



COUNTY OF PLACER
Community Development/Resource Agency

Michael J. Johnson, AICP
Agency Director

BUILDING
SERVICES DIVISION

Tim Wegner, CBO
Chief Building Official

TO: Honorable Board of Supervisors
FROM: Michael Johnson, AICP
Agency Director
DATE: August 20, 2013
SUBJECT: **APPOINTMENT OF ADMINISTRATIVE HEARING OFFICER**

ACTION REQUESTED

1. Appoint Ann Rubenstein as Administrative Hearing Officer, pursuant to Placer County Code Chapter 17, Section 17.62.180 (D)(1), to conduct hearings on Code Enforcement Administrative Citations for a budgeted net County cost of \$4,800 annually.
2. Authorize the Community Development Resource Agency Director to execute the service agreement in a not to exceed amount of \$4,800 annually for an initial term of 1 year subject to prior review and approval by County Counsel.

BACKGROUND

On October 19, 2010, the Board of Supervisors adopted Ordinance 5625-B that created the Administrative Citation process. The Administrative Citation Ordinance requires that an Administrative Hearing Officer be appointed by the Board of Supervisors to conduct hearings on Administrative Citations. The Community Development Resource Agency intended to implement the program upon adoption of Ordinance 5625-B utilizing a temporary manager as an Administrative Hearing Officer; however, the temporary manager subsequently accepted employment outside the area and was unable act as the Administrative Hearing Officer. Staff's search for an Administrative Hearing Officer resulted in three possible candidates, with Ms. Rubenstein being identified as the best candidate of the three. Staff has interviewed Ms. Rubenstein twice and found her knowledge, skills, and abilities matched the requirements of a Placer County Administrative Hearing Officer.

DISCUSSION

Staff is requesting that Ann Rubenstein be appointed as an Administrative Hearing Officer. Ms. Rubenstein is a retired Attorney and has acted as an Administrative Hearing Officer for Nevada County until the forced closure of that program due to funding issues. The Nevada County Code Enforcement staff spoke highly of Ms. Rubenstein's abilities and professionalism in carrying out her duties as an Administrative Hearing Officer. Staff has determined that Ms. Rubenstein has the qualifications necessary to be successful in the capacity of Administrative Hearing Officer. Those qualifications include:

- Practiced law from 1979 until present;
- Arbitrator and Judge Pro Tem for Sacramento County Superior Courts;
- Administrative Hearing Officer for Nevada County;

AUBURN OFFICE - 3091 County Center Dr. Ste 160 / Auburn, California 95603 / (530) 745-3010 / Fax (530) 745-3058
TAHOE OFFICE - 565 West Lake Blvd. / Tahoe City, California 956145 / (530) 581-6200 / Fax (530) 581-6204
Web Site Address: <http://www.placer.ca.gov>
Email: building@placer.ca.gov

- Instrumental in developing procedures to improve the Nevada County Administrative Citation Hearing process;
- Values proper hearing etiquette;
- Effective communicator, and is fluent in Spanish;
- Well balanced regulatory knowledge/community alignment skill.

This unique skill set, which has both private and government sector experience, results in an individual with extensive experience conducting public hearings, interpreting and enforcing zoning codes, building codes, and extensive public interaction within the local government arena. This diverse background will allow Ms. Rubenstein to deal effectively with all issues that would come before an Administrative Hearing Officer. Her tenure with Nevada County as an Administrative Hearing Officer will enable her to grasp the similar unique and diverse features of Placer County ensuring alignment with the Board of Supervisor's vision for the Administrative Citation process.

FISCAL IMPACT

Staff estimates the Administrative Hearing Officer will require four hours per month and will be paid \$100 per hour, resulting in an annual cost of \$4,800. These costs are included in the Department's Budget, and there is no new net cost to the County

ATTACHMENTS

- Attachment A: Resume for Ann Rubenstein
- Attachment B: Draft Service Agreement

cc: Michael J Johnson, Agency Director
Tim Wegner, Chief Building Official
Karin Schwab, County Counsel
Holly Heinzen – Chief Assistant CEO

RESUME OF ANN RUBENSTEIN



LAW OFFICE OF JONATHAN J. ZERIN
206 Sacramento Street, Suite 206
Nevada City, CA 95959

Mail: P.O. Box 3453
Grass Valley, CA 95945-3453

Tel: (530) 470-1925
Fax: (530) 470-1955
email: lawzer@aol.com

PERSONAL

Born and raised in Los Angeles, CA

Married to Jonathan J. Zerlin
June 1992

Fluent in Spanish
Mother of two, Grandmother of six
Horse owner and Tevis rider (4 buckles)

PROFESSIONAL LICENSES

General Secondary Teaching Credential
1965

State Bar of California
Admitted June 1978
State Bar No. 86334

EDUCATION

Mills College
Oakland, CA
BA 1964, major in English, minor in Spanish

University of Southern California
Los Angeles, CA
General Secondary Teaching Credential, 1965

Glendale College of Law
Glendale, CA
JD, 1978

PROFESSIONAL HISTORY

Culver City High School
Teacher, English and Spanish
1965-1969

Glendale Home School Teaching
1973-1976

Law Practice 1979 to Present
Administrative Law, Family Law, Immigration
Law, Personal Injury Law

Arbitrator and Judge Pro Tem
Sacramento County Superior Court

Administrative Hearing Officer
Nevada County, CA

Administering Agency: Placer County Community Development/Resource Agency

Contract No.

Contract Description: Administrative Citation Hearing Officer Services

Contract Term:

CONSULTANT SERVICES AGREEMENT

THIS AGREEMENT is made at Auburn, California, as of _____, by and between the County of Placer, a political subdivision of the State of California ("County"), and _____ ("Consultant"), who agree as follows:

1. **Services.** Subject to the terms and conditions set forth in this Agreement, Consultant shall provide the services described in Exhibit A. Consultant shall provide said services at the time, place, and in the manner specified herein.
2. **Amendments.** This Agreement constitutes the entire Agreement between the parties. Any amendments or changes to this Agreement shall be agreed to in writing, specifying the change(s) and the effective date(s) and shall be executed by duly authorized representatives of both parties. However, in no event shall such amendments create additional liability to County or provide additional compensation to Consultant except as explicitly set forth in this or amended Agreement.
3. **Payment.** County shall pay Consultant an amount not to exceed \$4800.00 over the contract period, at a rate of \$100.00 per completed administration citation hearing and written findings, and reimburse mileage at the non-taxable per mile rate permitted by the Internal Revenue Services (IRS) promulgated from time-to-time in IRS regulations, as full payment for all services set forth in Section 1, Services. Consultant shall provide invoices to the County on a monthly basis, within 30 days of the close of each calendar month. Invoices shall include detail on the services provided during the billing period. County will review, approve, and pay all valid invoices within 30 days of receipt.

Invoices for payment shall be submitted to the following address, and shall include the contract number indicated on the first page of this Agreement, the Consultant name and remittance address, and all additional specific information indicated herein:

Placer County Community Development/Resource Agency
Attn: Accounts Payable
3091 County Center Drive, Suite 140
Auburn, CA 95603

4. **Facilities, Equipment and Other Materials, and Obligations of County.** Except as otherwise specified in Exhibit B, Consultant shall, at its sole cost and expense, furnish all facilities, equipment, and other materials which may be required for furnishing services pursuant to this Agreement.
5. **Exhibits.** All exhibits referred to herein will be attached hereto and by this reference incorporated herein.
6. **Time for Performance.** Time is of the essence. Failure of Consultant to perform any services within the time limits set forth herein shall constitute a material breach of this Agreement.
7. **Independent Contractor.** At all times during the term of this Agreement, Consultant shall be an independent contractor and shall not be an employee of the County. County shall have the right to control Consultant only insofar as the results of Consultant's services rendered pursuant to this Agreement. County shall not have the right to control the means by which Consultant accomplishes services rendered pursuant to this Agreement.

8. **Licenses, Permits, Etc.** Consultant represents and warrants to County that it has all licenses, permits, qualifications, and approvals of whatsoever nature, which are legally required for Consultant to practice its profession. Consultant represents and warrants to County that Consultant shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement, any licenses, permits, and approvals which are legally required for Consultant to practice its profession at the time the services are performed.
9. **Time.** Consultant shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary for the satisfactory performance of Consultant's obligations pursuant to this Agreement. Neither party shall be considered in default of this Agreement to the extent performance is prevented or delayed by any cause, present or future, which is beyond the reasonable control of the party.
10. **Insurance.** Consultant shall file with County a Certificate of Insurance, with companies acceptable to County, with a Best's Rating of no less than A:-VII evidencing all coverages, limits, and endorsements listed below:
 - 10.1. **Workers' Compensation Insurance:** Consultant represents that it has no employees and, therefore, is not required to have Workers' Compensation coverage.
 Consultant agrees they have no rights, entitlements, or claim against County for any type of employment benefits or workers' compensation or other programs afforded to County employees.
 - 10.2. **General Liability and Professional Liability Insurance:** Consultant is considered exempt from standard County requirements for General Liability and Professional Liability coverage in the performance of duties under the scope of this Agreement under the principle of judicial immunity.
 - 10.3. **Automobile Liability Insurance**
 - 10.3.1. Automobile Liability insurance shall be provided covering bodily injury and property damage in an amount no less than three hundred thousand dollars (\$300,000) combined single limit for each occurrence.
 - 10.3.2. Covered vehicles shall include owned, non-owned, and hired automobiles/trucks.
11. **Indemnity.** Consultant hereby agrees to protect, defend, indemnify, and hold the County free and harmless from any and all losses, claims, liens, demands, and causes of action of every kind and character including, but not limited to, the amounts of judgments, penalties, interest, court costs, legal fees, and all other expenses incurred by the County arising in favor of any party, including claims, liens, debts, personal injuries, death, or damages to property (including employees or property of the County) and without limitation by enumeration, all other claims or demands of every character occurring or in any way incident to, in connection with or arising directly or indirectly out of this contract or agreement. Consultant agrees to investigate, handle, respond to, provide defense for, and defend any such claims, demand, or suit at the sole expense of the Consultant. Consultant also agrees to bear all other costs and expenses related thereto, even if the claim or claims alleged are groundless, false, or fraudulent. This provision is not intended to create any cause of action in favor of any third party against Consultant or the County or to enlarge, in any way, the Consultant's liability but is intended solely to provide for indemnification of the County from liability for damages or injuries to third persons or property arising from Consultant's performance pursuant to this contract or agreement.
 As used above, the term "County" means Placer County or its officers, agents, employees and volunteers.
12. **Contractor Not Agent.** Except as County may specify in writing Consultant shall have no authority, express or implied, to act on behalf of County in any capacity whatsoever as an agent. Consultant shall have no authority, express or implied pursuant to this Agreement to bind County to any obligation whatsoever.
13. **Assignment Prohibited.** Consultant may assign its rights and obligations under this Agreement only upon the prior written approval of County, said approval to be in the sole discretion of County.
14. **Standard of Performance.** Consultant shall perform all services required pursuant to this Agreement in the manner and according to the standards observed by a competent practitioner of the profession in which Consultant is engaged in the geographical area in which Consultant practices its profession. All products of

whatsoever nature which Consultant delivers to County pursuant to this Agreement shall be prepared in a substantial first class and workmanlike manner and conform to the standards or quality normally observed by a person practicing in Consultant's profession.

15. **Termination.**

15.1. County shall have the right to terminate this Agreement at any time by giving notice in writing of such termination to Consultant. In the event County shall give notice of termination, Consultant shall immediately cease rendering service upon receipt of such written notice, pursuant to this Agreement. In the event County shall terminate this Agreement:

15.1.1. Consultant shall deliver copies of all writings prepared by it pursuant to this Agreement. The term "writings" shall be construed to mean and include: handwriting, typewriting, printing, Photostating, photographing, and every other means of recording upon any tangible thing any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof.

15.1.2. County shall have full ownership and control of all such writings delivered by Consultant pursuant to this Agreement.

15.1.3. County shall pay Consultant the reasonable value of services rendered by Consultant to the date of termination pursuant to this Agreement not to exceed the amount documented by Consultant and approved by County as work accomplished to date; provided, however, that in no event shall any payment hereunder exceed the amount of the Agreement specified herein, and further provided, however, County shall not in any manner be liable for lost profits which might have been made by Consultant had Consultant completed the services required by this Agreement. In this regard, Consultant shall furnish to County such financial information as in the judgment of the County is necessary to determine the reasonable value of the services rendered by Consultant. The foregoing is cumulative and does not affect any right or remedy, which County may have in law or equity.

15.2. Consultant may terminate its services under this Agreement upon thirty (30) working days advance written notice to the County.

16. **Non-Discrimination.** During the performance of this Agreement, Consultant shall comply with all applicable federal, state and local laws, rules, regulations and ordinances, including the provisions of the Americans with Disabilities Act of 1990, and Fair Employment and Housing Act, and will not discriminate against any individuals appearing at administrative citation hearings or proceedings because of race, sex, sexual orientation, color, ancestry, religion or religious creed, national origin or ethnic group identification, mental disability, physical disability, medical condition (including cancer, HIV and AIDS), age (over 40), or marital status.

17. **Records.** Consultant shall maintain, at all times, complete detailed records with regard to work performed under this Agreement in a form acceptable to County, and County shall have the right to inspect such records at any reasonable time. Notwithstanding any other terms of this Agreement, no payments shall be made to Consultant until County is satisfied that work of such value has been rendered pursuant to this Agreement. However, County shall not unreasonably withhold payment and, if a dispute exists, the withheld payment shall be proportional only to the item in dispute.

18. **Ownership of Information.** All professional and technical information developed under this Agreement and all work sheets, reports, and related data shall become the property of County, and Consultant agrees to deliver reproducible copies of such documents to County on completion of the services hereunder. The County agrees to indemnify and hold Consultant harmless from any claim arising out of reuse of the information for other than this project.

19. **Waiver.** One or more waivers by one party of any major or minor breach or default of any provision, term, condition, or covenant of this Agreement shall not operate as a waiver of any subsequent breach or default by the other party.

- 20. **Conflict of Interest.** Consultant certifies that no official or employee of the County, nor any business entity in which an official of the County has an interest, has been employed or retained to solicit or aid in the procuring of this Agreement. In addition, Consultant agrees that no such person will be employed in the performance of this Agreement without immediately notifying the County.
- 21. **Entirety of Agreement.** This Agreement contains the entire agreement of County and Consultant with respect to the subject matter hereof, and no other agreement, statement, or promise made by any party, or to any employee, officer or agent of any party, which is not contained in this Agreement, shall be binding or valid.
- 22. **Alteration.** No waiver, alteration, modification, or termination of this Agreement shall be valid unless made in writing and signed by all parties, except as expressly provided in the Termination section herein.
- 23. **Governing Law.** This Agreement is executed and intended to be performed in the State of California, and the laws of that State shall govern its interpretation and effect. Any legal proceedings on this Agreement shall be brought under the jurisdiction of the Superior Court of the County of Placer, State of California, and Consultant hereby expressly waives those provisions in California Code of Civil Procedure §394 that may have allowed it to transfer venue to another jurisdiction.
- 24. **Notification.** Any notice or demand desired or required to be given hereunder shall be in writing and deemed given when personally delivered or deposited in the mail, postage prepaid, and addressed to the parties as follows:

COUNTY OF PLACER:

CONSULTANT:

Any notice so delivered personally shall be deemed to be received on the date of delivery, and any notice mailed shall be deemed to be received five (5) days after the date on which it was mailed.

- 25. **County Representative.** _____ or his/her designee is the representative of the County, will administer this Agreement for the County, and may be contacted as follows:

IN WITNESS WHEREOF, the parties hereto have caused their duly authorized representatives to execute this Agreement as of the day first above stated:

CONSULTANT:

COUNTY OF PLACER:

Date: _____

Date: _____

Approved as to Form
Office of Placer County Counsel

EXHIBITS:

Exhibit A – Scope of Services
Exhibit B – Facilities, Equipment, and Other
Materials and Obligations of County

Date: _____