

**PROFESSIONAL SERVICES AGREEMENT
BETWEEN THE COUNTY OF HUMBOLDT AND
CONTRACTOR
FOR HEARING OFFICER SERVICES**

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

WHEREAS, County desires to retain the services of a qualified professional to conduct hearings for the County or any board, agency, commission, or committee of the County, and

WHEREAS, such work involves the performance of professional, expert and technical services of a temporary and occasional character; and

WHEREAS, County has no employees available to perform such services and is unable to hire employees for the performance thereof for the temporary period; and

WHEREAS, Contractor represents that it is specially trained, skilled, experienced, and qualified to perform the special services required by County.

NOW THEREFORE, the Parties hereto mutually agree as follows:

Section 1. RESPONSIBILITIES OF CONTRACTOR.

- A. Pursuant to the terms and conditions of this agreement, when requested by County, Contractor shall, during the term of this agreement, assign a Hearing Officer for purposes specified in the assignment request. The Hearing Officer shall preside over and conduct hearings as identified in the Humboldt County Code pursuant to hearing procedures pertinent to the particular matter as specified in the assignment request, hear and consider the evidence, and prepare necessary findings and orders. Hearing Officer shall provide separate findings and orders for each administrative hearing conducted regardless of whether the administrative hearings are combined and heard at the same date and time.
- B. If expedited findings and orders are requested by either party to an administrative hearing in advance of or at the hearing, Hearing Officer shall endeavor to issue those findings and orders within five (5) business days from the closing of the record.
- C. For all other findings and orders, Hearing Officer shall issue within 21 calendar days from the closing of the record, unless otherwise agreed to in advance by both Parties.

D. When requested by County or other party in an administrative hearing and agreed to by Contractor, Contractor shall hear cases through WebEx or other mutually agreed video conference program. For cases heard through WebEx or such video conferencing program, Contractor shall maintain an audio record of all such proceedings, unless otherwise agreed to in writing by the Parties.

Section 2. RESPONSIBILITIES OF COUNTY.

County 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 \$240.00 per hour for the hearing officer's preparation, conducting the hearing, and issuing a written decision for the services described in this agreement. The hourly rate includes overhead expenses such as secretarial, telephone, photocopy, postage, and related costs. Travel time paid at a rate \$120.00 hour (not to exceed \$1,200.00 round trip) plus mileage at the allowable IRS rate at the time the travel is conducted. Accommodations and per diem expenses, if necessary, must be preapproved by County.

Any additional services not otherwise provided for herein shall not be provided by Contractor, or compensated by County, without written authorization by County. All unauthorized costs and expenses incurred above the maximum payable amount set forth herein shall be the responsibility of Contractor. Contractor shall notify County, in writing, at least six (6) weeks prior to the date upon which Contractor estimates that the maximum payable amount will be reached.

Section 4. BILLING AND PAYMENT.

Contractor shall submit to County within 15 days after completion of the services prescribed in section I, an itemized statement or invoice of services rendered. County shall make payment within 30 days of receipt of Contractor's correct and approved statement or invoice.

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

Should County, 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 County, or the state or federal government, as directed by County, or the state or federal government, for such disallowed cost.

Section 5. TERM OF AGREEMENT.

This agreement shall commence upon execution of signed agreement and shall end February 5, 2020, 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 County, or if Contractor fails to fulfill in a timely and professional manner Contractor's responsibilities under this agreement, then County shall have the right to terminate this agreement for cause effective immediately upon the County giving written notice thereof to Contractor. In no event shall County terminate this agreement because of Contractor's ruling on any particular case.
- B. Insufficient Funding. County'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, County shall, at its sole discretion, determine whether this Agreement shall be terminated. County shall provide Contractor seven (7) days advance written notice of its intent to terminate this Agreement due to insufficient funding.
- C. County's right to terminate this agreement may be exercised by the Director of the Planning and Building Department or the County Administrative Officer.
- D. Should this agreement be terminated, Contractor shall promptly provide to County any and all finished and unfinished reports, data, studies, photographs, charts, and other documents prepared by Contractor pursuant to this agreement.
- E. If this agreement is terminated, Contractor shall only be paid for services satisfactorily completed and provided prior to the effective date of termination.
- F. Contractor shall have a right to terminate this Agreement in the event of the County'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 County written notice of breach, which notice shall state the nature of said breach, and the County 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 Humboldt County Planning Director, provided that the amendment is in substantially the same format as the County's standard format amendment contained in the County 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.

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 County. The waiver by County 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 County 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 County is to insure 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 County employee. County shall not be liable for deductions for any amount for any purpose from Contractor's compensation. Contractor shall not be eligible for coverage under County's workers' compensation insurance plan nor shall Contractor be eligible for any other County 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 County, 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 negligent performance of the professional services provided under this agreement or from recklessness or willful misconduct.

Section 11. INSURANCE COVERAGE.

This Agreement shall not be executed by County, and Contractor is not entitled to any rights hereunder, unless certificates of insurance or other sufficient proof that the following provisions have been complied with, are filed with the Clerk of the Humboldt County Board of Supervisors.

- A. Without limiting Contractor's duties of defense and indemnification, Contractor and any subcontractor shall obtain, from an insurance carrier authorized to transact business in the State of California with a current A.M. Best rating of no less than A: VII or its equivalent, and maintain continuously during the term of this agreement:
 - 1. Commercial General Liability Insurance at least as broad as Insurance Services Office Commercial General Liability Coverage (occurrence form CG 0001), with limits of two million dollars (\$2,000,000) per occurrence for any one incident, including, but not limited to, personal injury, death and property damage. If a general aggregate limit is used, such limit shall apply separately hereto or shall be twice the required occurrence limit. Such insurance shall be provided as primary and non-contributory as to any insurance maintained by County;
 - 2. Automobile/Motor Liability Insurance with a limit of liability not less than One Million Dollars (\$1,000,000.00) combined single limit coverage. Such insurance shall include coverage of all owned, hired and non-owned vehicles. Said coverage shall be at least as broad as Insurance Service Offices Form Code 1 (any auto), and
 - 3. 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 County, its agents, officers, officials, employees and volunteers.
- B. If a subcontractor is retained by Contractor, Contractor shall require subcontractors to furnish satisfactory proof to County that liability, workers'

compensation, and errors and omissions insurance have been obtained and are maintained similar to that required of Contractor pursuant to this agreement.

1. The above-referenced policies shall not be canceled without thirty (30) days prior written notice being provided to County in accordance with the notice provisions set forth herein.
 2. For claims related to this Agreement, Contractor's insurance is the primary coverage to County, and any insurance or self-insurance programs maintained thereby are excess to Contractor's insurance and will not be used to contribute therewith.
 3. Contractor shall furnish County with certificates affecting the required coverage upon request.
- C. Insurance Notices. Any and all insurance notices required to be given pursuant to the terms of this Agreement shall be sent to the addresses set forth below in accordance with the notice provisions described herein.

County: County of Humboldt
Attention: Risk Management
825 Fifth Street, Room 131
Eureka, California 95501

Contractor: California Hearing Officers, LLP
8801 Folsom Boulevard, Suite 220
Sacramento, California 95826

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 County, Contractor shall give prompt and timely notice thereof to County. 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 Humboldt 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. ACCESS TO RECORDS; RECORDS RETENTION.

County, federal, and state officials shall have access to any books, documents, papers, and records of Contractor that are directly pertinent to the subject matter of this agreement for the purpose of auditing or examining the activities of Contractor or County. Except where longer retention is required by federal or state law, Contractor shall maintain all records for five years after County makes final payment hereunder. This provision shall survive the termination, expiration, or cancellation of this agreement.

Contractor shall maintain appropriate records to insure a proper accounting of all funds and expenditures pertaining to the work performed or the services provided pursuant to this agreement. Contractor shall maintain records providing information that account for all funds and expenses related to the provision of services provided pursuant to this agreement. Access to these records shall be provided to County during working days, 8:00 a.m. to 5:00 p.m. and at other times upon reasonable notice by County, and upon request of state and federal agencies charged with the administration of programs related to the work or services to be provided pursuant to this agreement.

Contractor agrees to accept responsibility for receiving, replying to, and/or complying with any audit exception by appropriate federal, state, or County audit directly related to the provisions of this agreement. Contractor agrees to repay County the full amount of payment received for duplicate billings, erroneous billings, audit exceptions, or false or deceptive claims. Contractor agrees that County may withhold any money due and recover through any appropriate method any money erroneously paid under this agreement if evidence exists of less than full compliance with this agreement including, but not limited to, exercising a right of set-off against any compensation payable to Contractor.

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 County of Humboldt, and all other appropriate governmental agencies, including any certification and credentials required by County. 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 County.

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 County: Department of Planning and Building
Attn: John H. Ford, Director
3015 H Street
Eureka, California 95501

If to Contractor: California Hearing Officers, LLP
8801 Folsom Boulevard, Suite 220
Sacramento, California 95826

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. 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 regulation or County 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 21. 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 22. USE OF COUNTY PROPERTY.

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

Section 23. NUCLEAR FREE HUMBOLDT COUNTY ORDINANCE COMPLIANCE.

Contractor certifies by its signature below that it is not a Nuclear Weapons Contractor, in that Contractor is not knowingly or intentionally engaged in the research, development, production or testing of nuclear warheads, nuclear weapons systems or nuclear weapons components, as defined by the Nuclear Free Humboldt County Ordinance. Contractor agrees to notify County immediately if it becomes a Nuclear Weapons Contractor as defined above. County may immediately terminate this Agreement if it determines that the foregoing certification is false or if Contractor subsequently becomes a Nuclear Weapons Contractor.

Section 24. DRUG-FREE WORKPLACE CERTIFICATION.

By executing this Agreement, CONTRACTOR certifies that it will comply with the requirements of the Drug-Free Workplace Act of 1990 (California Government Code Sections 8350, et seq.) and will provide a drug-free workplace by doing all of the following:

- A. Drug-Free Policy Statement. Publish, as required by California Government Code Section 8355(a)(1), a Drug-Free Policy Statement which notifies employees that the unlawful manufacture, distribution, dispensation, possession or use of a

controlled substance is prohibited, and specifies the actions to be taken against employees for violations.

- B. Drug-Free Awareness Program. Establish, as required by California Government Code Section 8355(a)(2), a Drug-Free Awareness Program which informs employees about the following:
 - 1. The dangers of drug abuse in the workplace;
 - 2. CONTRACTOR's policy of maintaining a drug-free workplace;
 - 3. Any available counseling, rehabilitation and employee assistance programs; and
 - 4. Penalties that may be imposed upon employees for drug abuse violations.
- C. Drug-Free Employment Agreement. Ensure, as required by California Government Code Section 8355(a)(3), that every employee who provides services pursuant to the terms and conditions of this Agreement will:
 - 1. Receive a copy of CONTRACTOR's Drug-Free Policy Statement; and
 - 2. Agree to abide by the terms of CONTRACTOR's Drug-Free Policy as a condition of employment.
- D. Effect of Noncompliance. Failure to comply with the above-referenced requirements may result in suspension of payments under this Agreement and/or termination thereof, and CONTRACTOR may be ineligible for award of future contracts if COUNTY determines that the foregoing certification is false or if CONTRACTOR violates the certification by failing to carry out the above-referenced requirements.

Section 25. COUNTERPARTS.

This Agreement, and any amendments hereto, may be executed in one (1) or more counterparts, each which shall be deemed to be an original and all of which, when taken together, shall be deemed to be one (1) and the same agreement. A signed copy of this Agreement, and any amendments hereto, transmitted by email or by other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original executed copy of this Agreement, and any amendments hereto, for all purposes.

[Signatures on Following Page]

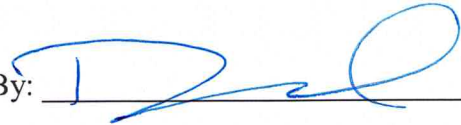
IN WITNESS WHEREOF, County and Contractor have executed this agreement on the dates set forth below. By their signatures below each signatory represents that he/she has the authority to execute this agreement and to bind the Party on whose behalf his/her execution is made.

TWO SIGNATURES ARE REQUIRED FOR CORPORATIONS:

(1) CHAIRPERSON OF THE BOARD, PRESIDENT, OR VICE PRESIDENT; AND

(2) SECRETARY, ASSISTANT SECRETARY, CHIEF FINANCIAL OFFICER OR TREASURER.

CONTRACTOR

By:  _____

Date: 1/24/19 _____

COUNTY OF HUMBOLDT:


By: _____

Date: _____

John H. Ford

Director, Humboldt County Planning and Building Department

INSURANCE AND INDEMNIFICATION REQUIREMENTS APPROVED:

By:  _____

Date: 01/25/2019 _____

Risk Management