

**CITY CLERK
ORIGINAL**

**C-8525
06/28/2013**

**CITY OF GLENDALE
ADMINISTRATIVE HEARING OFFICER AGREEMENT**

28 This Administrative Hearing Officer Agreement ("Agreement") is made and entered into this day of June, 2013, by and between the City of Glendale, an Arizona municipal corporation ("City") and Harold J. Merkow, Attorney at Law ("Hearing Officer")

RECITALS

- A. The City Manager of the City of Glendale is authorized and empowered by the provisions of the Glendale City Charter to execute contracts and contract amendments; and
- B. The City requires that an Administrative Hearing Officer conduct hearings on administrative appeals, to compose and write reports with his or her findings of fact, conclusions of law, and make a determination for the ultimate outcome of the appeal, and
- C. Hearing Officer is licensed to practice law in the State of Arizona, is a member in good standing with the State Bar of Arizona ("Bar"), is otherwise professionally qualified to provide the desired services and is ready, willing and able to do so; and
- D. City and Hearing Officer desire to memorialize their agreement with this document.

AGREEMENT

- 1. **Term of Agreement.** The term of this Agreement shall be for the period commencing on June 18, 2013 and expiring on June 18, 2016 ("Term").
- 2. **Renewal.** At least thirty (30) days before the end of the Term, City may extend this Agreement for up to two additional one-year periods with the consent of Hearing Officer. The City may change the rate of compensation applicable to each extension period.
- 3. **Fees.** The City will pay Hearing Officer for all part-time legal services provided under this Agreement at the rate of \$150.00 per hour. Hearing Officer must submit an invoice for payment to the City Manager or his/her designee no later than the tenth day of the following calendar month for which Hearing Officer is billing. When requested, the invoice must be substantiated with the appropriate reports. In the event of termination before the expiration date of this Agreement, Hearing Officer will submit a final billing within ten (10) calendar days.
 - 3.1 **Costs.** Hearing Officer will pay all costs and expenses incurred except as expressly provided in this Agreement. The Hearing Officer is responsible for the following costs, including, but not limited to: office rent, telephone, computer, expenses related to the maintenance and operation of an office, continuing education, transportation, photographs, photocopies, secretarial services, law clerks, transcripts (other than appeal transcripts) and preparation of reports required by this Agreement.
- 4. **Services.** Hearing Officer will preside over administrative hearings when appointed to do so by the City Manager.
 - 4.1 **Quality of Work.** Hearing Officer will conduct the hearings assigned diligently and professionally, consistent with standards set forth in the Arizona Rules of Professional Conduct.

4.2 State Bar of Arizona Membership. Hearing Officer must at all times remain an active member in good standing with the Bar. Hearing Officer must immediately inform the City Manager of any changes in Hearing Officer's active membership status and of any adverse Bar rulings. Failure to maintain membership status and/or failure to promptly apprise the City Manager of changes may result in the immediate termination of this Agreement.

4.3 Conflicts. In the event a conflict of interest or the appearance of impropriety should arise Hearing Officer will notify the City Manager immediately and the City Manager will appoint another hearing officer to avoid a conflict of interest, the appearance of impropriety or as otherwise required in the interest of justice.

5. **Insurance.** City must be named and properly endorsed as an additional insured on all liability policies required by this Agreement.

5.1 The coverage extended to the City as an additional insured must be primary and must not contribute with any insurance or self-insurance policies or programs maintained by the City.

5.2 All insurance policies obtained pursuant to this section must be with companies legally authorized to do business in the State of Arizona and reasonably acceptable to all parties.

6. **General Conditions.**

6.1 Modification of Agreement. This Agreement will be deemed modified to comply with any subsequent changes imposed by case law or rules promulgated by the Arizona Supreme Court.

6.2 Indemnification. Hearing Officer will defend, indemnify, and hold harmless the City and any of its departments, agents, officers, and employees from all damages, claims, or liabilities and expenses, including attorney fees, arising out of or resulting from the performance of professional services under this Agreement and caused by any error, omission or negligent act of the Hearing Officer, or anyone for whose acts the Hearing Officer is legally liable.

6.3 Waiver of Liens. Hearing Officer expressly waives any and all Hearing Officer's liens that may arise in the course of performance under this Agreement.

6.4 Non-exclusivity. Hearing Officer acknowledges and agrees that this Agreement is non-exclusive and the City may enter into other similar agreements with other private attorneys as may be deemed reasonably necessary to conduct the necessary administrative hearings for the City of Glendale.

6.5 City Manager. The City Manager will oversee performance of this Agreement and approve payments for Services provided. The Hearing Officer will submit reports, notices, requests, and other correspondence to the City Manager.

6.6 Integration. Except as stated herein, this Agreement constitutes the entire understanding of the parties and no representation or agreements, oral or written, made prior to this execution will vary or modify the terms herein.

6.7 Governing Law. This Agreement will be governed and interpreted according to the laws of the State of Arizona.

6.8 Amendments. Any amendment or modification of the terms of this Agreement must be in writing and signed by the parties.

- 6.9 Assignment. Services covered by this Agreement will not be assigned in whole or in part, except as approved and necessary to provide for substitution of counsel as required herein.
- 6.10 Time of the Essence. Time is of the essence with respect to fulfillment of all obligations set forth herein.
- 6.11 Public Record. Hearing Officer is hereby informed that this Agreement is a public record and is subject to full disclosure under Arizona law.

7. Confidentiality and Data Security.

- 7.1 Hearing Officer agrees to keep all deliberations, findings of fact, conclusions of law, and ultimate recommendations confidential until such time as he or she submits the written report with accompanying documents to the City. Hearing Officer agrees to refer all requests for information about a hearing or the hearing process to the City Manager.
- 7.2 All documents generated by the Hearing Officer or submitted to the Hearing Officer, including Hearing Officers notes, will be the property of the City and will be preserved by the City according to established policies. Once the final written report has been generated and the Hearing Officer's notes have been used to prepare the report, or is substantially incorporated into the report, the notes become the property of the Hearing Officer and may be destroyed.
- 7.3 Personal identifying information, financial account information, or restricted City information, whether electronic format or hard copy, must be secured and protected at all times to avoid unauthorized access. At a minimum, Hearing Officer must encrypt and/or password protect electronic files. This includes data saved to laptop computers, computerized devices or removable storage devices.
- 7.4 When personal identifying information, financial account information, or restricted City information, regardless of its format, is no longer necessary, the information must be redacted or destroyed through appropriate and secure methods that ensure the information cannot be viewed, accessed, or reconstructed.
- 7.5 In the event that data collected or obtained by the Hearing Officer in connection with this Agreement is believed to have been compromised, Hearing Officer shall notify the City Manager immediately. Hearing Officer agrees to reimburse the City for any costs incurred by the City to investigate potential breaches of this data and, where applicable, the cost of notifying individuals who may be impacted by the breach.
- 7.6 Hearing Officer agrees that the requirements of this Section shall be incorporated into all subcontractor/subconsultant agreements entered into by the Hearing Officer. It is further agreed that a violation of this Section shall be deemed to cause irreparable harm that justifies injunctive relief in court. A violation of this Section may result in immediate termination of this Agreement without notice.
- 7.7 The obligations of Hearing Officer under this Section shall survive the termination of this Agreement.

8. Audit/Records.

The City reserves the right, at reasonable times, to audit Hearing Officer's books and records relative to the performance of service under this Agreement. All records pertaining to this Agreement shall be kept on a generally accepted accounting basis for a period of three (3) years following termination of the Agreement.

9. Independent Contractor Status; Employment Disclaimer.

9.1 The parties agree that Hearing Officer is providing the Services under this Agreement on a part-time and/or temporary basis and that the relationship created by this Agreement is that of independent contractor. Neither Hearing Officer nor any of Hearing Officer's agents, employees or helpers shall be deemed to be the employee, agent, or servant of the City. The City is only interested in the results obtained under this Agreement; the manner, means and mode of completing the same are under the sole control of Hearing Officer.

9.2 This Agreement is not intended to constitute, create, give rise to, or otherwise recognize a joint venture, partnership or formal business association or organization of any kind, and the rights and obligations of the parties shall be only those expressly set forth in this Agreement. The parties agree that no individual performing under this Agreement on behalf of Hearing Officer will be considered a City employee, and that no rights of City Civil Service, City retirement or City personnel rules shall accrue to such individual. Hearing Officer shall have total responsibility for all salaries, wages, bonuses, retirement, withholdings, worker's compensation, other employee benefits, and all taxes and premiums appurtenant thereto concerning such individuals, and shall save and hold harmless the City with respect thereto.

10. Contacts with Third Parties.

Hearing Officer shall not contact third parties to provide any information in connection to the Services provided under this Agreement without the prior written consent of the City. Should Hearing Officer or its subcontractors be contacted by any person requesting information or requiring testimony relative to the Services provided under this Agreement or any other prior or existing Agreement with the City, Hearing Officer or its subcontractors shall promptly inform the City giving the particulars of the information sought and shall not disclose such information or give such testimony without the written consent of the City or court order. The obligations of Hearing Officer and its subcontractors under this Section shall survive the termination of this Agreement.

10.1 Hearing Officer agrees that the requirements of this Section shall be incorporated into all subcontractor agreements entered into by the Hearing Officer. It is further agreed that a violation of this Section shall be deemed to cause irreparable harm that justifies injunctive relief in court. A violation of this Section may result in immediate termination of this Agreement without notice.

11. Conflicts of Interest.

11.1 Hearing Officer acknowledges that, to the best of its knowledge, information and belief, no person has been employed or retained to solicit or secure this Agreement upon a promise of a commission, percentage, brokerage, or contingent fee, and that no member of the Glendale City Council, or any employee of the City has any financial interest in the consulting firm. For breach of violation of this warranty, the City shall have the right to annul this Agreement without liability, including any such commission, percentage, brokerage or contingent fee.

- 11.2 The City reserves the right to disqualify Hearing Officer in the event that the City determines that Hearing Officer has an actual or apparent conflict of interest with the purposes of this Agreement.
- 11.3 Upon a finding by the City that gratuities in the form of entertainment, gifts or inducements were offered or given by Hearing Officer, or any agent or representative of Hearing Officer, to any officer or employee of the City for the purpose of securing this Agreement, or securing favorable treatment with respect to the awarding, amending, or making of any determination with respect to the performance of this Agreement, the City may, by one (1) calendar day written notice to Hearing Officer, terminate the right of Hearing Officer to proceed under this Agreement, provided that the existence of the facts upon which the City made such findings shall be an issue and may be litigated in an Arizona court of competent jurisdiction. In the event of such termination, the City shall be entitled to the same remedies against Hearing Officer as could be pursued in the event of default by Hearing Officer.

12. Termination.

- 12.1 By City. This Agreement may be terminated by the City, without cause and for convenience, by a 30-day written notice of termination. In the event of termination for convenience, City's sole obligation to Hearing Officer will be to pay the fees incurred for Services performed as of the date of termination, except as provided below.
- 12.2 By Hearing Officer. Hearing Officer may terminate this Agreement upon a 60-day written notice of termination to the City Manager.
- 12.3 For Cause. The City may also terminate this Agreement without notice for cause. Any of the following may constitute an event of default by Hearing Officer which may constitute cause and entitle the City to terminate this Agreement immediately without notice for: (a) failure to comply with any of the terms and conditions of this Agreement; (b) unsatisfactory performance in the opinion of the City Manager; (c) failure to maintain malpractice insurance; (d) failure to abide by current rules of professional ethics; (e) performance that falls below the guidelines set by the Arizona Supreme Court for legal services, (f) suspension or disbarment by the Arizona Supreme Court; and (g) failure to provide the City, upon request, reasonable assurances of future performance. In the event of termination for cause, the City will not be liable to Hearing Officer for any damages sustained by reason of the default which gave rise to the termination, and the Hearing Officer will be liable to the City for any and all damages sustained by the City by reason of the default which gave rise to the termination.
- 12.4 Conflicts of Interest. This Agreement is subject to the provisions of A.R.S. § 38-511. It may be canceled by the City, without penalty or further obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating this Agreement on behalf of the City is, at any time while this Agreement or any extension is in effect, Hearing Officer's employee, agent or consultant, or consultant to the City with respect to the subject of this Agreement.
- 12.5 Funds Appropriation Contingency. If funds are not appropriated by the City Council for payment of charges hereunder, the City may terminate this Agreement.

13. Compliance with Laws.

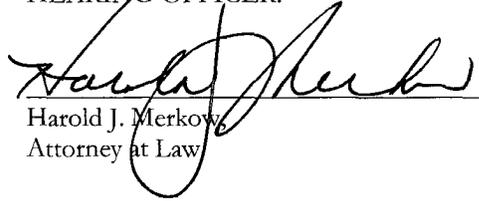
Hearing Officer shall comply with all existing and subsequently enacted federal, state and local laws, ordinances, codes, and regulations that are, or become applicable to this Agreement. If a subsequently enacted law imposes substantial additional costs on Hearing Officer, a request for an amendment may be submitted.

13.1 Immigration Law Compliance.

- a. Hearing Officer, and on behalf of any substitute hearing officer, warrants, to the extent applicable under A.R.S. § 41-4401, compliance with all federal immigration laws and regulations that relate to their employees as well as compliance with A.R.S. § 23-214(A) which requires registration and participation with the E-Verify Program.
- b. Any breach of warranty under this section is considered a material breach of this Agreement and is subject to penalties up to and including termination of this Agreement.
- c. City retains the legal right to inspect the papers of Hearing Officer or substitute hearing officer who performs work under this Agreement to ensure that the Hearing Officer or any substitute hearing officer is compliant with the warranty under this section.
- d. City may conduct random inspections, and upon request of City, Hearing Officer shall provide copies of papers and records of Hearing Officer demonstrating continued compliance with the warranty under this section. Hearing Officer agrees to keep papers and records available for inspection by the City during normal business hours and will cooperate with City in exercise of its statutory duties and not deny access to its business premises or applicable papers or records for the purposes of enforcement of this section.
- e. Hearing Officer agrees to incorporate into any subcontracts under this Agreement the same obligations imposed upon Hearing Officer and expressly accrue those obligations directly to the benefit of the City. Hearing Officer also agrees to require any substitute hearing officer to incorporate into each of its own subcontracts under this Agreement the same obligations above and expressly accrue those obligations to the benefit of the City.
- f. Hearing Officer's warranty and obligations under this section to the City is continuing throughout the Term of this Agreement or until such time as the City determines, in its sole discretion, that Arizona law has been modified in that compliance with this section is no longer a requirement.
- g. The "E-Verify Program" above means the employment verification program administered by the United States Department of Homeland Security, the Social Security Administration, or any successor program.

- 13.2 Foreign Prohibitions. Hearing Officer certifies under A.R.S. §§ 35-391 et seq. and 35-393 et seq., that it does not have, and during the Term of this Agreement will not have, "scrutinized" business operations, as defined in the preceding statutes, in the countries of Sudan or Iran.

HEARING OFFICER:



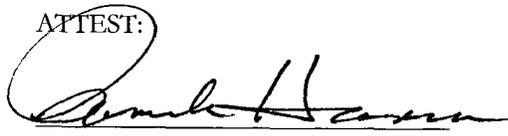
Harold J. Merkow
Attorney at Law

CITY OF GLENDALE:



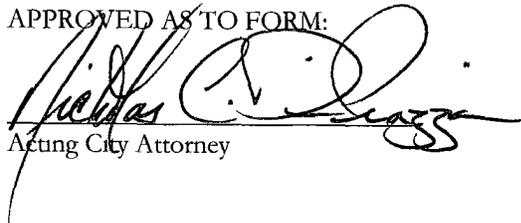
Acting City Manager

ATTEST:



City Clerk (Seal)

APPROVED AS TO FORM:



Acting City Attorney