

# **COCHISE COUNTY PROCUREMENT DEPARTMENT**

1415 Melody Lane, Building C, Bisbee, AZ 85603  
Phone: (520) 432-8391 Fax: (520) 432-8397

## **Professional Services Agreement**

### **Hearing Officer**

### **Agreement No. 13-15-P&Z-04**

### **(Amended)**

THIS AGREEMENT is made and entered into this \_\_\_ day of May, 2013 by and between COCHISE COUNTY, and the COCHISE COUNTY FLOOD DISTRICT, hereinafter referred to as the COUNTY, and Candace Lamoree, hereinafter referred to as the HEARING OFFICER.

#### **I. SCOPE OF SERVICES**

Subject to the terms and conditions set forth in this agreement, The Hearing Officer shall provide all services to the satisfaction of the County in accordance with the Scope of Services described in **Exhibit A**.

#### **II. COMPENSATION AND METHOD OF PAYMENT**

In consideration of the performance of the services described in the Scope of Work, the County shall pay the Hearing Officer in accordance with the fee schedule outlined in the solicitation Scope of Work, paragraph C.

The County will pay the Hearing Officer following the submission of itemized invoices(s) for the services rendered. No payment shall be issued prior to receipt of service and correct invoice. Each invoice must bear written certification by an authorized County representative confirming the services for which payment is requested have been performed. County agrees to pay all properly documented invoices, for accepted work within thirty (30) days of receipt.

All notices, invoices and payment shall be made in writing and may be given by personal delivery or by mail. The designated recipients for such notices, invoices and payments are as follows:

Hearing Officer: Candace Lamoree  
28 Black Knob View  
Bisbee, AZ 85603-1902

County: Rick Corley, Zoning Administrator  
Cochise County Community Development Department  
1415 Melody Lane, Bldg "E"  
Bisbee, AZ 85603

### **III. CONTRACT DURATION**

The contract term will be valid from January 1, 2013 through December 31, 2013 with the option to extend on a year to year basis at the County's discretion for a maximum of four (4) additional one (1) year periods.

### **IV. TERMINATION**

- A. The County may cancel this Contract without penalty or further obligation pursuant to A.R.S. §38-511 if any person significantly involved in initiating, negotiating, securing, drafting or creating the Contract on behalf of the County is or becomes, at any time while the Contract or any extension of the Contract is in effect any employee of, or Hearing Officer to any other party to this Contract with respect to the subject matter of the Contract. Such cancellation shall be effective when written notice from the County is received by the parties to this Contract, unless the notice specifies a later time.
  
- B. This contract may also be terminated at any time by mutual written consent, or by the County, with or without cause, upon giving the thirty (30) days written notice to the Hearing Officer. The County at its convenience, by written notice, may terminate this contract, in whole or in part. If this contract is terminated, the County shall be liable only for payment under the payment provisions of this contract for services rendered and accepted material received by the County before the effective date of termination.
  
- C. The County reserves the right to cancel the whole or any part of this contract due to failure of the Hearing Officer to carry out any term, promise or condition of the contract. The County will issue a written ten (10) day notice of default to the Hearing Officer for acting or failing to act any of the following, in the opinion of the County:
  - 1. Hearing Officer provides personnel who do not meet the requirements of the contract;
  - 2. Hearing Officer fails to adequately perform the stipulations, conditions, or services/specifications required in the contract;
  - 3. Hearing Officer attempts to impose on the County personnel, materials, products, or workmanship that is not of an acceptable quality;
  - 4. Hearing Officer fails to furnish the required service and/or product within the time stipulated in the contract;
  - 5. Hearing Officer fails to make progress in the performance of the requirements of the contract and/or gives the County a positive indication that Hearing Officer will not or cannot perform to the requirements of the contract.

**V. ENFORCEMENT, LAWS AND ORDINANCES**

This agreement shall be enforced under the laws of the State of Arizona. Hearing Officer must comply with all applicable federal, state, and local laws, ordinances, and regulations. Hearing Officer shall ensure payment of all taxes, licenses, permits, and other expenses of any nature associated with the provision of services herein. Hearing Officer shall maintain in current status all Federal, State and Local licenses and permits required for the operation of the business conducted by the Hearing Officer.

**VI. INDEPENDENT CONSULTANT**

It is clearly understood that each party shall act in its individual capacity and not as an agent, employee, partner, joint ventures, or associate of the other. An employee or agent of one party shall not be deemed or construed to be the employee or agent of the other party for any purpose whatsoever.

The Hearing Officer is advised that taxes or social security payments shall not be withheld from a County payment issued hereunder and that Hearing Officer should make arrangements to directly pay such expenses, if any.

The County will not provide any insurance coverage to the Hearing Officer including Workmen's Compensation coverage.

**VII. MODIFICATIONS**

This Agreement may only be modified by a written amendment signed by persons duly authorized to enter into contracts on behalf of the County and the Hearing Officer.

**VIII. WAIVER**

The failure of either party of this Agreement to take affirmative action with respect to any conduct of the other which is in violation of the terms of this contract shall not be construed as a waiver thereof, or of any future breach or subsequent wrongful conduct.

**IX. INDEMNIFICATION**

To the fullest extent permitted by law, Hearing Officer agrees to indemnify, defend, and hold harmless Cochise County, a body politic and corporate of the State of Arizona, its board members, officers, employees, agents and other officials from all claims, damages, losses, and expenses, including but not limited to attorney's fees, court costs, or other alternative dispute resolution costs arising out of, resulting from, or otherwise but for the performance or furnishing of work or services under this Agreement, provided that any such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease, death, or personal injury, or property damage, including the loss of use or diminution in value resulting there from; but only to the extent caused in whole or in part by the actual or alleged negligent acts, errors, or omissions of Hearing Officer, or anyone for whose acts Hearing Officer may be liable. Cochise County reserves the right, but not the obligation, to participate in defense without relieving Hearing Officer of any obligation hereunder.

The amount and type of insurance required shall not in any way be construed as limiting the scope of the indemnification set forth above.

**X. INSURANCE**

Insurance is not required for this contract

**XI. MISCELLANEOUS PROVISIONS**

- A. No assignment of this Agreement or subcontract shall be made by the Hearing Officer with any other party for furnishing any of the services herein contracted for without the advance written approval of the Procurement Department.
- B. The Hearing Officer shall establish and maintain procedures and controls that are acceptable to the County for the purpose of assuring that no information contained in its records or obtained from the County or from others in carrying out its functions under the contract shall be used by or disclosed by it, its agents, officers, or employees, except as required to efficiently perform duties under the contract. Persons requesting such information must be referred to the County.
- C. All services, information, computer program elements, reports, and other deliverables which may have a potential patent or copyright value and which are created under this Agreement shall be the property of the County and shall not be used by the Hearing Officer or any other person except with the prior written permission of the County.
- D. This Agreement is subject to the provisions of A.R.S. Sec. 38-511.
- E. The Hearing Officer shall comply with all applicable provisions of the Americans With Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and applicable federal regulations under the Act.

**XII. LEGAL ARIZONA WORKERS ACT COMPLIANCE:**

Hearing Officer hereby warrants that it will at all times during the term of this Contract comply with all federal immigration laws applicable to Hearing Officer's employment of its employees, and with the requirements of A.R.S. § 23-214(A) (together the "State and Federal Immigration Laws"). The Hearing Officer shall further ensure that each sub consultant who performs any work for the Hearing Officer under this contract likewise complies with the State and Federal Immigration Laws.

The County shall have the right at any time to inspect the books and records of the Hearing Officer and any sub contractor in order to verify such party's compliance with the State and Federal Immigration Laws.

Any breach of the Hearing Officer's or any sub contractor's warranty of compliance with the State and Federal Immigration Laws, or of any other provision of this section, shall be deemed to be a material breach of this contract subjecting the Hearing Officer to penalties up to and including suspension or termination of this Contract. If the breach is by a sub contractor, and the subcontract is suspended or terminated as a result, the Hearing Officer shall be required to take such steps as may be necessary to either self-perform the services that would have been provided under the subcontract or retain a replacement sub consultant, (subject to County approval if MWBE preferences apply) as soon as possible so as not to delay project completion.

The Hearing Officer shall advise each sub consultant of the County's rights, and the sub consultant's obligations, under this Section by including a provision in each subcontract substantially in the following form:

"The sub contractor hereby warrants that it will at all times during the term of this contract comply with all federal laws applicable to the sub contractor's employees and with the requirements of A.R.S. §23-214(A). The sub contractor further agrees that the County may inspect the sub contractor's books and records to insure that the sub contractor is in compliance with these requirements. Any breach of this paragraph by the sub contractor will be deemed to be a material breach of this contract subjecting the sub contractor to penalties up to and including suspension or termination of this contract."

Any additional costs attributable directly or indirectly to remedial action under this Section shall be responsibility of the Hearing Officer. In the event that remedial action under this Section results in delay to one or more tasks on the critical path of the Hearing Officer's approved construction or critical milestones schedule, such period of delay shall be deemed excusable delay for which the Hearing Officer shall be entitled to an extension of time, but not costs.

**XII. FOREIGN INVESTMENT AND BUSINESS OPERATIONS:**

By signing this agreement Hearing Officer certifies that it does not have scrutinized business operations in Iran and Sudan as per A.R.S sec. 35-297.

This Agreement represents the entire agreement between the County and the Hearing Officer relating to this requirement and shall prevail over any and all previous verbal and written agreements.

**APPROVED:**

\_\_\_\_\_  
Ann English, Chair  
Cochise County Board of Supervisors  
Cochise County Flood Control District

\_\_\_\_\_  
Date

**ATTEST:**

\_\_\_\_\_  
Clerk of the Board

\_\_\_\_\_  
Date

Hearing Officer:

\_\_\_\_\_  
Candace Lamoree

\_\_\_\_\_  
Date

## EXHIBIT "A" - SCOPE OF SERVICES

- A. Hearing Officer makes determinations on violations to the Zoning Regulations and Floodplain Regulations in accordance with procedures duly adopted by the Cochise County Board of Supervisors, including, but not limited to the following:
- Function in the capacity of an administrative law judge to determine whether or not a respondent has committed a violation of the Cochise County Zoning Regulations, Floodplain Regulations or Cochise County Building Safety Code
  - Conduct said hearing and make determinations thereon
  - Prepare findings of fact and conclusions of law in support of said decisions
  - Impose civil penalties on persons adjudicated to be in violation of said regulations or codes, as applicable
- B. Pursuant to A.R.S. §11-810, Hearing Officer hears appeals of dedications, exactions and the adoption or amendment of a zoning regulation that is alleged to be a taking in violation of A.R.S. §11-811.
- C. The Board of Supervisors may, at its discretion, and with the consent of the Hearing Officer, assign the Hearing Officer to preside over administrative appeals of other matters, as well.

## EXHIBIT B – FEE SUMMARY

In consideration of the performance of the services described in Exhibit A, Scope of Services, the County shall pay the Consultant Fifty Dollars (\$50.00) per hour with a maximum of eight (8) hours per day, with the total not to exceed Four Hundred Dollars (\$400.00) per day. The maximum annual amount paid shall not exceed Five Thousand Dollars (\$5,000.00).

Invoices shall be submitted following each hearing. The number of hours submitted by the Consultant shall be rounded to the nearest one-tenth of an hour.