

HEARING OFFICER SERVICES AMENDED AGREEMENT

THIS AGREEMENT is made on the 1st day of April, 2017, by and between the CITY OF CLEARWATER, FLORIDA, P.O. Box 4748, Clearwater, Florida 33758-4748 (the "City") and NANCY B. MAG, ESQ., 304 Old Mill Pond Rd., Palm Harbor, FL 34683 ("Attorney").

WITNESSETH:

WHEREAS, the City wishes to retain Attorney to provide Local Hearing Officer Services to the City of Clearwater for the purpose of conducting hearings pursuant to Section 316.0083, Florida Statutes.

NOW, THEREFORE, in consideration of the promises and mutual covenants herein contained, the parties hereto do hereby agree as follows:

SECTION 1. AUTHORIZATION TO PROCEED AS HEARING OFFICER. Attorney is hereby authorized to provide Local Hearing Officer services as described in and for the professional fees described in this Agreement.

SECTION 2. SCOPE OF SERVICES. Attorney accepts designation by the CITY as the "local hearing officer" ("Hearing Officer") for the purpose of conducting hearings pursuant to Section 316.0083, Florida Statutes.

- (1) All hearings conducted by Hearing Officer shall be held in the Clearwater City Council chambers, located on the 3rd floor of City Hall, 112 S. Osceola Avenue, Clearwater, FL 33756, or at such other location designated by the City.
- (2) The hearings shall be held monthly on the third Wednesday of each month at 1:00 p.m. unless the hearings are rescheduled upon the mutual agreement of the parties.
- (3) The City Clerk shall be the clerk for the Hearing Officer and shall be responsible for scheduling all hearings, sending all notices, attending all hearings, and for all of the costs associated with completing the clerk's duties.
- (4) At the hearing, Hearing Officer shall take testimony from a traffic infraction enforcement officer employed by the CITY and from the person requesting the hearing (hereinafter "petitioner"), and may take testimony from others. All testimony at the hearing will be under oath and will be recorded at the CITY'S expense. Hearing Officer shall review the photographic or electronic images and the streaming video made available under Section 316.0083, Florida Statutes. Formal rules of evidence do not apply, but

Hearing Officer shall ensure that due process is observed and governs the proceedings.

- (5) At the conclusion of the hearing, Hearing Officer shall determine whether a violation under Section 316.0083(1)(a), Florida Statutes, has occurred; in which case, Hearing Officer shall uphold or dismiss the violation. If Hearing Officer upholds the notice of violation, Hearing Officer shall require the petitioner to pay the penalty assessed pursuant to Section 316.0083, Florida Statutes, and may also require the petitioner to pay CITY costs, not to exceed \$250. The CITY Clerk will prepare the final administrative order for Hearing Officer containing the Hearing Officer's determinations. Hearing Officer will sign the final administrative order within 48 hours from the date of the hearing.

SECTION 3. TERM. This Agreement will be effective April 1, 2017 and will continue until terminated in accordance with Section 9 herein.

SECTION 4. PROFESSIONAL FEES FOR SERVICES. The City and Attorney agree to a retainer of \$300.00 per month to conduct the hearing.

SECTION 5. CONFLICT OF INTEREST. It is understood by the City and Attorney that Attorney is not aware of any clients of the Attorney that currently present any conflict between the interests of the City and other clients of Attorney. If any potential conflict of interest arises during the time Attorney is acting as Hearing Officer, Attorney will promptly inform the City. The City is under no obligation to agree to permit the conflict representation.

SECTION 6. INDEPENDENT CONTRACTOR. Attorney agrees that Attorney and any persons employed by Attorney for purposes related to this agreement are not employees of the City for any purpose whatsoever, including unemployment tax, social security contributions, income tax withholding or workers compensation, whether state or federal. Attorney agrees to pay and be solely responsible for all applicable taxes, both state and federal, in connection with this agreement.

SECTION 7. DUAL OFFICE-HOLDING PROHIBITED. It is understood by the City and Attorney that Attorney may not act as a Local Hearing Officer for any other municipality while this agreement is in effect.

SECTION 8. CONSTRUCTION AND AMENDMENTS. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. This Agreement may be amended only by a writing duly entered into by the City and Hearing Officer.

SECTION 9. CANCELLATION OF AGREEMENT. The City may cancel or terminate this Agreement upon ten days advance written notice to Hearing Officer. In the event of cancellation, Hearing Officer shall immediately cease work hereunder and shall be reimbursed for eligible and documented reimbursable expenses incurred prior to the

date of cancellation. Hearing Officer may cancel this Agreement by giving 30 days written notice to the city.

IN WITNESS WHEREOF, the City and Attorney have executed this Agreement as of the date first written above.

THE CITY OF CLEARWATER

By: _____
George N. Cretekos
Mayor

Approved as to form:

Attest:

Pamela K. Akin
City Attorney

Rosemarie Call
City Clerk

Attest:

NANCY MAG, ESQ.
