of the Contractor.

Section 7. ENTIRE AGREEMENT; AMENDMENTS; HEADINGS; EXHIBITS / APPENDICES.

- A. This agreement supersedes all previous agreements relating to the subject of this agreement and constitutes the entire understanding of the parties hereto. Contractor shall be entitled to no other benefits other than those specified herein. Contractor specifically acknowledges that in entering into and executing this agreement, Contractor relies solely upon the provisions contained in this agreement and no others.
- B. No changes, amendments, or alterations to this agreement shall be effective unless in writing and signed by both parties. However, minor amendments that do not result in a substantial or functional change to the original intent of this agreement and do not cause an increase to the maximum amount payable under this agreement may be agreed to in writing between Contractor and the City of Capitola Administrative Officer, provided that the amendment is in substantially the same format as the City's standard format amendment contained in the City Contracts Manual.
- C. The headings that appear in this agreement are for reference purposes only and shall not affect the meaning or construction of this agreement.

- D. If any ambiguity, inconsistency, or conflict exists or arises between the provisions of this agreement and the provisions of any of this agreement's exhibits or appendices, the provisions of this agreement shall govern.
- E. This agreement may be signed in any number of counterparts, each of which is an original and all of which taken together form one single document and will be effective when one or more counterparts have been signed by each of the parties and delivered to the other party. Signatures delivered by email in PDF format or by fax will be effective.

Section 8. NONASSIGNMENT OF AGREEMENT; NON-WAIVER.

Inasmuch as this agreement is intended to secure the specialized services of Contractor, Contractor may not assign, transfer, delegate, or sublet any interest herein without the prior written consent of City. The waiver by City of any breach of any requirement of this agreement shall not be deemed to be a waiver of any other breach.

Section 9. EMPLOYMENT STATUS OF CONTRACTOR.

Contractor shall, during the entire term of this agreement, be construed to be an independent contractor, and nothing in this agreement is intended nor shall be construed to create an employer-employee relationship, a joint venture relationship, or to allow City to exercise discretion or control over the professional manner in which Contractor performs the work or services that are the subject matter of this agreement; provided, however, that the work or services to be provided by Contractor shall be provided in a manner consistent with the professional standards applicable to such work or services. The sole interest of City is to ensure that the work or services shall be rendered and performed in a competent, efficient, and satisfactory manner. Contractor shall be fully responsible for payment of all taxes due to the State of California or the federal government that would be withheld from compensation if Contractor were a City employee. City shall not be liable for deductions for any amount for any purpose from Contractor's compensation. Contractor shall not be eligible for coverage under City's workers' compensation insurance plan nor shall Contractor be eligible for any other City benefit. Contractor must issue W-2 and 941 Forms for income and employment tax purposes, for all of Contractor's assigned personnel under the terms and conditions of this agreement.

Section 10. INDEMNIFICATION.

For professional services provided under this agreement, Contractor shall indemnify, defend, and hold harmless City, its elected officials, officers, employees, agents, and volunteers from and against any and all claims, demands, actions, losses, liabilities, damage, and costs, including reasonable attorneys' fees, arising out of or resulting from the reckless or willful misconduct of the professional services provided under this agreement.

Section 11. INSURANCE LIMITS.

Contractor shall maintain the following insurance policy limits of coverage:

- a) Comprehensive general liability insurance: \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If coverage is subject to an aggregate limit, that aggregate limit will be twice the occurrence limit, or the general aggregate limit shall apply separately to this project/location.
- b) Professional liability insurance: Not less than \$1,000,000 per claim and \$2,000,000 aggregate on a claims-made basis.
- c) Comprehensive motor vehicle liability insurance: Minimum limits of \$1,000,000 per accident for bodily injury and property damage, including owned and non-owned and hired automobile coverage, as applicable to the scope of services defined under this agreement.
- d) Workers' Compensation Insurance, as required by the Labor Code of the State of California, with statutory limits, and Employers Liability Insurance, or participate in a self-insurance plan approved by the State of California Department of Industrial Relations to cover employees of Contractor, with a limit of no less than One Million Dollars (\$1,000,000.00) per accident for bodily injury or disease. Contractor will ensure that any non-employees hired by Contractor to perform services under this agreement also maintain continuously Workers' Compensation and Employer's Liability insurance. Each such policy shall contain, or be endorsed to contain, a waiver of subrogation against City, its agents, officers, officials, employees and volunteers.

Section 12. NOTICE OF CLAIM; APPLICABLE LAW; VENUE.

- A. If any claim for damages is filed with Contractor or if any lawsuit is instituted concerning Contractor's performance under this agreement and that in any way, directly or indirectly, contingently or otherwise, affects or might reasonably affect City, Contractor shall give prompt and timely notice thereof to City. Notice shall be prompt and timely if given within 30 days following the date of receipt of a claim or 10 days following the date of service of process of a lawsuit. This provision shall survive the termination, expiration, or cancellation of this agreement.
- B. Any dispute between the parties, and the interpretation of this agreement, shall be governed by the laws of the State of California. Any litigation shall be venued in Santa Cruz County or Sacramento County.

Section 13. COMPLIANCE WITH LAWS; NON-DISCRIMINATION.

- A. Contractor shall observe and comply with all applicable federal, state, and local laws, ordinances, and codes that relate to the work or services to be provided pursuant to this agreement. All hearing officers will have been admitted to practice before the courts of this

state for at least five years prior to his or her appointment as required by California Government Code section 27724.

- B. Contractor shall not discriminate in employment practices or in the delivery of services on the basis of race, color, creed, religion, national origin, sex, age, marital status, sexual orientation, medical condition (including cancer, HIV, and AIDS) physical or mental disability, use of family care leave under either the Family & Medical Leave Act or the California Family Rights Act, or on the basis of any other status or conduct protected by law.
- C. Contractor represents that Contractor is in compliance with and agrees that Contractor shall continue to comply with the applicable provisions of: Title VI and Title VII of the Civil Rights Act of 1964; Section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975; the Food Stamp Act of 1977; Title II of the Americans with Disabilities Act of 1990; the California Fair Employment and Housing Act; California Civil Code Sections 51, et seq.; California Government Code Sections 4450, et seq., and regulations and guidelines issued pursuant thereto.

Section 14. COMPLIANCE WITH CHILD, FAMILY, AND SPOUSAL SUPPORT REPORTING OBLIGATIONS.

Contractor's failure to comply with state and federal child, family, and spousal support reporting requirements regarding Contractor's employees or failure to implement lawfully served wage and earnings assignment orders or notices of assignment relating to child, family, and spousal support obligations shall constitute a default under this agreement. Contractor's failure to cure such default within 90 days of notice by City shall be grounds for termination of this agreement.

Section 15. LICENSES AND PERMITS.

Contractor, and Contractor's officers, employees, and agents performing the work or services required by this agreement, shall possess and maintain all necessary licenses, permits, certificates, and credentials required by the laws of the United States, the State of California, the [AGENCY NAME], and all other appropriate governmental agencies, including any certification and credentials required by City. Failure to maintain the licenses, permits, certificates, and credentials shall be deemed a breach of this agreement and constitutes grounds for the termination of this agreement by City.

Section 16. PERFORMANCE STANDARDS.

Contractor shall perform the work or services required by this agreement in accordance with the industry and/or professional standards applicable to Contractor's work or services.

Section 17. CONFLICTS OF INTEREST.

Contractor and Contractor's officers and employees shall not have a financial interest, or acquire any financial interest, direct or indirect, in any business, property, or source of income

that could be financially affected by or otherwise conflict in any manner or degree with the performance of the work or services required under this agreement.

Section 18. NOTICES.

- A. Except as provided in section 6.B. of this agreement (oral notice of termination due to insufficient funding), any notices required or permitted pursuant to the terms and provisions of this agreement shall be given to the appropriate Party at the address specified below or at such other address as the Party shall specify in writing. Such notice shall be deemed given: (1) upon personal delivery; or (2) if sent by first class mail, postage prepaid, two days after the date of mailing.

If to City: Jamie Goldstein
City of Capitola, City Manager
420 Capitola Avenue
Capitola, CA 95076

If to Contractor: Kamardeep Athwal
California Hearing Officers, LLP
101 Parkshore Drive
Folsom, CA 95630

Section 19. AGREEMENT PREPARATION.

It is agreed and understood by the parties that this agreement has been arrived at through negotiation and that neither Party is to be deemed the Party which created any uncertainty in this agreement within the meaning of section 1654 of the Civil Code.

Section 20. COMPLIANCE WITH POLITICAL REFORM ACT.

Contractor shall comply with the California Political Reform Act (Government Code, sections 81000, *et seq.*), with all regulations adopted by the Fair Political Practices Commission pursuant thereto, and with the City's Conflict of Interest Code, with regard to any obligation on the part of Contractor to disclose financial interests and to recuse from influencing any City decision which may affect Contractor's financial interests. If required by the City's Conflict of Interest Code, Contractor shall comply with the ethics training requirements of Government Code sections 53234, *et seq.*

Section 21. PROPERTY TAXES.

Contractor represents and warrants that Contractor, on the date of execution of this agreement, (1) has paid all property taxes for which Contractor is obligated to pay, or (2) is current in payments due under any approved property tax payment arrangement. Contractor shall make timely payment of all property taxes at all times during the term of this agreement.

Section 22. SEVERABILITY.

If any portion of this agreement or application thereof to any person or circumstance is declared invalid by a court of competent jurisdiction or if it is found in contravention of any federal or state statute or local ordinance, the remaining provisions of this agreement, or the application thereof, shall not be invalidated thereby and shall remain in full force and effect to the extent that the provisions of this agreement are severable.

Section 23. CONFIDENTIALITY.

During the term of this agreement, both parties may have access to information that is confidential or proprietary in nature. Both parties agree to preserve the confidentiality of and to not disclose any such information to any third party without the express written consent of the other Party or as required by law. This provision shall survive the termination, expiration, or cancellation of this agreement.

Section 24. USE OF CITY PROPERTY.

Contractor shall not use City premises, property (including equipment, instruments, and supplies), or personnel for any purpose other than in the performance of Contractor's obligations under this agreement.

IN WITNESS WHEREOF, City and Contractor have executed this agreement on the dates set forth below. By their signatures below, each signatory represents that he/she has the authority to execute this agreement and to bind the Party on whose behalf his/her execution is made.

City of Capitola

Date: _____

Jamie Goldstein, City Manager

Approved as to form:

RISK MANAGEMENT APPROVAL

City Counsel

Samantha Zutler, City Attorney

Date: _____

By: _____
Kamardeep Athwal
California Hearing Officers, LLP

