

original on file in this office.

ATTEST:
LAURA BYNUM
County Clerk of the State of California
In and for the County of Siskiyou.

By: Wendy White
Deputy

AGREEMENT FOR HEARING OFFICER SERVICES

This Agreement is made by and between the County of Siskiyou, Community Development Department (COUNTY) and Lynn M. Cottier (CONTRACTOR) on this ___ day of January, 2021.

BACKGROUND

- A. COUNTY has a need for hearing officer services; and
- B. COUNTY desires to have CONTRACTOR perform such services pursuant to certain terms and conditions.

AGREEMENT

NOW, THEREFORE, the parties hereby agree as follows:

1. DESIGNATED REPRESENTATIVES.

The Siskiyou County Counsel or his or her designee shall be the representative of the COUNTY for all purposes under this Agreement.

2. DUTIES OF CONTRACTOR.

CONTRACTOR shall perform the duties and/or provide hearing officer services as described in Exhibit "A" attached hereto and incorporated herein. CONTRACTOR's appointment and continued appointment by COUNTY is and will not be based or contingent upon any expectation of favorable outcomes or decisions in any hearings and it is understood that CONTRACTOR shall act independently in a fair, unbiased, and appropriate manner in deciding all such matters in which CONTRACTOR participates.

3. DUTIES OF COUNTY.

In addition to compensating CONTRACTOR as provided in Section 4 below, the COUNTY shall:

- a. Furnish a suitable place at which hearings conducted by CONTRACTOR shall be held,
- b. Provide CONTRACTOR with a copy of the Siskiyou County Code.
- c. Provide parking to the CONTRACTOR to park on the County's employee-only lot.

VN# 016662
 CT# E2100470 CC LOG#
 ACCT see accty page
 AMT \$26,000.00 / \$35,000.00
 ANNUAL TOTAL

d. Provide an upcoming calendar along with the physical and mailing addresses of citees, their address and assessor parcel numbers of the location of the alleged violation.

4. COMPENSATION.

A. Compensation. In consideration of the performance by CONTRACTOR of all the services set forth in this Agreement, COUNTY agrees to compensate CONTRACTOR at the hourly rate of ninety (\$90.00) dollars. COUNTY agrees to compensate CONTRACTOR at the hourly rate of ninety (\$90.00) dollars for time spent in traveling to and from Red Bluff and Yreka.

COUNTY shall compensate CONTRACTOR for necessary accommodations (at actual cost) and meals (based on County per diem rates as established in the County's Travel and Expense Policy). In addition, COUNTY agrees to reimburse CONTRACTOR for any costs incurred to comply with this Agreement or the County's laws or procedures, such as mailing and service. COUNTY also agrees to compensate CONTRACTOR for up to one and one half (1.5) hours of preparation time for each noticed hearing unless COUNTY cancels such hearing date and notifies CONTRACTOR of such cancellation at least ninety-six (96) hours prior to the scheduled commencement time for such hearing. In the event of cancellation, COUNTY shall reimburse CONTRACTOR for any cancellation costs it incurs, such as nonrefundable travel costs. COUNTY may give notice to CONTRACTOR of such cancellation by telephone or by email. This contract will not exceed \$26,000 for Fiscal Year 2020-2021 and shall not exceed \$9,000 for Fiscal Year 2021-2022. The total compensation shall not exceed Thirty-Five Thousand Dollars AND No/CENTS (\$35,000.00) during the term of this Agreement."

B. Invoices. Contractor shall submit detailed invoices and original itemized receipts for all services being rendered.

C. Date for Payment of Compensation. County will make payment within thirty (30) days of receipt of invoices from the Contractor to the County.

D. Retired Annuitant Status. Contractor acknowledges being subject to the employment restrictions of the Public Employees' Pension Reform Act and Public Employees' Retirement Law, and accepts full responsibility for any action(s) taken by CALPERS as a result of this agreement, if any. Contractor further releases any and all claims that Contractor may have against County as a result of entering into this agreement and specifically related to any enforcement action(s) taken by CALPERS for a violation of the Public Employees' Pension Reform Act or Public Employees' Retirement Law. In connection herewith, Contractor waives any rights provided by California Civil Code section 1542, which reads as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

5. TERM OF AGREEMENT.

The term of this Agreement shall be for eighteen (18) months commencing on February 1, 2021, and ending on June 30, 2022, inclusive. subject to the provisions of Section 6 of this Agreement. Upon mutual agreement of the parties in writing, the term of this Agreement may be extended for an additional 18-month period. The term of this Agreement shall not be affected in any way by the outcomes of the hearings or decisions rendered by CONTRACTOR, whether or not adverse to the COUNTY.

6. TERMINATION.

A. Discretionary. Either party may terminate this Agreement without cause upon thirty (30) days written notice mailed or personally delivered to the other party. Notwithstanding the foregoing, this Agreement may not be terminated for any reason related in any way to CONTRACTOR's decisions or outcomes of a hearing.

B. Termination of Funding. COUNTY may terminate this Contract in any fiscal year in that it is determined there is not sufficient funding. California Constitution Article XVI Section 18.

C. Termination by Operation of Law. This Agreement shall terminate immediately upon a determination by a court of competent jurisdiction ruling that its terms do not provide adequate due process to those receiving the services hereunder. Notwithstanding the foregoing, the County may elect, at its sole discretion, to appeal any such determination and may elect, at its sole discretion. to terminate or not terminate the contact while the appeal is pending.

D. Effect of Termination. Upon receipt of notice of termination, neither party shall incur additional obligations under any provision of this Agreement without the prior written consent of the other, except that COUNTY shall be responsible for any fees and costs incurred by CONTRACTOR through the date of notice of termination.

D. Return of Documents. Upon termination, any and all COUNTY documents or materials provided to CONTRACTOR and any and all of CONTRACTOR's documents and materials prepared for or relating to the performance of its duties under this Agreement, shall be delivered to COUNTY as soon as possible, but not later than thirty (30) days after termination. COUNTY shall be responsible for the costs of transmittal.

7. OWNERSHIP OF DOCUMENTS.

The written documents and materials prepared by the CONTRACTOR in connection with the performance of its duties under this Agreement, shall be the sole property of COUNTY.

8. INSPECTION AND AUDIT.

A. Right to inspect. Upon reasonable notice, CONTRACTOR shall make available to COUNTY, or its agent, for inspection and audit. all documents and materials maintained by CONTRACTOR in connection with its performance of its duties under this Agreement. CONTRACTOR shall fully cooperate with COUNTY or its agent in any such audit or inspection.

B. Contractor's Books and Records. CONTRACTOR shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the COUNTY for a minimum of five (5) years, or for any longer period required by law. from the date of final payment to the CONTRACTOR under this Contract. Any records or documents required to be maintained shall be made available for inspection, audit and/or copying at any time during regular business hours, upon oral or written request of the COUNTY.

9. ASSIGNABILITY

The parties agree that they shall not assign or transfer any interest in this Agreement nor the performance of any of their respective obligations hereunder, without the prior consent of the other party, and any attempt to so assign this Agreement or any rights, duties or obligations arising hereunder shall be void and of no effect.

10. INDEMNIFICATION.

A. Contractor's Duty to Indemnify. CONTRACTOR shall indemnify, release, defend and hold harmless COUNTY. its officers, agents, employees, and volunteers. against any claim, demand, suit, judgment, loss, liability or expense of any kind, including attorney's fees and administrative costs, to the extent arising from the willful misconduct or gross negligence of CONTRACTOR.

B. County's Duty to Indemnify. Notwithstanding Paragraph 10A, if a claim or lawsuit is filed against CONTRACTOR for an official decision made by Contractor while acting in the capacity of hearing officer or in the interpretation or application of COUNTY's Codes or Code Enforcement Procedures Manual, if any, COUNTY shall indemnify, release, defend and hold harmless CONTRACTOR, its officers, agents and employees against any claim, demand, suit, judgment, loss or liability or expense of any kind, including attorney's fees and costs, to the same extent as if CONTRACTOR was a COUNTY employee, but nothing shall require COUNTY to indemnify CONTRACTOR for liability arising solely from their own negligence.

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11. NONDISCRIMINATION.

CONTRACTOR shall not discriminate, in any way, against any person on the basis of age, sex, race, color, religion, ancestry, national origin or disability in connection with or related to the performance of its duties and obligations under this Agreement.

12. COMPLIANCE WITH ALL LAWS.

CONTRACTOR shall observe and comply with all applicable federal, state and local laws, ordinances, codes and regulations, in the performance of its duties and obligations under this Agreement. CONTRACTOR shall perform all services under this Agreement in accordance with these laws, ordinances, codes and regulations. CONTRACTOR shall release, defend, indemnify and hold harmless COUNTY, its officers, agents and employees from any and all damages, liabilities, penalties, fines and all other consequences from any noncompliance or violation of any laws, ordinances, codes or regulations.

13. NO THIRD PARTY BENEFICIARIES.

COUNTY and CONTRACTOR do not intend, by any provision of this Agreement, to create in any third party any benefit or right owed by one party, under the terms and conditions of this Agreement, to the other party.

14. NOTICES.

Except as otherwise provided herein, all notices and other communications required or permitted to be given under this Agreement, including any notice of change of address, shall be in writing and given by personal delivery, or deposited with the United States Postal Service, postage prepaid, addressed to the parties intended to be notified. Notice shall be deemed given as of the date of personal delivery, or if mailed, upon the date of deposit with the United States Postal Service. Notice shall be given as follows:

COUNTY:

	Siskiyou County Counsel's Office Attn: Edward Kierman, County Counsel P.O. Box 659 205 Lane Street Yreka, CA 96097 Email: ekieman co.siskivou.ca.us	Phone: 530.842.8100 FAX: 530.842.7032
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CONTRACTOR:

	<p>Lynn M. Cottier PO Box 340998 Sacramento, CA 95934</p>	
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15. INDEPENDENT CONTRACTOR.

For the purposes, and for the duration, of this Agreement. CONTRACTOR, its officers, agents and employees shall act in the capacity of an Independent Contractors. and not as employee of the COUNTY. CONTRACTOR and COUNTY expressly intend and agree that the status of CONTRACTOR, its officers, agents and employees shall be that of an Independent Contractors and not that of an employees of COUNTY.

16. ENTIRE AGREEMENT – AMENDMENTS

A. The terms and conditions of this Agreement, all exhibits attached, and all documents expressly incorporated by reference, represent the entire Agreement of the parties with respect to the subject matter of this Agreement.

B. This written Agreement shall supersede any and all prior agreements, oral or written, regarding the subject matter between the CONTRACTOR and the COUNTY.

C. No other agreement, promise or statement, written or oral, relating to the subject matter of this Agreement, shall be valid or binding, except by way of a written amendment to this Agreement.

D. The terms and conditions of this Agreement shall not be altered or modified except by a written amendment to this Agreement signed by the CONTRACTOR and the COUNTY.

E. If any conflicts arise between the terms and conditions of this Agreement, and the terms and conditions of the attached exhibits or the documents expressly incorporated by reference, the terms and conditions of this Agreement shall control.

17. SET-OFF AGAINST DEBITS.

CONTRACTOR agrees that COUNTY may deduct from any payment due to CONTRACTOR under this Agreement. any monies which CONTRACTOR owes COUNTY

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under any ordinance, agreement- contract or resolution for any unpaid taxes. fees, licenses, assessments, unpaid checks or other amounts.

18. WAIVERS.

The waiver by either party of any breach or violation of any term, covenant or condition of this Agreement, or of any ordinance, law or regulation, shall not be deemed to be a waiver of any other term, covenant, condition, ordinance, law or regulation, or of any subsequent breach or violation of the same or other term, covenant, condition, ordinance, law or regulation. The subsequent acceptance by either party of any fee, performance, or other consideration which may become due or owing under this Agreement, shall not be deemed to be a waiver of any preceding breach or violation by the other party of any term, condition, covenant of this Agreement or any applicable law, ordinance or regulation.

19. TAXES.

CONTRACTOR shall pay any and all state and federal taxes and any other applicable taxes. COUNTY shall not be required to pay for any work performed under this Agreement, until CONTRACTOR has provided COUNTY with a completed Internal Revenue Service Form W-9 (Request for Taxpayer Identification Number and Certification).

Withholding for Non-Resident Contractor: Pursuant to California Revenue and Taxation Code Section 18662, payments made to nonresident independent contractors, including corporations and partnerships that do not have a permanent place of business in this state, are subject to 7 percent state income tax withholding. Withholding is required if the total yearly payments made under this contract exceed \$1,500.00.

Unless the Franchise Tax Board has authorized a reduced rate or waiver of withholding and COUNTY is provided evidence of such reduction/waiver, all nonresident contractors will be subject to the withholding. It is the responsibility of the CONTRACTOR to submit the Waiver Request (Form 588) to the Franchise Tax Board as soon as possible in order to allow time for the Franchise Tax Board to review the request.

20. APPLICABLE LAW.


The laws of the State of California shall govern this Agreement. Any action brought relating to this Contract shall be brought exclusively in a state court in the County of Siskiyou.

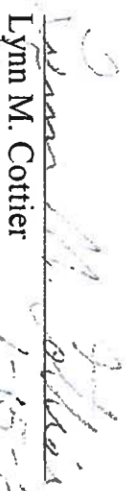
21. SEVERABILITY.

Except as set forth in the Section 6.C, Termination, if any term or portion of this Agreement is held to be invalid, illegal or otherwise unenforceable by a court of competent jurisdiction. the remaining provisions of this Agreement shall continue in full force and effect.

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

COUNTY OF SISKIYOU

By: 
Ray A. Haupt, Chair


Lynn M. Cottier

Taxpayer I.D. [W-9 on file]

License No.: N/A

(Licensed in accordance with an act providing for the registration of contractors)

Note to Contractor: For corporations, the contract must be signed by two officers. The first signature must be that of the chairman of the board, president or vice-president; the second signature must be that of the secretary, assistant secretary, chief financial officer or assistant treasurer. (Civ. Code, Sec. 1189 & 1190 and Corps. Code, Sec. 313.)

ATTEST:
LAURA BYNUM
Clerk, Board of Supervisors

By: 
Deputy

ACCOUNTING: 1001-207080-723000 - \$12,000 FY20/21
2750-807010-723000 - \$14,000 FY20/21
1001-207080-723000 ACT 143- \$ 9,000 FY 21/22
Fund Organization Account Not To Exceed: \$35,000

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EXHIBIT "A"

HEARING OFFICER SERVICES

1. Pre-Administrative Hearing Duties.
 - A. The Community Development Director or his or her designee will schedule administrative hearings on Notices and Orders. Any administrative hearings will be scheduled for Thursday mornings, subject to confirmation first by the Contractor.
 - B. At least six (6) days prior to the scheduled day of the administrative hearing, the Community Development Director shall mail or email to Contractor a copy of the staff report with respect to the Notice and Order. The County shall also serve a copy on the appellant(s).
 - C. At least prior to the day of the administrative hearing on a contested administrative citation, Contractor shall review staff report, and shall research if necessary, all relevant County rules, regulations, ordinances, and/or policies governing the subject matter of the hearing.
2. Administrative Hearing Duties.
 - A. Contractor shall conduct the administrative hearings and make determinations regarding the Notice and Order in accordance with the Siskiyou County Code.
 - B. Contractor shall conduct each administrative hearing in a professional manner and be respectful, courteous, patient and responsive to all Contestants.
3. Post-Administrative Hearing Duties.
 - A. Contractor shall conduct any additional research necessary to fully and properly adjudicate any issues not resolved on the day of the administrative hearing.
 - 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. Hearing Officer shall issue all other findings and orders within 21 calendar days from closing of the record, unless otherwise agreed to in advance by both parties.
 - C. Contractor shall deliver the decision to the COUNTY and COUNTY shall be responsible for copying and serving the decision.

D. Contractor shall return any copies of exhibits and materials submitted at the hearing to the County Counsel within fifteen (15) days of the administrative hearing.