

TOWN OF SAN ANSELMO
STAFF REPORT
July 17, 2013

For the Meeting of July 23, 2013

TO: Town Council

FROM: Robert Epstein, Town Attorney
Megan Acevedo, Deputy Town Attorney

SUBJECT: Authorize Mayor to Execute the Local Agency Agreement with the California Office of Administrative Hearings to Provide for the Appointment of an Independent Hearing Officer to Conduct and Decide the Appeals Concerning Councilmember Ford Greene's property at 711 Sir Frances Drake Blvd.

RECOMMENDATION:

Staff recommends that the Town Council consider and authorize the Mayor to execute the Local Agency Agreement between the Town of San Anselmo and the California Office of Administrative Hearings to provide for the appointment of an independent hearing officer to conduct and decide the appeals concerning Councilmember Ford Greene's property at 711 Sir Frances Drake Blvd.

BACKGROUND:

On February 14, 2013, Councilmember Greene filed an appeal of (a) the Town Planning Commission's decision on February 4, 2013, that denied his appeal of an administrative determination made by the Town Planning Department on August 14, 2012, concerning Greene's real property located at 711 Sir Francis Drake Blvd; and (b) the determinations of the Town's Building Official on March 29, 2012 and January 22, 2013 declining to classify the California Building Code occupancy of Greene's building as R-2 ("the Greene Appeals"). The San Anselmo Municipal Code provides that the Town Council hears appeals of Planning Commission decisions. (San Anselmo Municipal Code § 10-1.06). The California Building Code provides that the Town Council hears appeals of decisions made by the Town Building Official. (California Building Code § 1.8.8.2). However, on June 25, 2013, the Town Council adopted an ordinance providing for appointment of an independent hearing officer to conduct and decide the hearing concerning the Greene Appeals.

DISCUSSION:

The California State Office of Administrative Hearings (“OAH”) provides neutral Administrative Law Judges (“ALJ”) to more than 1,400 local agencies in California. To utilize OAH services, the Town Council must first enter into the attached Local Agency Agreement with the OAH. Any hearing conducted by the OAH will be open and noticed in accordance with the Town Municipal Code and state law. The public will have the opportunity to be heard at the hearing.

Under the attached Local Agency Agreement, OAH agrees to provide hearing services to the Town when the Town submits a written request for such services. In exchange for the services, the Town agrees to pay filing fees, ALJ hourly rates, and any reasonable costs related to requested accommodations made for the hearing. Currently, OAH filing fees are \$80/case and ALJ hourly rates are set at \$184/hour.¹

At the June 25, 2013, Town Council meeting, the Council asked that staff attempt to estimate the amount of time it will take for an ALJ to hear and decide the Greene Appeals. On July 8, 2013, the Deputy Town Attorney spoke with the attorney for Councilmember Greene to request an estimate of the time required for this matter. He stated that the ALJ would need approximately 10-20 hours to meet with parties before the hearing, to hear and decide the matter and to resolve any post-hearing issues. He also estimated that the ALJ would require 6-8 hours to review the administrative record for this matter, for a total of 28 hours. Bonnie Freeman, counsel to the Town for the Greene Appeals, agreed with this estimate, but suggested that record review might require some additional time. Her suggestion was to increase the total estimated time to 30 hours. Before speaking with the attorneys in this matter, Town Attorney Rob Epstein offered an estimate of 40 hours to resolve this matter.

It is encouraging that the parties believe the matter will require less than 30 hours, but to allow for unforeseen issues the Council may wish to build in a cushion by contracting for an amount that slightly exceeds these estimates. Accordingly, staff recommends the Council authorize the Town Manager to enter into a Local Agency Agreement to cover OAH services up to \$10,000.

Once the Town enters into the Local Agency Agreement, the next step is to file a Request to Set form, which will formally engage the OAH for the Greene Appeals.

Conclusion

Staff respectfully requests that the Town Council consider and authorize the Mayor to execute the Local Agency Agreement between the Town of San

¹ California Department of General Services Price Book , available at http://www.dgs.ca.gov/ofs/Resources/Pricebook/Pricebook_A/AdminHear.aspx

Anselmo and the OAH in the amount of \$10,000, to provide for the appointment of an independent hearing officer to conduct and decide the appeals concerning Councilmember Greene's property at 711 Sir Frances Drake Blvd.

Respectfully submitted,

M. Acevedo
DS

Megan Acevedo
Deputy Town Attorney

Exhibit A – Local Agency Agreement (amount to be determined)

STANDARD AGREEMENT

AGREEMENT NUMBER

1. This Agreement is entered into between:

LOCAL AGENCY'S NAME

CONTRACTOR'S NAME

Department of General Services / Office of Administrative Hearings

2 The term of this Agreement is:

Upon the date of approval and execution by all parties through five years

3. The maximum amount of this Agreement is: \$ 10,000.00

Ten Thousand Dollars and No Cents

4. The parties agree to comply with the terms and conditions of the following exhibits which are by this reference made a part of the Agreement.

Exhibit A – Scope of Work	2 pages
Exhibit B – Budget Detail and Payment Provisions	1 pages
Exhibit C – General Terms and Conditions	1 pages
Exhibit D – Special Terms and Conditions	0 pages
Exhibit E – Additional Provisions	0 pages

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.

CONTRACTOR

CONTRACTOR'S NAME

Office of Administrative Hearings

BY (Authorized Signature)

DATE SIGNED(Do not type)

PRINTED NAME AND TITLE OF PERSON SIGNING

Linda A. Cabatic, Director and Chief Administrative Law Judge

ADDRESS

2349 Gateway Oaks Drive, Suite 200, Sacramento, CA 95833

LOCAL AGENCY

LOCAL AGENCY NAME

BY (Authorized Signature)

DATE SIGNED(Do not type)

I declare under penalty of perjury that I have full authority to execute this agreement on behalf of the Local Agency.

PRINTED NAME AND TITLE OF PERSON SIGNING

ADDRESS

EXHIBIT A

SCOPE OF WORK

1. Upon request of Town of San Anselmo (hereinafter referred to as "Local Agency"), Department of General Services, Office of Administrative Hearings (OAH) agrees to furnish the services of Administrative Law Judges (ALJs) to the Local Agency, for the purpose of conducting hearings pursuant to Government Code section 27727 when required personnel are available by OAH. The assignment of ALJs for hearings will be at the discretion of the Director and/or Presiding Administrative Law Judges, who may elect to hear the matter themselves.

The Local Agency agrees to provide OAH a written request for hearing with all pleadings, documents, papers, or other materials that have been provided to the other party. The Local Agency agrees to provide copies of all applicable laws and ordinances governing the hearing to the OAH. The Local Agency agrees that OAH will not be able to schedule a hearing or mediation until the materials are provided.

The Local Agency agrees to inform OAH if the hearing is to be recorded or if a court reporter is required. The Local Agency agrees to inform OAH 30 days prior the hearing if any accommodations or interpreters are required.

In consideration of the performance of such services by OAH, the Local Agency agrees to pay to OAH the cost of rendering such services at the rate established at the time the services are rendered. In the event a calendared case is taken off calendar, or needs to be re-calendared, other than by the OAH, and the OAH is unable to schedule the ALJ for another case, the Local Agency agrees to pay OAH for the original hearing time or until the ALJ is assigned to another case, whichever occurs first. Every effort will be made to promptly reassign the scheduled ALJ in the event a calendared matter is cancelled, taken off calendar, settled, re-calendared or continued.

The costs of OAH's services include filing fees, Administrative Law Judge hourly rates, any reasonable costs related to any requested accommodations, and translator/interpreter fees as required. All costs associated with providing a record of the hearing (reporter/transcription, etc.) shall be billed directly to the Local Agency. ALJ hourly rates and filing fees charged by OAH will be the rates set forth in the Department of General Services' Price Book at the time the services are rendered. Rates for court reporters will be the current contract rates at the time the services are rendered, which vary by geographical location. Fees for translator/interpreters and transcription services will be based on current contract rates at the time the services are rendered. All rates are subject to change annually.

The Local Agency further agrees to be responsible for the full costs of any service provided by OAH regardless of any agreement the Local Agency may have with a third party.

The contract is effective upon approval and execution of all signatures to this contract. The term of this contract is five years from the effective date of the contract and may be extended by amendment.

2. The services shall be performed at a location convenient for all parties.

3. The project representatives during the term of this agreement will be:

Office of Administrative Hearings	Local Agency: Town of San Anselmo
Name: Cheryl Hill	Name: Kay Coleman, c/o Debbie Stutsman
Phone: 916-263-0550	Phone: 415-258-4652
Fax: 916-263-0545	Fax: 415-459-2477
Email: Cheryl.Hill@dgs.ca.gov	Email: colemankp@comcast.net
	Additional Email: dstutsman@townofsananselmo.org

Direct all inquiries to:

Office of Administrative Hearings	Local Agency: Town of San Anselmo
	Section/Unit: Town Attorney
Attention: Local Agency Agreement Coordinator	Attention: Rob Epstein
Address: 2349 Gateway Oaks Dr. Suite 200 Sacramento, CA 95833	Address: 525 San Anselmo Avenue San Anselmo, CA 94960
Phone: 916-263-0550	Phone: 415-755-2625
Fax: 916-263-0545	Fax: 415/482-7542
Email: tim.dean@dgs.ca.gov	Email: rob@epsteinlawyer.com

4. OAH will retain the administrative record, including electronic recording for 30 days following the issuance of a decision / proposed decision. After 30 days, OAH will transmit the complete record to the Local Agency unless the Local Agency directs otherwise. Decisions / Proposed Decisions and closed case files shall be directed to:

Local Agency: Town of San Anselmo
Section/Unit: Town Attorney
Attention: Rob Epstein
Address: 525 San Anselmo Avenue San Anselmo, CA 94960
Phone: 415-755-2625
Fax: 415/482-7542
Email: rob@epsteinlawyer.com

EXHIBIT B

1. INVOICING AND PAYMENT

- A. For services satisfactorily rendered in accordance with the Scope of Work, and upon receipt and approval of the invoices, the Local Agency agrees to compensate the Department of General Services, Office of Administrative Hearings, for actual expenditures incurred in accordance with the rates specified herein. OAH charges will include filing fees, Administrative Law Judge hourly rates, and translator/interpreter fees as required. All costs associated with providing a record of the hearing (reporter/transcription, etc.) shall be billed directly to the Local Agency. ALJ hourly rates and filing fees charged by OAH will be the rates set forth in the Department of General Services' Price Book at the time the services are rendered. Rates for court reporters will be the current contract rates at the time the services are rendered, which vary by geographical location. Fees for translator/interpreters and transcription services will be based on current contract rates at the time the services are rendered. All rates are subject to change annually. Any training required of the ALJs by the Local Agency to conduct these hearings will be paid out of the contract funds by the Local Agency at the prevailing ALJ hourly rate. The Price Book is available at http://www.dgs.ca.gov/ofs/Resources/Pricebook/Pricebook_A/AdminHear.aspx.
- B. The OAH shall be paid not more frequently than monthly, in arrears, upon submission of an original invoice, which properly details all charges, expenses, direct and indirect costs.

EXHIBIT C

GENERAL TERMS AND CONDITIONS

1. APPROVAL: This Agreement is of no force or effect until signed by both parties.
2. AMENDMENT: No amendment or variation of the terms of this Agreement shall be valid unless made in writing, signed by the parties and approved as required. No oral understanding or Agreement not incorporated in the Agreement is binding on any of the parties.
3. CANCELLATION/TERMINATION:
 - A. This agreement may be cancelled or terminated without cause by either party by giving thirty (30) calendar days advance written notice to the other party. Such notification shall state the effective date of termination or cancellation and include any final performance and/or payment/invoicing instructions/requirements.
 - B. Upon receipt of a notice of termination or cancellation from the Local Agency, OAH shall take immediate steps to stop performance and to cancel or reduce subsequent contract costs.
 - C. OAH shall be entitled to payment for all allowable costs authorized under this agreement, including authorized non-cancelable obligations incurred up to the date of termination or cancellation, provided such expenses do not exceed the stated maximum amounts payable.
5. GOVERNING LAW: This contract is governed by and shall be interpreted in accordance with the laws of the State of California.
6. SETTLEMENT OF DISPUTES: In the event of a dispute, the Local Agency shall file a "Notice of Dispute" with the Director of OAH within ten (10) days of discovery of the problem. Within ten (10) days, the Director of OAH shall meet with the Local Agency for purposes of resolving the dispute. The decision of the Director of OAH shall be final.